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The Legal Position of the Interim Director of Company

Omar Natiq Yehya

College Of Law, University of Misan. Iraq, omar_natik@uomisan.edu.iq

Abstract

The theory of the interim manager of joint stock companies is a jurisprudential theory reached by the judiciary, to find a solution to the crises or obstacles that threaten the continued survival of the company due to the inability of those in charge of its management to solve this crisis or the absence of management, and to maintain the continuity of the company's survival, the urgent judiciary when it is resorted to appoint a person who manages the company temporarily and preserve its assets and achieve the purpose for which it was established, therefore, this person must be experienced and specialized in the management of this company due to the different activities of the companies.

Keywords: Interim Director, Company, Management Organs, Shareholders, Partners.

1. Introduction

After the establishment of the joint stock company and the commencement of its activity, the interest of others who deal with it and the interest of its employees and the interest of the company as well as the interest of its shareholders arises, and this is what makes interest in running the company and overcoming any obstacles it faces, and this task is entrusted to the administrative organs of the company, the owners of the capital are keen not to interfere with the judiciary or any party in the affairs of their company because of what may result from knowing the economic, industrial and commercial secrets of the company or shaking the confidence of those dealing with the company in it.

Since the joint stock company contract is distinguished from other contracts and achieves several interests as a legal and economic entity that aims to achieve many social and economic goals, and the most important of these goals is the development of the economy. Due to the importance of the joint stock company, adequate protection must be provided for the interests of shareholders and persons dealing with it because it is based on financial consideration and the liability of its shareholders is limited.

2. Study Problem.

The research problem There is no legal regulation for the interim administration, whether in Egyptian law or Iraqi law, revolves around what the joint stock company may encounter some difficulties or crises that affect the performance of its activity and the entity in charge of its management cannot solve these difficulties or crises, either because of the intensification of the dispute between the existing agencies on its management or the absence of the administrative apparatus entrusted with solving the crisis, it is necessary to get out of this crisis, otherwise the fate of the company will expire, There must be intervention from an external party to solve this crisis without the end of the company. Therefore, we need to answer the following questions:

1. Who is the interim director of companies, what are his rights and obligations, and what are his responsibilities?

2. Does every dispute in the companies requires the appointment of an interim director for the companies?

3. Background of the Study.

The appointment of an interim director of companies is not new, as it has historical and legal origins. The French Trade Law issued on May 15, 2001, amending the Companies Law issued on July 24, 1966, has allowed the judiciary to appoint an interim director, whose duties are to call the company's general assembly to convene until the settlement of the dispute. As many judgments were issued to appoint an interim director for the company to run its affairs, so that the company's activity would not stop, the French Refusal Court in 1966 sentenced the appointment of the judge of urgent affairs based on one of the shareholders in the company.

4. Objectives of the Study.

The research aims to explain what is meant by the interim director of companies, clarify the method of his appointment, identify the conditions that must be met in the interim director, indicate the authority that should appoint this person, and give him the necessary powers to carry out the work assigned to him. He has rights and obligations and bears responsibility for his mistakes. Therefore, the court should not delay appointing the interim director, as this greatly impacts the company's work, which is reflected in the economy.

5. Methodology of the Study.

As for the methodology used in this research, it is the comparative method, by comparing the legal texts related to the subject of the research between French law, Egyptian law and Iraqi law, and referring to judicial decisions related to the subject of our research, as well as putting forward the opinions of jurists while giving our opinion. To reach an integrated study of the interim director of companies from his appointment until the end of his duties.

6. Research Hypotheses.

1. Not every dispute in the company necessitates the appointment of an interim director for the company. The matter must be presented to the court, which decides whether or not to appoint an interim director; this means certain conditions must be met in the dispute presented before it.

2. Not every person is suitable to be appointed an interim director for the company; an interim director must meet certain conditions.

3. The urgent judiciary must consider the presented dispute for the appointment of an interim director for the company, but the judiciary must not affect the origin of the right.

7. Appointment of the Interim Director.

There is no legal regulation for the interim administration, whether in Egyptian law or Iraqi law, unlike French law, and even the term for the interim manager Both Egyptian and Iraqi law use the term judicial receiver, knowing that there is a difference between the work of the interim manager and the judicial receiver, despite the intervention of the judiciary to approve them, as the interim administration is distinguished from the judicial receiver, it is based on appointing a person who manages the company positively and effectively in place of the normal and natural management apparatus of the company and giving him the powers to take Decisions and their signature, while judicial receivership is limited to a negative attitude that is to ensure the preservation of the object of judicial assignment.

The judiciary is resorted to appoint a temporary manager for the company for several reasons, such as the absence of the company's management organs or their failure, or the management apparatus acts that seriously harm the company, as well as arbitrariness on the minority shareholders, and there may be a dispute between the shareholders of the company or partners so that it is impossible to continue to manage, The manager appointed in the company's

contract may seriously breach his obligations that require his replacement, and the partners or some of them may die and remain the actual manager of the company without deputizing it by the heirs (Shawarbi, 1995, 78-89).

The court should choose who has experience and specialization in managing the company due to the different activities of companies, and the court should be careful in choosing the manager who can get the company out of the crisis it is going through and threatens to end before it is due, as he has all the rights to choose the method he follows to get the company out of the danger stage. The manager is chosen from the list prepared for this purpose by the Court of Appeal, and this list is the table in which experts, liquidators, bankruptcy agents and other specialists are appointed in this type of disputes that are submitted to the judiciary, and the court may not choose the interim manager of the company from outside this list. The court may not choose the interim manager of the company from outside this list, as it is not permissible to appoint one of the shareholders or partners in the company or one of the parties to the dispute that led to the imposition of temporary management, even if they are included in the list prepared for that, and the reason for this is that the interim manager must enjoy impartiality and complete independence as a guarantee through which he can manage the management of the doubt. Thus, the interim manager is considered as an assistant to the judiciary to assign them the task of managing the company in crisis (Abdel Khaleq, 2018, 55- 116).

7.1. Legal basis for appointing the interim director.

There is more than one trend in determining the legal basis for the appointment of the interim manager of the company, part of the jurisprudence believes that the silence of the legislator not to stipulate the subject of the temporary director of companies is considered deliberate silence, as the interim management must be highly flexible in order to suit and fit a remedy for unexpected events resulting from the complexity of the laws that regulate companies and the complexity of business life. The existence of a general and abstract text regulating the interim administration may be more harmful than beneficial, and moreover, the legislator did not want to codify a habit that would harm partners or shareholders. Because it strips them of their right to appoint the director, and this right is a privilege for them, it is better that the judicial director, as a necessity, stems from judicial rulings and not from legislative texts (Guyon, 1972-43).

The second jurisprudential trend believes, that the basis must be sought in the contract of formation of the company itself and in its system, the appointment of the interim manager by the court or the judiciary must aim to protect the company's system and comply with

it, not to paralyze the provisions of this system or oppose it, the company will not continue and practice its activity unless its administrative organs perform their functions, and the cessation of these devices means that the company will be dissolved, if we apply this rule strictly, there is no way to dissolve the company before the deadline specified in its contract, however, the company must remain until the end of its specified term in respect of the provisions of the contract, hence the company and partners have a definite right to treat transient crises that threaten the existence of the company, and this is done by resorting to the judiciary to appoint the interim manager, if the judiciary intervenes is to implement the company's contract (Lapp, 1952, 87).

As for the third jurisprudential trend, it is believed that the company cannot express its will itself as a legal person, due to its nature, and its manager undertakes the expression of will, because he is the representative of it, he is the hand of the company that acts and the mind that thinks about it. When the company loses its management organs, it loses the ability to express its will and becomes completely paralyzed and its activity stops, it cannot conclude any kind of behavior, and if this situation is not remedied, the company will be dissolved before the deadline specified for it in the founding contract, so the administrative vacuum that has occurred to the company as a result of the absence of those who express its will must be filled, This is done through the appointment of an interim manager until the selection of new representatives who express this will, the directors and members of the Board of Directors Those elected by the partners or the general assembly of the company, as the case may be, derive their powers to express the company's will from the prosecution agreement, because its source is the agreement of the partners or shareholders. In the absence of agreement on the appointment of these people, the appointment of a replacement by the judiciary to manage the company on a temporary basis represents an agreement in terms of its source and the determination of the powers of a temporary manager of the company, as the judiciary is the one who appoints him and determines his powers (Al-Sayed, 2009, 98-123).

Our own opinion on the subject, we see that the basis for appointing the interim manager of the company, lies in the interest of the company to continue its activity, for which it was established without expiry before its term, and this is considered the implementation of the principles on which the company is based, which is the intention to participate, whether related to partners or shareholders, and from here they have the right to resort to the judiciary to appoint a temporary manager for the company in the event that they are unable to solve the crisis that their company is going through, the dissolution of the company before its deadline

specified in its founding contract will have negative effects on the economy, especially if this company is a shareholder and carries out an important activity.

7.2. Conditions for appointing the interim director.

To appoint an interim manager of the company, certain conditions must be met, and these conditions are general conditions for the intervention of the judiciary in the appointment of the interim manager, and special conditions for determining the qualitative jurisdiction of the judiciary.

General conditions, they are:

1. The dispute between the partners or shareholders should not reach a degree of severity with which it is impossible for the company to survive, because if it reaches this degree, the dissolution of the company before its maturity is unavoidable, and there is no room for appointing a temporary manager for the company.

2. The appointment of the interim manager of the company shall be dictated by the interest of the company and not the interest of certain parties in the company.

3. The appointment of the interim manager should not conflict with the company's contract, if the company's contract stipulates certain ways to resolve and settle this dispute, his business shall be appointed, as the intervention of the judiciary in this matter is not legitimate unless it is indispensable for the implementation of the company's contract (Lapp, 1952, 55). As for the special conditions, they are:

A. Urgency: It is defined as the threat to the rights and interests that are intended to be preserved, and it is available whenever there is a situation in which the lapse of time results in irreparable and irreparable damage (Jama'i, 1974,45-69). Article 872 of the French Code of Procedure stipulates that "the President of the Commercial Court shall be competent, in every case of urgency, and within the limits of the jurisdiction of this Court, and in his capacity as a judge of urgent matters, to take all measures that do not conflict with a serious objection, and are justified by the existence of a dispute." Article (45) of the Egyptian Civil and Commercial Procedures Law stipulates that "a judge of its judges shall be delegated at the headquarters of the Court of First Instance to rule on a temporary basis without prejudice to the origin of the right in urgent matters that are feared by the lapse of time.

The urgency is not subject to a fixed standard despite the attempts of the judiciary and jurisprudence to develop controls and approximate determinants for it, as it is a flexible and unspecified principle, as it

allows the judge to estimate the urgency and his decision is due to the circumstances of each case separately.

The condition of urgency is not a fixed principle, but it changes with the change of time and space conditions and is compatible with the developments of social life (Shawarbi, 2006, 320-323). The Court of Urgent Matters is qualitatively competent to hear the lawsuit appointing a temporary manager of the company, whatever the value of this lawsuit, and this is known in the jurisprudence of the Code of Procedure, that urgent disputes fall within the exceptional qualitative jurisdiction of the summary judge. The condition of urgency is achieved when it becomes clear to the judge of urgent matters that the temporary action that he will take came to preserve the right that he fears from a certain matter and cannot wait until the presentation of the original dispute, and this means that it is achieved in the lawsuit for the appointment of the interim manager of the company when there is a dispute and divisions within the company's management organs or any other reason, so that the company's affairs are not going normally and it is no longer possible to achieve the purpose for which it was established, Which may lead to the collapse of the company and its expiry before achieving its purpose or the deadline specified for it. This means that a real crisis arises in the company and exposes the company's interest to immediate and verified danger, which leads to the fulfillment of the urgency condition for the convening of jurisdiction for the summary judiciary (Al-Sayed, 2009, 32-39).

The question arises, when should the urgency be met?

The condition of urgency should be met from the time of filing the lawsuit by appointing a temporary manager of the company until the time of issuance of the judgment therein, and if he fails at any stage of its stages, one of the policemen shall deny the jurisdiction of the summary judiciary, the summary judiciary is not competent to hear the case, and the availability of the urgency condition is necessary at the first instance and appeal stages, as the disappearance of urgency in the appellate stage leads to the lack of jurisdiction of the summary judiciary even if it is available at the first instance stage (Burhan Al-Din, 2020,22-27).

B. Without prejudice to the origin of the right: The Egyptian legislator explicitly stipulated this condition in Article (45) of the Civil and Commercial Procedures Law, as well as the Iraqi legislator explicitly, as for the French legislator expressed in Article (872) of the Code of Procedure, there is no serious objection, and the French judiciary equated the condition that there is no serious objection in order to specialize the summary judiciary and the condition of not prejudice to the origin of the right (Cass.Civ.25.arv). The condition of not prejudice to the origin of the right is intended to refrain from the judge of urgent

matters in any way to rule on the origin of obligations and rights, no matter how urgent or consequent as a result of his failure to eliminate them from harm to the special, the judgment of the judge of urgent matters must not affect the origin of the right, but rather to take a temporary measure intended to provide temporary protection of the right or to respond to an assault on it. As the judge of urgent matters must not be exposed to the origin of the right and leave it to the trial judge with jurisdiction to decide on it, as it includes within the concept of the origin of the right everything related to it, whether it affects its validity or affects its entity or changes it or the legal effects arranged by the law or intended by the contracting parties (Rateb, 1985, 65-73).

Examples abound in this regard, where the summary judiciary is not competent to appoint the interim manager of the company in the event that the minority of the shareholders in the company object to the actions of the company's board of directors because of the consequent prejudice to the origin of the right. It is also not permissible for the judge of urgent matters to rule on the appointment of a temporary manager of the company in preparation for its dissolution, because the dissolution or liquidation of the company is prejudicial to the origin of the right.

7.3. Rights of the interim director.

Part of the jurisprudence believes that the manager in the company is a worker or wage earner in the company, and therefore he is linked with the company by an employment contract when his work has the subordination to the employer - represented by the public body - in addition to the wage (Al-Baroudi, 1986, 79). While another aspect of jurisprudence is considered that the manager is part of the company's body and an instrument of execution in it, which is not a separate part of it; but part of its members, and therefore the responsibility of the manager is based on the mistake he commits as a member of the legal person (Al-Sharqawi, 1986, 77-83). Most of the legislation of countries, including comparison countries, stipulates that the manager is an agent for the company, as the pillars of the agency, which apply to the nature of the work of the company's manager, he acts on its behalf, where the effects of these actions go to the company, and the nature of the manager's relationship with the company and what binds him to it in terms of his control and approval of his work, is the principal's control over the agent's work (Al-Uqaili,). It is well established that the interim manager is like the ordinary director of the company, where he has some rights and some obligations stemming from the nature of his work as a judicial agent of the company. Since the interim manager is a judicial agent who manages the company temporarily, then he approaches the work of the agent who manages the funds of others, and then the provisions

of the agency stipulated in French law and the provisions of the agency stipulated in the Egyptian Civil Code as well as the provisions of the agency stipulated in the Iraqi Civil Code apply to him.

The rights enjoyed by the interim manager of the company are:

The wage of the interim manager: The interim manager of the company deserves a wage for the implementation of the work entrusted to him (Ghosn, 2010,78), but in the absence of legal regulation of the interim administration, whether in Egypt or Iraq, there is no explicit legal text that determines the wage of the interim manager, and even in France, which stipulated the interim administration in some texts of the laws, there is no stated text specifying the wage.

This is a good deed on the part of legislators leaving the determination of the remuneration of the interim director of the judiciary appointed by him, It is well established that the interim manager is like the ordinary director of the company, where he has some rights and some obligations stemming from the nature of his work as a judicial agent of the company. Since the interim manager is a judicial agent who manages the company temporarily, then he approaches the work of the agent who manages the funds of others, and then the provisions of the agency stipulated in French law and the provisions of the agency stipulated in the Egyptian Civil Code as well as the provisions of the agency stipulated in the Iraqi Civil Code apply to him.

The rights enjoyed by the interim manager of the company are:

1. The right of the interim manager to recover expenses: According to Article (1999) of the French Civil Code, Article (710) of the Egyptian Civil Code and Article (941, F1) of the Iraqi Civil Code, the interim manager has the right to claim the company for the expenses that he volunteers to spend - from his own money - in the interest of the company, and this right is not dependent on the company's gain and the success of the work for which those expenses were made, because the interim manager is an agent who performs his duty according to the rules of good faith and custom, and is not curious, so it is a recovery of expenses within the limits of the company's benefit from them, but what is important is that the manager paid the expenses in good faith and without error or negligence, i.e. in good faith and insight. The right of the interim manager to recover the amounts paid for the benefit of the company is an application of the general rules of the agency.

2. The right of the interim manager to appoint assistants: As we explained earlier, the interim manager is chosen from the list prepared for this by the Court of Appeal, and this list is the table in which liquidators, bankruptcy agents, experts and other specialists in this type of disputes are appointed to the court. The interim manager has

the right to appoint assistants or assistants from among the specialists in the activity of the company that he was appointed to manage, without referring to the court that appointed him if the company's activity is extensive or because he does not have sufficient experience in a particular subject to be able to manage the company through them.

The question arises, to what extent is the interim director empowered to appoint his assistants?

The interim director has the freedom to choose his assistants and dismiss them, this is what has been settled by the rulings of the judiciary, and he bears responsibility for their actions in accordance with the provisions of the responsibility of the follower for the actions of the follower. Considering that the interim manager is the final decision-maker in the company, and he has the right to appoint assistants and experts from outside the list of names prepared in the court schedule, but he has the right in some disputes to seek the help of one of the company's managers to manage it, and as a justification for that, there is no fear that these people will not be exploited to manage the company, because the matter and the decision are ultimately in the hands of the interim manager (Abdel Khaleq, 2018, 67-95). If the appointment of assistants to the interim manager is optional, but it is mandatory in some cases, as when the company on which the interim management is imposed carries out a specialized activity, it is necessary that the manager be among the approved practitioners of this activity. Examples include pharmaceutical companies, engineering consulting firms, law firms and accountant firms. As these activities need specialization and experience, in order for the interim manager to work on managing them, in the absence of this specialization, the manager must appoint assistants and specialized experts to manage this company, but under his supervision (Al-Sayed, 2009,94-133). If the company imposed on the interim management of the companies working in the field of pharmacy, whether production or distribution, it is usually required by laws, whether in France, Egypt or Iraq, that the technical work be the owners of the aforementioned specialty (pharmacy), and therefore if the interim manager is not a pharmacist, he may not do those technical works personally because this violates the law (Abdel khaleq, 2018,69-85).

7.4. Obligations of the interim director.

1. Careful care, since the interim manager of the company is considered an agent and the provisions of the agency apply to him, which start from Article 1998 to 2002 of the French Civil Code, and from Articles 703 to 710 of the Egyptian Civil Code, and from Articles 933 to 940 of the Iraqi Civil Code. Pursuant to the above-mentioned

articles, the interim manager must manage the company himself, and exert in his work the care of the careful man, meaning that his care is special and not the care of the usual man, as the work entrusted to him is to get the company out of the crisis it is going through and return it to normal, and not to conclude a contract that increases the company's debts, and to provide a detailed account of the financial matters that he has done, and he must not receive any financial compensation for the contracts concluded in the name of the company and for its account, and for the sake of these works he must carry out the tasks entrusted to him himself unless it is necessary to appoint assistants or assistants to him in some works, but he may not delegate another with all the powers granted to him.

2. Maintaining the professional secrets of the company: The interim manager is obligated to keep the secrets of the company that was imposed on the interim management, and among the professional secrets are commercial, industrial and technical secrets of an activity, so he is committed to preserving them and not disclosing them to others, especially for those who work in the same specialization and field so that these secrets are not exploited to eliminate the company. Both civil and criminal liability may be held on the interim manager of the company in the event that he disclosed a secret of secrets that harm the company, and here the first responsibility is governed by the general rules in the Civil Code, which is a contractual responsibility, it does not raise controversy, as for the criminal responsibility stipulated by the French Penal Code in Article (378), as stipulated by the Egyptian Penal Code in Article (310). They are disputed because there is an imposition, if the company entrusted with its management to the interim director of the company is one of the companies whose field of activity is industrial and technical depends on scientific formulations, the disclosure of such a secret of its own may lead to the ruin of this company.

7. 5. Responsibility of the interim director.

The negligence of the interim manager or the issuance of some actions from him entails responsibility and this responsibility may be civil or criminal. The civil liability of the interim manager before the company, as we explained that the interim manager is a judicial agent and applies in this relationship the provisions of the agency, and therefore his responsibility before the company is a contractual responsibility, and since he is an agent, he has a number of obligations that must be carried out and not violated, and he must also abide by the company's contract and articles of association, if he violates that or commits mistakes during his tenure of management in the company and this error caused damage linked by a causal relationship that resulted in contractual liability (Abdel-Hamid , 1995, 52-59).

As for the civil liability of the interim manager to third parties and partners, the interim manager is personally liable to third parties in every case where the conditions of the company's commitment are not met, or misuses its address with a person in bad faith, in these cases the company gets rid of liability and does not remain in front of third parties except to refer to the manager personally, and this return may be on the basis of contractual liability, the third party invalidates the contract and recovers what he paid and refund what he received, and it may be on the basis of tort liability if the interim manager committed a mistake against third parties and caused damage to him without this error being on the occasion of his mission (Interim manager), as well as the responsibility of the interim manager to each partner who caused him personal injury, and here again his liability is tort (Ghosn, 2010, 68-79).

The interim manager is also held criminally responsible as a natural person if he commits one of the crimes stipulated in the French Companies Law issued on July 24, 1966, the Egyptian Companies Law No. 159 of 1981, and the Iraqi Companies Law No. 21 of 1997.

8. Conclusion.

Through the study and research of the interim manager of companies, we have reached several results, and we decided to propose some recommendations, in order to be an integrated study. Not every dispute or disagreement in the company requires the imposition of a temporary manager on the company, but certain conditions must be met in order to impose on the company a temporary management and appoint a temporary manager on it through the regulations before the court, and it is not permissible to appoint a temporary manager from outside these regulations.

The interim director of companies is considered a judicial agent, where he is considered a deputy to represent the company before third parties. The interim manager also has rights and has some duties and obligations, if he breaches these obligations, he has a contractual liability before the company, and before third parties and partners in tort. The interim manager may incur criminal liability if he commits one of the crimes provided for in the corporate laws of the countries in question.

Since the French legislator has regulated some rules for the interim director of companies, but this regulation is incomplete, as it is deficient in some things, so we suggest that this deficiency be remedied. Unlike the Egyptian and Iraqi legislator, which did not regulate the temporary management of companies, but more than that, the judiciary in both countries applies the rules of the judicial

receiver to the interim manager despite the difference in some of their tasks, so we recommend both the Egyptian and Iraqi legislators to legally regulate the interim management of the company and determine the conditions, tasks, powers and responsibility of the interim manager, in order to facilitate the judiciary their work in the lawsuits of private companies in this matter.

We propose to include a legal text in which the interim manager has the right to conclude contracts with other companies to manage some specialized activities, because this reduces the temporary manager in managing his assigned work, and the interim manager remains the one who has the last word and is responsible for errors. We also suggest that the wages of the interim manager of the company and his assistants be paid by the person who caused the imposition of temporary management on the company, by stating a legal text that the company on which the interim management is imposed has the right to refer to the person who caused the error, so that if it were not for this error, the judiciary would not have been resorted.

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