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LITIGATIONS OF DISSENTING SHAREHOLDERS IN THE AMERICAN LEGAL SYSTEM FOLLOWING THE MERGER OF JOINT-STOCK COMPANIES AND THEIR APPLICATION IN THE IRANIAN LEGAL SYSTEM

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ABSTRACT

The rights of shareholders are profoundly impacted whenever two or more joint-stock companies merge. There is a possibility that several company shareholders, who are considered to be minority shareholders, may disagree with the company's merging. These shareholders will still participate in the extraordinary general meeting but will not vote in favor of the merger. The shareholders who were opposed to the merger and did not vote in favor of it would get an amount from their company as the value of the shares they lose as a result of the merger if the merger is approved at the extraordinary general meeting. This group of shareholders can assert that the amount given to them is not the intrinsic value of their shares in the company, so they have experienced losses and that their rights have been infringed. In the American legal system, lawsuits for the right of appraisal and breach of fiduciary duty have been anticipated to protect dissenting shareholders. According to these lawsuits, dissenting shareholders can go to court and demand damages if they believe they have been wronged in some way. The present study was conducted by using a descriptive-analytical methodology, and the required data were gathered in libraries. The following question has been answered in the current study: Can a lawsuit similar to the Americans be predicted in the Iranian legal system regarding the issue? It was found that in Iran's legal system, litigation akin to the right of appraisal lawsuit and the breach of fiduciary duty lawsuit can be anticipated so that the minority shareholders who are opposed to the merger can pursue damages due to the absence of a legal framework to protect them.

Keywords: Merger of joint-stock companies, Appraisal right, Fair value of shares, Fiduciary relationship, Breach of fiduciary duty.

INTRODUCTION

Today, commercial companies play a significant part in the realm of economic and commercial endeavors; concurrently, the number of commercial enterprises has expanded in tandem with the expansion and development of societies, as well as their progress toward modernization and industrialization. Joint-stock companies play a key role in the field of economy and commerce, and the vast majority of active commercial companies in contemporary countries are joint-stock companies. A competitive market is generated as a result of the growth of economic and commercial activities in countries as well as the establishment of newly founded enterprises. In this market, active companies compete with one another to achieve greater success than their rivals. Joint-stock corporations make changes in the general levels of the company; one of these changes is referred to as a "merger." These modifications are made so that the companies can

continue to be successful in a highly competitive market, as well as enhance their wealth and management authority. One of the first legal notions to be acknowledged in western law and for which laws were subsequently drafted was the concept of merger. In 1971, the Iranian government passed a law concerning insurance companies called the Law on the Establishment of Central Insurance and Insurers. This law was the first time that Iranian law acknowledged the practice of the merger. After that, in 1991, the law governing cooperative companies in the cooperative sector of the economy of the Islamic Republic of Iran was amended to include recognition of the cooperative company. No explicit and codified regulations in our legal system deal with the merger issue and study its rules, methods, and effects. In addition, this institution in our legal system does not have any unique rules and is only found dispersed throughout the laws. Decision-making regarding the merger does not require unanimity and does not require the approval of all shareholders. Delaware's state corporate law requires the merger of companies to be subject to the approval of the merger agreement at the extraordinary general meeting with a majority vote. Also, according to the model law of American commercial companies, the approval of the merger plan is within the competence of the extraordinary general meeting and with a majority vote. In Iranian law, according to paragraph A of Article 40 of the Law of the Fourth Plan of Economic, Social and Cultural Development of the Islamic Republic of Iran: "merger... is carried out with the approval of four-fifths of the shareholders in the extraordinary general meeting of joint-stock companies...". Article 603 of Bill 91 of the Trade Law placed the authority to decide whether or not the companies should merge within the purview of the extraordinary general meetings of both of the companies involved. Because the merger of joint-stock companies results in the destruction of the legal personalities of the companies and the creation of a new legal personality, in the vast majority of instances, all of the shareholders of the companies that are involved in the merger are opposed to the merger and are against the creation of a new company, new statutes, and new shares. The shareholders who own the majority of the company's shares have a decisive role in meeting the extraordinary general assembly to decide on the merger. If the majority shareholders of the company are in favor of the merger and whether they approve the merger, the company, and the minority shareholders who are against the merger, even if they participated in the extraordinary general assembly meeting and stated their opposition, will not be effective against the will of the majority, and the merger of the company is approved despite the minority shareholders' objection. Dissenting shareholders have two options: 1) to join the merger process and enter the new business and get shares of this company, or 2) to leave the company and not join the merger process. Although the opposition shareholders chose to leave the company, their departure was absolutely against their will. The shareholders who oppose the merger and are compelled to leave the company may launch a lawsuit to assert their rights in court. Not only are the effects of a merger anticipated to have on the shareholders, the company, and other individuals, but it is also anticipated to affect the regulations and legal institutions that are a part of the American legal system. This is because the concept of a merger is well-known in the American legal system. There is a provision in the legal system of this country that allows shareholders who are against the merger but were unable to prevent the approval of the merger agreement in the extraordinary general assembly meeting from refer to the court by using these regulations and legal institutions and, depending on the circumstances, filing a lawsuit against the managers or



the remaining company to claim their rights. Because our country's legal system does not have any laws that specifically and explicitly deal with the topic of mergers in detail, and because the effects of mergers on shareholders, as well as the rights that shareholders have during the process of a merger, are unknown and unclear, the purpose of this research was to investigate the institutions and regulations that, in the legal system of the United States, allow shareholders who are opposed to a merger to file a lawsuit against it after the merger process has been completed by making use of those institutions and regulations. What possible recourse do the dissenting shareholders have if they sue for damages? That is, how much money can they make you pay out for how much trouble? Which of their rights does the court have jurisdiction to examine and decide upon? Whom can shareholders sue if they experience problems? The present study aimed to fill this gap in the law by analyzing the compensation alternatives available under U.S. law to shareholders who oppose a merger. Besides, this study is an attempt to find a solution within Iran's legal system that will pay the shareholders opposed to the merger and stop the majority from conspiring against or infringing upon the rights of the minority. Consequently, it is required to examine the American legal system and make use of the legal concepts and opinions of jurists to think of a solution to defend the interests of the dissenting shareholders under Iranian law. Besides, to close the current gap in the law, the legislator ought to establish comprehensive and complete regulations to examine the rights that dissenting shareholders may be entitled to.

MATERIALS AND METHODS

The method used in this research is the analytical method, the method of collecting library materials, in addition to the available books, articles and materials available on the Internet have also been used. Since the issue of shareholders' lawsuits against the merger has not been investigated in the laws and works of any Iranian lawyer, including books and articles, the present research has addressed this issue by using the legal principles and opinions of lawyers and their analysis.

RESULTS AND DISCUSSIONS

the amount of mergers of joint stock companies is increasing day by day, and during the merger of these companies, one of the issues and problems that may arise is the claim of damages and lawsuits by the shareholders against the merger, after the merger process, in front of the managers and or a new company. Since this legal entity and its effects are known in the American legal system, and on the other hand, it is unknown in the legal system of our country, in the existing legal vacuum, it is necessary to study and review the methods of compensation provided in the American legal system for the shareholders who oppose the merger. In Iran's legal system, a solution was provided to compensate the shareholders who oppose the merger and prevented the majority from colluding or causing the violation of the rights of the minority.



Therefore, it is necessary to fill the existing legal gap to some extent by predicting and knowing the rights that minority shareholders can apply after their forced exit from the company and the types of lawsuits they can raise, and by using legal principles and the opinions of lawyers, find a solution to preserve Consider the rights of dissenting shareholders. By examining and studying the American legal system in the field of methods of compensating shareholders who oppose the merger and filling the existing legal vacuum and adopting a solution in the laws to protect the opposing shareholders, it is possible to help the judicial system in verifying the rights of shareholders and issuing votes, and adopting methods of compensation for damages. In laws, it prevents different procedures and conflicting opinions.

Definitions

Literal and Idiomatic Definition of Merger

'Merger' is called /edgham/in Persian. Lexically, Edgham is an Arabic word, and the Kufis considered it as the infinitive of Efaal, and the Basaris considered it as the infinitive of Efteaal. Basaris stressed "d" in Edgham, which means to achieve or insert something into another thing or to squeeze two things together (Dehkhoda, 1993, p. 1330). Moein Persian dictionary also defined "merger" as squeezing and submerging two things (Moein, 1996, p. 181) .

In Latin, the word "merger" is often used for the abovementioned concept, and it refers to simple integration. Meanwhile, the word "consolidation" is also used for the combined merger. In the Latin dictionary, there are different definitions for the term "merger," such as something being combined with something smaller and less important so that the smaller thing becomes a part of the bigger one (Nolan, 1990, p. 988)..

Thus, "merger" is defined by the following phrases, "The combination of two or more units, rights or other things into a single whole, especially the absorption of a unit or right or small thing into something bigger (Blackwell, 2008, p. 315). Also, it is the union of two or more things, usually together with something smaller and less important, to end existence and life (Oran&Tosti, 2007, p. 333)..

In the area of law about joint-stock companies, the term "merger" refers to two distinct types: 'practical merger' and 'legal merger.' It is referred to as a "practical merger" when one company purchases the shares of another company, when shares of two joint-stock companies are exchanged, or when one joint-stock company purchases the assets of another joint-stock company. After the completion of the contract relating to the merger, joint-stock companies maintain their identities from a legal standpoint.

The real or legal method of merging two joint-stock companies is for the boards of directors of both companies to give their approval to the merger plan and then for the extraordinary general assemblies of both companies to vote on whether or not to proceed with the plan that has been approved by the boards of directors of the joint-stock companies. For a merger of joint-stock companies to be considered legal, both the assets and liabilities of the company or companies that are being merged must be transferred to the company that will remain after the merger.



Additionally, the company or companies that are being merged must be liquidated without going through the process of liquidation. When compared to other types of liquidation, in which the legal identity of the company continues to exist even after its assets and liabilities have been liquidated, and its obligations have been satisfied. Even if a company is in the process of being dissolved, it is still possible to be merged into another business or to take part in the establishment of a new business (Isaei Tafrashi, 2015, pp. 168-185).

Another division a legal merger is divided into 2 types: 'simple merger' and 'hybrid merger.'

It is referred to as a "simple merger" when the assets and liabilities of two commercial companies are transferred to just one of those companies, and it is referred to as a "hybrid merger" when the assets and liabilities of two commercial companies are transferred to a new commercial company that is considered to be a new legal person (Beigi Habibabadi, 2013, p. 232).

The Oxford dictionary also defines 'merger' as the "combination of two companies of comparable size, so that the members of each company participating in the merger exchange their shares with the shares of the new company, or with the shares of the other company involved in the merger (Martin & Law, 2006, p. 340).."

Therefore, a legal or real merger is a legal act by which a company is absorbed into another company by dissolving and erasing its legal personality, and the legal personality of the merging company remains (simple merger). Alternatively, two or more companies, by erasing their legal personality, form a new legal personality, and all assets, debts, litigations, and obligations of the companies involved in the merger are transferred to the new company (hybrid merger). As a result, the new business or the company that has survived the dissolution is the representative of the company or companies that were dissolved concerning all rights, obligations, litigations, and assets. The current study focused on legal or actual mergers; however, it did not investigate practical mergers because those fell beyond the parameters of the study. This legal institution was initially acknowledged in American law and had a very long history. In recent years, this issue has entered the legal system of Iran, and it is discussed in the following sections.



The Concept of Dissenting Shareholders

Both the Delaware State Business Companies Law and the Model Law of American Business Companies stipulate that a majority of the voting stock at an extraordinary general meeting of a joint-stock company must consent for the company to merge with another joint-stock company. All of the shareholders, except for the shareholders who were against the merger, are required to enter into the contract once the merger is approved by the majority of the shares, and the remuneration that is specified in the merger agreement is distributed among them. According to the law of Delaware commercial companies, a dissenting shareholder is someone who meets all these conditions: 1- He is against the merger of the company; 2- He has not voted in favor of the merger in the extraordinary general assembly meeting; 3- He has not joined the merger process after the approval of the merger; 4- He declares his opposition in the prescribed manner (will be reviewed in the future), and by following the formalities; 5- He should have his shares continuously at the time of approval of the merger and after that and after the merger becomes effective. As a result of the fact that all of these factors come together, the shareholder who has a minority stake is the one who is considered to be opposed to the merger. Following an analysis of the merger and its associated formalities, the law in question contains a section that is devoted to the protection provisions of shareholders who are opposed to the merger. Additionally,

solutions and institutions are envisioned to protect the rights of shareholders who are opposed to the merger. If the conditions mentioned above are included in these protective regulations, then shareholders can use them in their capacity as dissenting shareholders.

Right to Appraisal

What is the Appraisal Right Lawsuit?

Until the nineteenth century, in the common law of the United States of America, the consensus of all shareholders was required for making fundamental changes in the company, and important company decisions, including mergers, had to be made with the consensus of all shareholders. A scenario of this nature hindered the advancement of the company and the adoption of essential choices, and minority shareholders might obstruct the adoption of significant decisions and changes by casting a no vote. Sometimes they abused their right to vote, and for approval of a decision, they forced the majority to give them some concessions. Because of this predicament, the majority of states have passed laws that stipulate how significant and fundamental changes and decisions within a company, such as modifying the statutes, merging companies, and other similar matters, must be approved by a majority vote (Thomphson, 1984, p. 418). In the landmark case known as *Wheeler v. EIPA Eisen Palmen*, which took place in 1892, the Supreme Court of Illinois declared that fundamental decisions of the company do not require unanimity and will be approved by the majority of the shareholders. This decision established the majority rule, which states that fundamental decisions of the company do not require unanimity. After that, most of the state courts started to accept the majority rule (Richlin&Rospert, 2015, pp. 1-5). After the "majority rule" was established, legislators, to protect minority shareholders, passed "Appraisal rights" laws. These laws state that shareholders who oppose and object to the merger have the right to receive fair value for their shares, as well as the right to leave the company if they so choose. The legislators assumed that the requirement of a majority vote to approve the merger could lead to the majority shareholders attempting to violate the rights of the minority shareholders who are opposed to the merger. In addition, it is not permissible to compel dissident shareholders to leave a corporation by paying them unjust and extremely cheap sums that do not reflect the actual value of their shares. Almost every state had enacted some form of dissenting shareholder appraisal law by the first half of the twentieth century (Curran, 1981, pp. 671-689). Appraisal litigation is a method of compensating shareholders who are opposed to the company's merger but were unable to prevent its approval, forcing them to leave the company. On the other hand, the sum (compensation) that was offered to him (which is for the shares that he lost) is very low and unfair, and he sued for the appraisal right to seek that the court computes the "fair value of his shares." Through the process of the shareholders' appraisal right and by paying the fair value of the shares to the dissenting shareholders, the majority shareholders, who in most cases control and manage the company, can be punished. This is in addition to the fact that the appraisal right lawsuit is considered a method of compensation. It is also a form of punishment for the majority shareholders (Tran&vrublevskaya, 2015, pp. 1-4). Since the ruling that the Delaware court made in the case *Weinberger v. UOP and Signal Corporation* in 1983, the number of appraisal rights lawsuits that have been filed in the United States has increased significantly. In this particular case, the Delaware court did not find the merger deal, and the price was determined to be fair. As a result,



the court ordered Signal Company, which was the surviving company after the merger, to pay the minority shareholders of UOP Company the value that the court deemed appropriate for their shares. In the scenario involving the appraisal right of dissident shareholders, "cash" is the only kind of compensation that may be given, and dissident shareholders are given "cash" as the equivalent of the fair value of their shares. According to the model business corporation act of American commercial companies, the "fair value" of a company's shares is determined to be the value of those shares immediately before the company takes an action that dissatisfied shareholders have objected to. This is true regardless of whether or not the share price has decreased or increased since the merger. According to this regulation, the value of shares should be evaluated using standard principles and methodologies that are used to determine the value of a company's business, and the inability to sell shares on the market and the minority should not be taken into account when evaluating the fair value. In addition, as the American Companies Act and the jurisprudence of the majority of state courts have established, since the right of appraisal is intended as a method of compensation for shareholders who are deprived of the opportunity to remain in the new company, the court should consider the fair value of the shares without taking into account any change in the value of the shares after the merger. A shareholder who willingly declines the opportunity to participate in the new company is not entitled to any possible success coming from the merging of the companies, nor is he or she entitled to the value of the company following the merger (Thompson, 1984, pp. 430-434).. In appraisal right litigation, the disputing parties (the dissident shareholder and the new company) must present the appraisal experts' certificates to demonstrate the true value of the company's shares. By presenting the theory of appraisal experts, the court should make the expert theory the basis for giving a decision that is more accurate and closer to the fair value; however, the courts are in a situation of expert dispute and must choose the expert theory of one of the parties (Wartheimer, 1998, pp. 671-696). The court may consider the fair value of the shares to be greater or lesser than the amount offered to the dissident shareholder. Therefore, in the case of appraisal rights, the shareholder who objected must assume the risk that the court may consider the fair value of the shares to be less than the requested amount and must get the same amount as the court deems. In addition, the court will order the defendant to pay the plaintiff interest on the fair value of the shares from the merger's effective date in the appraisal litigation (Tran& vrublevskaya, 2015, pp. 1-5).



Appraisal Litigation Procedures in American Law

The state company law of Delaware provides specific filing procedures for appraisal litigations. According to this regulation, after the board of directors of the companies participating in the merger prepares the merger agreement (plan), the company must notify all shareholders at least 20 days before the extraordinary general meeting. Consequently, all shareholders will be informed of the subject of the meeting and that shareholders who oppose the merger have the right to appraisal, and a copy of the terms of this section shall be attached to the announcement given to shareholders. Any shareholder who is opposed to the merger and wishes to assess his shares must submit a written request to the company before the extraordinary general meeting vote on the merger to exercise his appraisal right. The application should tell the company of its attributes and its intention to exercise its appraisal right if the merger is authorized. The appraisal right for dissenting shareholders is not created by simply voting against the merger at

the extraordinary general assembly meeting; this written request must be submitted separately. The remaining company or the new company will notify all shareholders within 10 days of the merger's approval that the merger has been approved and that dissenting shareholders have the right to evaluate. Any dissident shareholder who has the right to assess his shares must notify the remaining company or the new company within 20 days of getting the notification that he intends to evaluate his shares. Additionally, the remaining company or the new company will publish an announcement and, based on it, will establish the total number of shares that did not vote in favor of the merger, the number of written requests for stock evaluation, and the total number of shareholders holding such shares. Any shareholder who has not yet filed a lawsuit to enforce his appraisal right may waive it within 60 days of the merger's approval by agreeing to the merger's terms, participating in the merger process, and joining the remaining or new company while accepting the proposed change. Within 120 days of the date the merger was approved, shareholders who have complied with the above deadlines, conditions, and formalities regarding the evaluation and who believe the amount proposed by the company to be unfair for leaving the company intend to file a lawsuit for the right of appraisal. They must turn to the "court of chancery" and, following the petition, file an appraisal litigation against the remaining company or the new company and demand the fair value of their shares.

To hear such a lawsuit, the court of chancery must first assess if the shareholder who filed the litigation has the authority to evaluate his shares. According to this law, shareholders have the appraisal right if they: 1- did not vote in favor of the merger or did not join it after its approval; 2- have complied with the formalities and deadlines (mentioned above) to exercise the appraisal right; 3- have had continuous possession of their shares since the merger was approved.

Also, according to this law, none of the shareholders of the merging company have the absolute right to evaluate their shares in the following situations:

- If the company's shares are tradable on an exchange or market
- If the number of stockholders exceeds 2000.
- In the parent-subsidary company merger (merger with quick formalities), when the parent company is merged into the subsidiary company, the shareholders of the subsidiary company are not required to vote for the merger, nor do they have the right to appraise the shares.

If the court determines that the dissenting shareholders do not have the right of appraisal based on the above conditions and rules, it will dismiss the lawsuit. If the court determines that the shareholder who filed the lawsuit has the right of appraisal, it will begin the process of appraising the shares based on the rules of the court of chancery and the special rules that are followed in lawsuits involving the right of appraisal.

Since the approval of the merger and thereafter, shareholders who have requested an appraisal of their shares following the procedures outlined in this law (except for dividends relating to dates before the approval of the merger) have no voting rights and cannot receive dividends. Also, according to this law, if no request or petition for appraisal has been filed within the deadlines and formalities specified in this law for the right of appraisal or if the shareholders waive the right of appraisal within 60 days of the merger's approval by announcing the renunciation of the right of appraisal in writing, the merger shall be deemed to have been



approved. If they have entered the merger procedure, the dissenting shareholder's right of appraisal will be canceled.

Litigation Concerning Appraisal Rights in Iran's Legal System
Iranian Appraisal Right Litigation Mechanism

To protect the rights of shareholders who oppose the merger, it is preferable to anticipate a lawsuit similar to the evaluation lawsuit in the Iranian legal system, as the managers and majority shareholders may force the dissenting shareholders out of the company by paying them a small sum that is not equal to the intrinsic value of their shares. Thus, the merger process concludes entirely to the benefit of the majority shareholders and to the detriment of the minority owners who oppose the merger.

Who should this case be filed against? Is the first question concerning the prognosis of the evaluation right litigation? Specifically, who is the defendant? In response, it should be stated that despite the unfair payment, it may be the consequence of collusion between the majority shareholders and the company's managers to drive the minority shareholders to depart. However, given that the merger agreement was drafted by the company's board of directors on behalf of the company and the majority of shareholders voted in favor of it at the extraordinary general assembly (the decision-making body of the company, the extraordinary general assembly, legally approved the merger), this lawsuit cannot be brought against the managers and majority shareholders because the amount paid to the dissenting shareholders has already been deducted from the company's assets. In fact, according to the provisions of the American legal system, the share appraisal litigation should be launched against "the remaining company or the new corporation" that resulted from the merger.

It is because although the former company has approved the merger and the amount that the dissenting shareholder considers unfair, the former company has offered him and it is committed to paying the intrinsic value of the shares to the dissenting shareholder; however, because with the dissolution of the company, all the assets, rights and obligations of the former company are transferred to the remaining or new company, and the new company is the deputy of the former company in all assets, rights, and obligations, so all the obligations of the former company are transferred to the new company, and the new company that is the result of the merger must pay the shareholder who opposes the merger, the intrinsic value of the company's shares. Then, the litigation of the shareholder who opposes the merger is transferred from the former company to the remaining or new company. Therefore, the litigation for stock valuation and the demand for the intrinsic value of the shares must be filed with the party of the remaining or new company, which is the deputy of the former company.

In the case of stock valuation, the suit should demand an evaluation of the company and its shares, the determination of the intrinsic value of the former company's shares, and the conviction of the remaining or new company to pay it. Net stock value is closer to the fair value of the stock than "nominal value," "market value," and "book value," and it protects the interests of shareholders who reject the merger. In calculating the net value of the company's shares, rather than using the assets reflected in the balance sheet, the value of the company's assets should be calculated daily and continuously, minus the company's liabilities, and the resulting number, which is the net value of the company's assets, should be divided by the number of



issued shares. The formula is as follows: market value of assets minus liabilities divided by the number of outstanding shares equals the net value of the company's shares (Maverick, 2022).. This is the same value that was taken from them as a result of the merger. Although the lawsuit for stock evaluation should be filed against the remaining or new company, the demand is to condemn this company to pay the intrinsic or fair value of the shares of the former company that has been dissolved and destroyed. Because what the opposing shareholder has lost as a result of the merger is the value and benefits that he had in the former company and should be paid to him, and it cannot be expected that the value of the company's shares will be given to him after the merger. The dissenting shareholder could have joined the merger process and acquired the shares of the new company and benefited from the benefits of the new company's activities, but he chose to leave the company at his discretion. Therefore, what he is entitled to is only the intrinsic and fair value of his shares in the former company, which should be paid to him. Therefore, it is suggested that to protect the shareholders who oppose the merger and make the minority of the company's shareholders, a lawsuit similar to the evaluation lawsuit in the American legal system should be provided in the legal system of Iran. According to this lawsuit, if shareholders who oppose the merger believe that the money offered for their withdrawal from the company is unjust, but the intrinsic value of their shares in the company was not paid to them, they must petition the court to ascertain the intrinsic value of their shares by the remaining or new company. Given that the evaluation of the company and its shares to calculate the net value of the company's assets requires technical and complex calculations and that the daily value of all of the company's assets, whether material or immaterial, tangible or intangible, must be calculated, and given that these calculations are beyond the expertise of the court, the court should make use of experts in the relevant field instead.



Lawsuits for Breach of Fiduciary Duty

The Concept of Fiduciary Duty

Within the context of the legal system in the United States, the concept of a "fiduciary relationship" is synonymous with "active trust." Similar definitions of fiduciary obligation have been presented, one of which is that a fiduciary relationship has been established once one party in a legal relationship establishes such trust and confidence in the other party while being aware of the development of such trust. A fiduciary relationship is established whenever one of the parties to a legal relationship, due to his control and superiority over the other party, establishes some type of confidence and trust in the other party. The person who is trusted is referred to as a 'trustee.' When one party of a legal connection is obligated to behave in the other party's best interests, a fiduciary relationship exists. The fiduciary relationship creates a duty called "fiduciary duty" for the trustee, according to which the trustee is required to act in the interest of the other party and prioritize the interests of the other party over his own. He must respect the interests of the other party in all actions, such as in the relationship between a lawyer and a client, an estate administrator and an heir, or a guardian and the person under guardianship (Stockham & Wallace, 2014, pp.1-2).

In the field of commercial company law, company managers owe a fiduciary duty to the company and its shareholders, while majority shareholders owe a fiduciary duty to minority shareholders. Accordingly, majority shareholders and company managers are obligated to

observe and protect the interests of the company and its shareholders in all their actions. Managers and majority shareholders are required to comply with fiduciary duties in a variety of situations, such as mergers, company transactions with other parties, the purchase and sale of the company's or another company's shares and assets, etc. Regarding the transactions that managers outside the company engage in with third parties, they are obligated not to engage in transactions that pose a threat to the business of the company, pose a threat of competition with the company, or pose a threat of profit that the company can use to its advantage. In regards to the merger, given that the managers undertake the initial merger negotiations and establish the merger agreement and its conditions, it is the managers' responsibility to uphold their fiduciary duty and safeguard the company's and shareholders' best interests. The manager should design the merger agreement with the company and shareholders' interests (both majority and minority). The fiduciary duty includes several duties:

1. *Duty of Care:* According to the duty of care, managers and majority shareholders must exercise the same degree of care while making decisions and taking acts within the company as a prudent person would under similar situations and circumstances. The meaning of "commitment to care" is the commitment of commercial company management to make well-informed and deliberate business judgments. In situations when they make business decisions for the company, controlling shareholders have this responsibility. This condition is exemplified by the parent company's power to control the subsidiary company's decisions. Despite the formal separation of the legal corporation and the subsidiary company, the parent business controls the subsidiary company in the majority of instances. Before making any kind of choice affecting the company, managers and majority shareholders should be apprised of all the pertinent information that is customarily and reasonably accessible to them. It is not required for them to be aware of all the nuances and issues, but it is sufficient for them to receive the essential knowledge that is available with a reasonable and customary amount of work given the circumstances (Lafferty, Schmidt & Wolfer, 2012, pp. 842-844)..

In the case of *Fields Dodge v. Amax*, the Delaware court stated that, although the company's board of directors can reject the merger proposal, the duty of care requires that it consider the merger proposal before deciding whether to reject the proposal informs the shareholders and rejects the proposal by notifying the shareholders. If he rejects the merger proposal without informing the shareholders, he violates the duty of care. Therefore, managers should thoroughly examine all available facts and papers indicating the actual status of the company and the intrinsic value of the company and its shares before the merger. In cases of ambiguity, management should seek the advice of consultants and experts and value the business's shares with care and prudence so that if shareholders oppose the merger or wish to leave the company, they will receive the true value of their shares, and their rights will not be violated (Lafferty, Schmidt & Wolfer, 2012, pp. 844-847).

2. *Duty of Loyalty:* The duty of loyalty requires managers and majority shareholders to put the company's interests ahead of their own, and managers are prohibited from engaging in transactions that do not benefit the company. Therefore, in a situation where personal interests and company interests conflict, they should prioritize the company's interests. Managers and majority shareholders who control the company and have access to all of its sensitive information cannot use it for personal gain when making decisions or engaging in



transactions that increase their position in the organization (Lafferty, Schmidt& Wolfer, 2012, pp. 844-847)..

3. *Duty of Good Faith:* Due to the commitment to have good faith, managers should not consciously ignore their duties or deliberately violate the law, or not do their best for the company's interests. According to the Delaware State Corporation Law, the duty of good faith is considered an independent fiduciary duty, but Delaware courts treat the concept of good faith as a part of the duty of loyalty. A manager violates the duty of good faith when he intentionally performs his actions with a purpose other than securing the interests of the company or shareholders. When managers intentionally neglect their recognized duty, it shows their inattention to their duties in the company. For example, even though they are aware of the real state of the company's assets, they set the value of the company's shares much lower than the intrinsic value by presenting false information and paying the dissenting shareholders.

4. *Duty of Secrecy:* This duty requires managers to keep company information confidential. It is an obligation that prohibits managers from using the company's sensitive information to advance their interests and from disclosing this information to those who could use it for their gain. The duty of secrecy is a particularly significant obligation, as managers frequently deal with sensitive and proprietary company information. A breach of fiduciary duty occurs when this information is misrepresented to individuals in a manner that is damaging to the company or improperly advantageous to the directors themselves. In the case of Weinberger versus UOP and Signal, for instance, two board members of UOP, who were also board members of Signal, got sensitive information from UOP. Based on this information, they advised Signal business that it has benefitted from this transaction if it accepted up to 24 dollars for each UOP share. The Delaware court ruled that the UOP board of directors breached its fiduciary duties by disclosing secret company information to Signal and that the minority shareholders should get the fair market value of their shares (Lafferty, Schmidt& Wolfer, 2012, pp. 844-847)..

Duty of Revelation: This duty compels the managers to tell all shareholders of the company about the facts and circumstances surrounding the board of directors' decision and disclose all pertinent information. As with the duty of good faith, the duty of revelation is not considered an independent obligation; rather, it derives from loyalty and care duties. Consequently, the duty of revelation requires that the managers, when deciding on the merger in the extraordinary general assembly, provide the general assembly with all the information and financial statements regarding the true state of the company's assets and the value of the company's shares, and refrain from important information about company status (Lafferty, Schmidt& Wolfer, 2012, pp. 844-847).

5. .

Lawsuit for Breach of Fiduciary Duty and its Elements



In situations in which one party has a fiduciary duty to the other, the breach of fiduciary duty litigation is a form of commercial, civil liability action. Regarding the merger, the management is bound by a basic guideline known as the "business judgment rule." According to this rule, it is presumed that the managers acted in good faith and based on complete and comprehensive information while respecting the company's interests and that the transaction was conducted solely for the benefit of the company and its shares, thereby protecting the best interests of the company and its shareholders (Lafferty, Schmidt&Wolfer, 2012, pp. 841-842). This common law rule is used to assess the decisions of managers in situations where the managers are not dealing with themselves, and it is not litigation of managers' bad faith (Yousefzadeh, Rostamzad Asli& Saberi, 2018, p. 381).. It is important to note that the commercial businesses legislation of Delaware enables corporations that are subject to this law to protect managers against any responsibility resulting from a breach of their fiduciary duty to the company and shareholders under the company's articles of association. In three instances, the articles of incorporation cannot under any circumstances relieve the directors from a breach of fiduciary duty:

- Violation of the manager's duty of loyalty to the company and shareholders.
- Act and omission that is not in good faith or involves willful misconduct or willful and knowing violation of the law.
- Transactions that managers have obtained personal and inappropriate benefits.

If the shareholders of the company who oppose the merger claim that the managers of the company did not comply with their fiduciary duties in carrying out the merger, then the managers are accused of breaching their fiduciary duty. Despite the aforementioned rule, the shareholders who claim they have been damaged due to the breach of fiduciary duty must go to court to prove their litigation and receive compensation and file a "Breach of Fiduciary Duty" lawsuit. The dissident stockholders also bear the blame for the conflict. Contrary to the appraisal right case, which must adhere to the law's dates and formalities, the violation of fiduciary duty litigation does not require compliance with special deadlines or formalities. Therefore, it is sufficient for a shareholder who has not submitted a litigation for the right of appraisal to proceed to court, sue the former company's directors for breach of fiduciary duty, and seek the damages he claims from them. Unlike the action for the right of appraisal, which was brought against the remaining or new company, the case for breach of fiduciary duty should be made against the former company's directors. In the instance of violation of fiduciary duty, dissenting shareholders, who brought the lawsuit as plaintiffs, bear the burden of proving the litigation, while managers are excused from establishing their innocence under the rule of "commercial review (Lafferty, Schmidt&Wolfer, 2012, pp. 841-844)." This is only the case if the managers' culpability has not been established, and if it is established, the lawsuit will be dismissed, as we will discuss later.

There are three elements of the lawsuit for breach of fiduciary duty that must be proven:

1. *Fiduciary Duty*: The defendant must demonstrate that, according to law, tradition, or contract, a fiduciary relationship existed between the plaintiff and defendants and that the defendants owed him a fiduciary obligation (Johnson, 2018, p. 1).. Therefore, concerning the merger, the dissident shareholders must demonstrate that the defendants were the managers of the former company, which they can do by submitting documentation from the former company.



2. *Violation of Fiduciary Duty:* The litigation must prove that the directors have violated the fiduciary duty. For example, regarding the duty of care, they must prove that the managers did not obtain the necessary information when determining the merger exchange and did not act with caution, and due to the lack of consultation with the relevant experts or negligence in obtaining the necessary information, the amount paid to them is insufficient and worthless "(Johnson, 2018, p. 1).. Delaware courts have adopted a standard called "gross negligence" to determine whether the board of directors exercised a duty of care in making the merger decision. Delaware courts have defined gross negligence as follows: "gross negligence without a sense of responsibility or deliberate disregard for the company and shareholders or extreme actions without limits (Lafferty, Schmidt& Wolfer, 2012, pp. 842-844). Therefore, Delaware courts consider the duty of care violated if they find gross negligence, for example, the board of directors without regard to the facts of the accounting and financial accounts of the company and a sense of responsibility towards the shareholders. The opponent of the merger and preservation of their rights selected a sum as the value of the company's shares to be given to the dissenting shareholders, and it turns out that the amount paid was chosen with negligence and disregard for minority shareholders who rejected the merger. Regarding compliance with the duty of care and the standard of gross negligence, Delaware courts take into account the following:

- According to a statement, before convening the meeting of the company's general assembly, they informed the shareholders of the meeting's aim and provided the appropriate documentation to describe the proposed issue.
- Managers and stockholders should be aware of any developments and alterations on the topic at hand.
- They should confer with qualified financial and legal consultants regarding the merger and the merger's exchange.
- They should review the important or relevant documents on the merger, the actual state of the company, and the share price.
- They should do reasonable research.
- They should spend enough time conducting research and obtaining the necessary information.

3. *Damages:* Damage evidence is the third pillar of a breach of fiduciary duty lawsuit. The claimant must demonstrate that he sustained a loss as a result of the breach of fiduciary duty by the company's managers and that the loss is the difference between the actual value of the shares and the amount paid to the dissident shareholder. The petitioner must demonstrate that, due to the management's incompetence, bad faith, or conspiracy, the amount paid to them is less than the intrinsic value of their shares in the company and that the intrinsic value of their shares was never determined. In this action, there must be a "direct causal relationship" between the violation of fiduciary duty and the resulting damages, which must be the direct outcome of the breach of duty (Johnson, 2018, p. 6). In the case of Weinberger v. UOP., which was mentioned about the appraisal rights lawsuit, it was stated that since Signal Company was the majority shareholder of UOP., several Signal Company's boards of directors elected these elected members to serve on Signal's board of directors as well. Andrew Chitia and Charles Aridge, who also serve on Signal's board,



informed Signal Company that it would be advantageous for Signal to pay up to \$24 per share of UOP Company when Signal opted to combine with UOP.

On the other hand, in establishing the value of the shares that should be delivered to the shareholders of UOA, Signal Company consulted an employee of Signal Company who was also a benefit of the transaction. In addition, the theory quickly revealed itself and offered 21 dollars per share of UOP. Under the persuasion of board members who were also directors of Signal Company, the shareholders of UOP authorized the merger without knowing about the research that Andrew Chitia had conducted. The Supreme Court of Delaware also ruled that the Signal Company, as the majority shareholder of the UOP Company, as well as the members of the UOP Board of Directors who also served in the Signal Company, breached their fiduciary duties to the minority shareholders. As a result of the breach of fiduciary duty, both the merger transaction and the established price were unfair. In reality, by proving the breach of fiduciary duty, it was determined that the minority was not paid the fair value of the shares, creating a connection between these two complaints. In the instance of violation of fiduciary duty, in addition to the difference between the intrinsic value of the shares and the amount paid, the court orders the respondent to pay the dissident shareholder the future benefits of the former corporation. In addition, to punish the defendant for breaching his fiduciary duty, punitive damages, which are several times the plaintiff's real loss, are awarded. Therefore, a broader range of damages can be sought in a breach of fiduciary duty action than in a right appraisal litigation.

After the plaintiff has proven all three pillars of a breach of fiduciary duty litigation, the court will review the acts of the board of directors regarding the company's actions and the assessment of the merger consideration to determine whether the transaction was fair. Have the company and stockholders benefited? This is where it is stated that the case has been dismissed, and the managers of the previous company, who are parties to the litigation, must prove that the transaction was in the best interest of the company and its shareholders and that the amount and other terms of the contract are fair (Lafferty, Schmidt & Wolfer, 2012, p. 842). Therefore, by showing the components of the litigation of violation of fiduciary duty, the "commercial review rule" is rendered useless, and the plaintiffs must prove their innocence by proving the litigation. The court orders the plaintiffs to pay the petitioner damages equivalent to the difference between the intrinsic value of the company's shares and the amount provided to the petitioner, as well as lost profits and punitive damages after the petitioner has proven his litigation.

Anticipation of Breach of Fiduciary Duty lawsuits in Iran's Legal System

Fiduciary Relationships in Iran's Legal System

In Iran's legal system, breach of fiduciary duty lawsuits and the term "breach of fiduciary duty" is not expected. In all social relationships, the fundamental principles of civil responsibility apply. If a person accidentally or directly causes damage to another person, he is responsible for compensating for the damage, whether the other party trusts him, such as a lawyer and a client, or a guardian and a trustee, or whether there is no trust, such as when a neighbor causes damage to his neighbor and, for example, destroys the wall of the neighbor's house. Obviously, in relationships such as those between a lawyer and a client, a guardian and a trustee, or a company



manager and a company, although there is no term of the fiduciary relationship, the legislator has placed these persons as trustees. Therefore, according to the principles of fiduciary, the lawyer, guardian, and company manager are required to respect the interests of the client, the investor, and the company. Consequently, notwithstanding the absence of definitions for the terms "fiduciary relationship" and "fiduciary duty" in the statutes, the rules define their meaning. Hence, a case for breach of fiduciary duty is a sort of commercial and economic civil liability lawsuit that adheres to the same concepts and procedures as traditional civil liability. Not only is the fiduciary duty of managers towards the company's shareholders not mentioned in the 1968 amendment to the Commercial Law, but according to the traditional principles and rules of civil duty, managers are responsible towards the company's shareholders due to their management position. To protect the minority shareholders and compensate them for the damages they have suffered, when the majority shareholders and managers use a merger to force the minority shareholders out of the company and the amount paid to them is less than the intrinsic value of their shares, predicting such a lawsuit in Iran's legal system can protect the minority's rights and prevent the malicious behavior of managers and majority shareholders.

As was stated in the instance of a breach of fiduciary duty in the American legal system, the first pillar of such a lawsuit is the proof of fiduciary duty. The plaintiff is the one who is responsible for proving that the defendant owed him a fiduciary duty, and this is the first pillar. This litigation is distinct from the traditional type of civil liability lawsuit in that it does not necessitate any relationship and fiduciary duty between the parties. As a result, the first requirement for accurately anticipating whether or not such a case will be filed in Iran's judicial system is to acknowledge the fiduciary duty that managers have toward all shareholders (both majority and minority). If the company's managers are recognized as trustees in front of the company's shareholders, and if they are required to protect the interests of the shareholders along with the interests of the company, then the managers will be careful not to use the available information about the state of the company in their possession for their benefit and the interests of the shares to protect the shareholders who provide the capital for the company. Thus, they will not try to violate the rights of the shareholders by colluding to violate the rights.

In the American legal system, concepts such as the duties of care, loyalty, good faith, and revelation are considered to be fiduciary obligations. In the Iranian legal system, however, these same concepts are considered to be the duties of a trustee. Other aspects of the action for violation of fiduciary duty are identical to those of the lawsuit for civil liability, including the following:

- *Violation of Fiduciary Duty (Fault):* Managers have been regarded as trustees of the shareholders, and it is acknowledged that they are obligated to protect the interests of the shareholders, while a breach of fiduciary duty may take place intentionally or unintentionally if the fault lies with the managers and that they fail to respect the interests of the shareholders during the preparation of the merger agreement. Consequently, as the second pillar of the breach of fiduciary duty case, the legislator ought to view the shareholders as being obligated to prove the fault of the managers when they were writing the merger agreement. The shareholders who are opposed to the merger are the minority shareholders of the company, and they have filed a lawsuit against the former managers of the company for breach of fiduciary duty. In the lawsuit, the shareholders must demonstrate that the managers did not take the necessary precautions when preparing the merger



agreement and determining the amount that should be paid to the shareholders who are opposed to the merger in exchange for their departure from the company. Therefore, they have acted carelessly by not obtaining reliable information regarding the state of the company or by using the opinions of experts. They maliciously and willfully may mislead the shareholders about the status of the company by providing incorrect information, changing the information, or by concealing a portion of the information. As a result, they have established a value for the company's shares that is significantly lower than the actual price. Therefore, it is possible to demonstrate that the information that the directors presented to the General Assembly concerning the status of the company is not accurate and that some of the information has not been presented. Consequently, it is possible to demonstrate that the directors have deceived the General Assembly of the company. The criterion of the illegitimacy of the conduct that was done, which is one of the foundations of civil liability, can be satisfied here as well by demonstrating that the management was at fault, whether intentionally or unintentionally.

- *Proof of Damages:* In the same way that in the case of civil liability, to realize civil liability, the relationship of causation and direct causation must be established between the fault of the perpetrator and the harmful act regarding attribution to predict the lawsuit of breach of fiduciary duty in Iran's legal system, the relationship of direct causation between the fault of the managers must be established. In addition, evidence of the damages done to the shareholders must be presented. The shareholders who are against the merger have the burden of proving that they have been harmed as a direct result of the managers' actions (either their intentionality and malice or their negligence) in the process of preparing the merger agreement and providing information to the company's general meeting about the status of the company. Within the framework of the American legal system, the dissident shareholder can file multiple sorts of damage litigations. As a result, it is necessary to investigate whether or not, if such a lawsuit is filed in Iran's legal system, it will be possible to seek compensation for all of the damages that may be sought under the applicable provisions of American law.



Types of Damages

- The first type of damage that can be claimed is the difference between the intrinsic value of the shares and the amount paid to the shareholders who dissented from the company's management due to the managers' misconduct which deprived them of the intrinsic value of their shares. This is the first type of damage that can be claimed. According to the provisions of the civil procedure, the court is required to issue an expert opinion, examine the company's documents, and calculate the intrinsic value of the shares to the experts to verify that the plaintiff has been damaged. This is because the calculation of the value of the company's shares is a specialized issue that is outside the expertise of the court judges. If the experts testify that the intrinsic value of the shares can be determined by reviewing the company's documents and that this value is greater than the amount paid to the petitioner, and if they testify to the exact amount, then the court will decide how much damage was caused to the petitioner.
- Lost benefits: Lost benefits are equivalent to 'loss of prospective profits. Regarding the ability to claim loss of prospective profits, some jurists feel that when civil procedure and

civil law declare that loss of prospective profits cannot be claimed, they are referring to a type of loss of prospective profits that is not typically considered a loss. However, being deprived of the benefits that would inevitably come in the future based on reason and custom is a loss, and it is covered under the broad rules of compensation for the unjustified loss (Katouzian, 2011, p.p. 243-244).. Therefore, according to this group of legal experts, a loss of prospective profits is a real and compensable loss. However, it has been objected to this argument because if a loss of prospective profits is probable, one of the elements for compensability of the loss, namely certainty, is not met. This criticism applies to all types of losses, not only the loss of prospective profits. Therefore, it must be acknowledged that the civil law, the law of civil liability, and the code of civil procedure all contain a general principle stating that if a loss does not have a material basis, i.e., it does not result from damage to property or person, it cannot be claimed except in cases specifically outlined by law (Badini, 2010, p. 74). This litigation appears to be valid, and loss of prospective profits cannot be deemed damage, even though courts rule on the loss of prospective profits in civil disputes, save in the instances stipulated under the civil liability statute. Therefore, based on the aforementioned ideas and the fact that civil law and civil procedure law negate the possibility of claiming loss of prospective profits, it is not conceivable to sue the company's managers for loss of prospective profits owing to the merger (Maqsodi Pashaki, 2008, p. 67).

- Punitive damages are another type of damage that can be sought in the American legal system. Punitive damages are granted to the claimant when the respondent intentionally and maliciously causes harm to the claimant. Punitive damages are not considered compensatory damages, and they are not equal to the petitioner's actual damages; rather, they are meant to punish the perpetrator who knowingly and maliciously inflicted harm, taking into account the specific circumstances and conditions. In addition to awarding compensatory damages, the court decides the case. Punitive damages are not provided for in Iran's domestic laws and have no legal foundation in domestic disputes (Maqsodi Pashaki, 2008, p. 148).. Therefore, to penalize the management who abused their position, conspired and deceived dissenting shareholders, and altered the company's status purposefully, they were paid less than the intrinsic value of their shares. It is preferable, while anticipating such a case in Iran's legal system, to additionally anticipate the possibility of requesting punitive damages so that the violating managers are punished by paying several times the number of damages caused to dissident shareholders. Consequently, it has a preventative character and avoids actions linked with managers' poor intentions.

CONCLUSION

The merger is one of the completely understood and defined notions in the American legal system, and its consequences on the shareholders of the enterprises involved in the merger have been addressed in the laws and writings of American attorneys. In Iran's legal system, despite specifying the merger and deeming it legitimate, its repercussions on the shareholders of the merging enterprises have not been investigated in the laws or the writings of jurists, creating a legal gap in this regard. In the American legal system, there are two methods of compensation,



according to which shareholders against the merger, who are in the minority and therefore could not prevent the approval of the merger in the extraordinary general meeting, and although they are compensated due to their exit from the company, they do not consider the intrinsic value of their shares to be insignificant, so they can file a lawsuit and obtain their rights.

These are the compensation methods:

1. Appraisal right lawsuit, regarding this right, shareholders who oppose the merger may petition the court, initiate a lawsuit against the new or surviving company, and demand the fair value of their shares in the defunct company. Using the notion of evaluation specialists, the court also evaluates the fair value of the protesting shareholder's shares in the former company and orders the new or surviving company to pay it. In the American legal system, the new or surviving company is the successor to all rights, debts, and responsibilities of the defunct company; hence, the lawsuit for the appraisal right is brought in favor of this company. In Iran's legal system, it is feasible to anticipate a lawsuit similar to the valuation case, in which shareholders opposed to the merger petition the court for the fair value of their shares. This case must be brought on behalf of the new or remaining company as the successor to the former company, and the court must consider the net value of the company's shares to determine the fair and true value of the dissenting shareholders' shares. Besides, the theory of experts to calculate the net (intrinsic) value of the company's shares should be utilized.
2. Lawsuit for Breach of Fiduciary Duty: In the American legal system, managers and majority shareholders owe the company and its shareholders a fiduciary duty. If the managers and majority shareholders do not comply with each of their fiduciary duties at the time of drafting and approving the merger agreement and do not determine the compensation that should be paid to the opposing shareholders for their exit from the company, and as a result, the amount paid to the opposing shareholders is very small, the court will order the managers or the majority shareholders to pay damages (the difference between the amount paid and the real value of the shares, loss of profit and punitive damages) to the shareholders who filed a lawsuit. In Iran's legal system, such a lawsuit can be anticipated if, by amending the laws, managers are considered to be the guardians of the interests and trustees of the shareholders alongside the company, and then dissenting shareholders can use the same principles, rules, and elements of classical civil liability to sue the managers for the difference between the amount paid and the intrinsic value of their shares. It is also feasible to anticipate the potential of requesting punitive damages to penalize managers who have unfairly altered the merger agreement in bad faith and with the intent to violate the rights of minority shareholders.

Consequently, by utilizing the institutions and methods of compensation provided by the American legal system to support the shareholders against the merger, it is possible to anticipate similar solutions and institutions in the Iranian legal system and, to a certain extent, fill the existing legal gap.

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