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Mistakes of Board of Directors' Members in a Joint-Stock Company: A Comparative Study

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ABSTRACT

This study examined the issue of mistakes made by members of the board of directors in public joint-stock companies, in a comparative study, in light of the transformations taking place at the local, regional, and global levels, and the growing role of companies in influencing national and global economies, in addition to the increasing expansion of the activities of international organizations specialized in commercial affairs. These factors and their implications for local legal entities, their ability to develop their economic and administrative activities, and their ability to adapt them to market requirements and needs have resulted in many mistakes from the boards responsible for managing such companies. Given the legal nature of public joint-stock companies and the size of the activities they undertake, they are more exposed to such mistakes. Therefore, it has become necessary for the legislator to keep pace with modern developments and establish legal guarantees capable of protecting all parties dealing with these companies. The research aims to study and regulate the relationship between the board of directors of the company, by addressing the subject in detail and identifying the mistakes committed by the board and their effects on the company and others, in addition to clarifying both civil and criminal liability within the framework of the public joint-stock company. At the end of the research, a set of findings was reached, the most important of which is that members of the board of directors are responsible towards the company and the shareholders for damages arising from violations of the provisions of the law, or from mistakes or negligence in their duties. The study also concluded with many recommendations, the most important of which is the hope that the legislator would intensify penalties and strengthen civil obligations on managers and board members.

Keywords: Joint-stock companies, Board of directors, Responsibility of board members, Shareholders

INTRODUCTION

A public joint-stock company is managed through two main bodies: the General Assembly of Shareholders and the Board of Directors. The General Assembly consists of all shareholders, while the Board of Directors acts as the executive body of the company. This board is composed of members elected by the General Assembly to represent the interests of the shareholders. Management tasks are assigned to them in accordance with the provisions of the Companies Law and the company's articles of association (Al-Qureshi, 2004, p. 209).

They are entrusted with performing their duties, carrying out their competencies, and protecting their powers efficiently, while committing to avoiding negligence or making mistakes. Many individuals prefer to engage in this type of company due to their limited liability compared to other types of companies, as it offers multiple advantages, most notably its prominent role in supporting the national economy through productive, marketing, and investment activities.

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Furthermore, the company's possession of an independent legal personality grants it the ability to continue its activities even if the shareholders change.

The public joint-stock company is one of the most prominent types of capital companies that various legislations have given special attention to, as it constitutes an effective tool for pooling capital to implement specific projects without taking the personal aspect of the shareholders into consideration (Al-Qalyubi, 1984, p. 252).

Therefore, the need has emerged for legislative intervention to regulate the formation of the Board of Directors and the working mechanism of its members, including defining the powers of the board chairman, aiming to avoid conflicts in decision-making and ensure the imposition of appropriate penalties in case board members commit administrative errors.

This regulation contributes to achieving stability for the company's economic activity and enhancing its profitability, especially since the members of the Board of Directors bear legal responsibility for all decisions and measures, they take, which may cause harm to shareholders or the company.

Study Problem

The study problem lies in identifying the nature of the mistakes that members of the Board of Directors in joint-stock companies may commit, analyzing the extent of their impact on the company itself, on the other hand, and on others such as shareholders, creditors, or third parties, on the other hand, and determining the legal liability arising from those mistakes.

Study Objectives

The study aims to clarify the cases that lead to the dismissal of a liability lawsuit filed against the chairman and members of the Board of Directors, whether that lawsuit is brought by the company itself, by shareholders, or by others. The study also seeks to determine the types of these lawsuits and the legal foundations upon which they are based when filed.

And it generally aims to enhance governance systems capable of activating the company's management mechanisms in a way that achieves its strategic goals.

Importance of the Study

This study derives its importance from two main aspects:

First Aspect: Shedding light on the nature of corporate work in public joint-stock companies, clarifying the role of Board of Directors members, with a focus on identifying points of error that may occur during their performance of duties.

Second Aspect: Any dysfunction in the performance of joint-stock companies, resulting from misconduct or mistakes of the Board of Directors, may negatively reflect on the national economy. Given the scarcity of in-depth studies that have addressed this topic, this research comes as an attempt to fill this gap, hoping to enrich the knowledge of specialists and workers in commercial law, especially in the field of capital companies.

Study Questions

- Is the liability of Board of Directors members joint or individual?
- Is the decision issued by the Board of Directors in a joint-stock company subject to legal liability, or is it evaluated according to the standard of care of an ordinary person?
- Does the discharge of Board of Directors members by the General Assembly of Shareholders exempt them from the civil and criminal liability arising from their actions during their management period?
- Has the Iraqi legislator succeeded in imposing the necessary oversight on the members of the Board of Directors?
- What are the legislations that regulated the establishment and management of public joint-stock partnerships?

Study Limits

Spatial Limits: Since this study focuses on the Iraqi Companies Law No. 21 of 1997, the study environment and context are confined within the scope of the Republic of Iraq.

Time Limits: Defining the time frame for this study as the period extending from the date of the issuance of the Companies Law until the time of preparing this research.

Subject Limits: The study revolves around clarifying the mistakes that members of the Board of Directors in joint-stock companies may commit.

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Study Terms

Joint-Stock Company: "A company composed of a number of persons not less than (five), in which shareholders subscribe to shares in a public subscription, and they are responsible for the company's debts to the extent of the nominal value of the shares they subscribed to" (Adel, 2017, p. 7).

Board of Directors: "It is the body that has the vital role in managing the company and facilitating its business. It makes the necessary decisions to manage the company by a majority of votes, and its members are elected in general assemblies from among shareholders" (Radwan, 1983, p. 29).

Liability of Board of Directors Members: "It is the civil and criminal liability resulting from the mistakes of the Board of Directors that cause harm to the company, shareholders, or others" (Al-Akili, 2010, p. 300).

Shareholder: That person who owns several shares in the public joint-stock company through subscription, and his liability is limited to the extent of his share in that company (Sami, 2005, p. 485).

Share: Shares are equal divisions of the company's capital, indivisible, and represented by negotiable instruments. The share represents a right for the shareholder or partner in the company, and it also refers to the document proving this right (Taha, M.K., 2000, p. 59).

STUDY METHODOLOGY

Given the importance of the topic, this study relied on the **analytical descriptive approach**, based on reviewing relevant literature and studies directly related to the research topic, aiming to enhance the understanding and analysis of legal texts related to commercial companies.

Legal Description of the Role of Board of Directors Members in a Joint-Stock Company

The Board of Directors of a public joint-stock company is considered the primary body responsible for managing the company's affairs and supervising its operations, ensuring progress towards achieving the goals for which it was established. The commitment to preserving the company's interest and its secrets is closely linked to the authorized chairman and members of the Board of Directors, given their administrative position that allows them full access to all the company's affairs, whether public or confidential.

This necessitates addressing the legal status of the Board of Directors members and their relationship with the company, which has led to jurisprudential differences regarding the legal characterization of the position of the chairman and members of the Board of Directors and the authorized director (Salih, Y., 2001, p. 89).

Some jurists considered the members of the Board of Directors as agents of the company, and the relationship between them and the company is based on an agency contract. This characterization is attributed to their view of the joint-stock company as a contract. The description of an agent has also been applied to the authorized director, whether related to a joint-stock company or otherwise.

In contrast, another opinion considered the authorized director as an agent of the Board of Directors when implementing the decisions issued by it, as well as when carrying out the daily management operations of the company, in addition to representing it before judicial authorities in case of disputes (Al-Mawla, 2010, p. 92).

Meanwhile, a third opinion adopted a perspective based on considering the public joint-stock company as an organized legal entity and not merely an agency contract, starting from the premise that the relationship that binds the chairman and members of the Board of Directors to the company is not a traditional agency relationship but an independent legal bond that makes them part of this entity, in light of the complex nature of the company's structures that range between the general assembly and the board of directors.

In light of the above, the researcher believes that the dual nature of the joint-stock company, in terms of combining the contractual aspect and the legal system, opens the door to argue that the chairman and members of the Board of Directors are considered as agents or managers, but in a special form imposed by the nature of the company as a legal person characterized by complexity, and the consequent obligations and responsibilities placed upon them. This is an opinion that finds its justification and calls for support (Yamalki, 2010, p. 265).

Article (19) of the Iraqi Companies Law No. (21) of 1997 stipulated: "The company's board of directors undertakes drawing up and setting the administrative, financial, organizational, and technical policies and plans necessary for the conduct of the company's activity and the achievement of its objectives, and supervises and follows up on their implementation. It exercises all rights and powers related to that, and it may delegate to the company's general manager whatever powers it deems appropriate."

It is worth noting that Article (21) of the aforementioned law and the company's internal regulations have explained the approved mechanism for electing representatives of associates and the board of directors, in addition to specifying the qualifications required in candidates for those positions.

It is noted that the Iraqi legislator stipulated in Article (20) of the Companies Law that the Board of Directors consists of the General Manager as chairman, in addition to eight members (Adel, 2017, p. 132).

Article (177/1) of the Egyptian Law No. 159 of 1981, as amended, stipulates that the company is managed by a board of directors formed from an odd number of members not less than three, chosen by the general assembly for a period of three years (Khalil, 2011, p. 10).

As for the Jordanian Companies Law, it stipulated in Article (132/A) that the number of Board of Directors members shall not be less than three and not more than thirteen members, elected for a period of four years starting from the date of their election (Sami, 2005, p. 422).

The researcher believes that specifying the minimum number of members of the Board of Directors of a public joint-stock company aims to prevent a single person from monopolizing the management of the company, as this contradicts the foundations upon which joint-stock companies are based and the vital economic role they play within the structure of the national economy.

It is worth mentioning that most Arab legislations have been keen to set an upper ceiling for the number of Board of Directors members.

Chapter One: Characterization of Mistakes

The characterization of Board of Directors' mistakes refers to the actions or omissions issued by the board members during company management, which lead to causing harm to it or its shareholders. These mistakes include making unstudied decisions, violating laws and regulations, or squandering company funds. Mistakes may also manifest as negligence in oversight or a lack of transparency. However, the general assembly, as the body representing the company, may refrain from taking legal procedures against the Board of Directors for multiple reasons, which is considered a form of negligence. These mistakes entail legal liability that may be personal or joint, depending on their gravity and nature (Khalil, 2011, p. 85).

First Requirement: Characterization of Mistakes within the Framework of Traditional Activity

Characterizing mistakes in a joint-stock company is a pivotal part of the traditional framework governing the work of board members due to its effective role in controlling administrative performance and entrenching the principles of accountability and transparency within the corporate structure.

The importance of this characterization lies in its contribution to revealing actions and decisions that constitute a deviation from the requirements of the functional duty or a violation of the legal and regulatory controls governing the behavior of board members, whether in terms of exceeding the limits of authority, gross negligence, or harming the interests of the company and shareholders.

The Iraqi legislator gave this aspect clear importance, as stipulated in Article (147) of the Iraqi Companies Law No. 21 of 1997 and its amendments, regarding the liability of Board of Directors members in case they commit mistakes during their management of the company, and emphasized their subjection to legal accountability when harming the interests of the company or others, whether those mistakes resulted from negligence or bad faith.

Article (153) of the same law also clarified the possibility of filing a lawsuit against the board members by the general assembly or a shareholder if damage is proven (Iraqi Companies Law No. 21 of 1997).

In the same context, we find that the Jordanian legislator addressed this issue in the Companies Law No. (22) of 1997 and its amendments, where Article (134) indicated that the members of the Board of Directors are liable to the company, shareholders, and others for any damage resulting from their violation of the provisions of the law, the articles of association, or the internal regulations, or if they are negligent in performing their duties. Article (135) also granted shareholders the right to file a liability lawsuit if they are harmed by the board's actions (Khalil, 2011).

Thus, the characterization of mistakes is not limited to theoretical aspects but constitutes a necessary legal and practical tool for activating oversight and accountability within the joint-stock company in line with modern principles and ensuring the preservation of its financial and administrative stability.

For example, if a member of the Board of Directors commits a mistake while performing his company management duties, this leads to the legal accountability of the board according to the gravity of the mistake. The mistake may be gross or unjustified to the extent that it is not expected from a member in his functional position and experience to commit it, or it may be a minor mistake that can be overlooked in light of professional norms and work context (Taha, M.K., 1965, p. 90).

This principle is based on what is stated in Article (153) of the Iraqi Companies Law, which stipulates that "The members of the board of directors are liable to the company and the shareholders for damages arising from a violation of the provisions of this Law or from error and negligence in the performance of their duties" (Iraqi Companies Law No. 21 of 1997).

As for Egyptian law, Article (96) of the Companies Law No. (159) of 1981 stipulated that "The members of the board of directors are liable to the company or to others for acts that constitute a violation by them of the provisions of the law or the company's system. They are also liable for error in management." It is understood

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from this that liability may arise from any type of mistake, whether gross or minor, according to the circumstances and context surrounding the committed act.

Consequently, the members of the Board of Directors must exercise the highest degrees of care and caution in performing the tasks assigned to them and refrain from exploiting their positions to achieve personal benefits at the expense of the interests of the company they represent, especially in cases where their private interests conflict with the company's interests (Al-Bassam, 1963, p. 179).

Second Requirement: Characterization of Mistakes within the Framework of Activity Developments

Delaying decision-making and slowness in implementation may undermine management stability and often lead to issuing similar, unstudied decisions or repeating previous mistakes.

The manager is required, when performing his duties in managing the company's affairs, to show a degree of care not less than that shown by an ordinary person in managing his private affairs; rather, he is assumed to be more cautious towards the company's interests. His personal level of caution is not considered if he is negligent; rather, he is obliged to exercise the care expected from a person acting wisely and cautiously in the same circumstances. This obligation comes in the context of modern developments in the company's activity.

Also, negligence in amending internal policies, such as executive regulations or company structures, especially those related to oversight.

In addition to neglecting the rights of minority shareholders and being biased towards majority decisions without ensuring sufficient transparency. All this requires from the management an advanced level of attention and accuracy to avoid mistakes within the framework of activity developments.

Confirming the above, a member of the Board of Directors or the manager may not be a party to the contracts or deals concluded by the Board on behalf of the company, to avoid conflicts of interest and ensure good management of the company, as emphasized by Article (38) of the Egyptian Companies Law. Additionally, a board member is presumed to avoid any behavior or action that may raise suspicions or cast shadows of doubt about his integrity or the interest of the company he represents (Shafiq, 1956, pp. 652-654).

Article (124) of the Iraqi Companies Law stipulates, which refers to Article (120) of the same law regarding the care required from the members of the Board of Directors of a joint-stock company (Komani, 2015, p. 106).

The provisions of comparative legislation show their keenness to limit mistakes within the framework of developments in company activities. Article (166) of the Jordanian Companies Law prohibited members of the Board of Directors and employees from dealing in the company's name, whether directly or indirectly, thus limiting conflicts of interest and exploitation of influence. In the same context, Article (101) of the Egyptian Companies Law stipulates that the company may not provide any donations to political parties, considering that any donation made in this context is legally void.

Most laws stipulate the necessity of preserving the company's secrets and prohibit their disclosure, even to shareholders, unless during general assembly meetings and within the limits determined by the law (Iraqi Companies Law, Egyptian Companies Law, Jordanian Companies Law).

Legislations also prohibit companies from lending to members of the Board of Directors or guaranteeing them, except for companies whose primary purposes include lending. Therefore, oversight should play its role in the joint-stock company as stipulated in Article (125) of the Iraqi Companies Law, to ensure that the company applies the provisions of its contract (Komani, 2015, p. 239).

These provisions form a preventive framework aimed at avoiding potential mistakes in management practices and establish an environment that ensures the integrity of institutional performance through compliance with sound governance.

Chapter Two: The Impact of Mistakes

The Iraqi legislator obligated the chairman and members of the board of directors of a joint-stock company to deal with the company's affairs with the same degree of care and diligence that they show in managing their personal affairs, and that management be conducted legally and soundly. Their liability only arises if an error is proven and accompanied by the occurrence of damage, with the necessity of a causal relationship between the error and the damage (Salih, B. & Wali, n.d., pp. 247-248).

Article (119) of the Iraqi Companies Law No. 21 of 1997 and its amendments stipulated: "The chairman of the company's board of directors or a member of its board of directors shall be liable to the company for any damage inflicted on the company due to a breach of this article" (Adel, 2017, p. 77).

Given the nature of commercial activity, which is characterized by instability and the possibility of exposure to sudden fluctuations, managers cannot be required to guarantee the company's future, even if they exercise the utmost care and diligence, in accordance with what is stated in Article (35) of the Egyptian Commercial Companies Law No. 159 of 1981: "These agent managers are not liable except for the fulfillment of the work entrusted to

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them, meaning that they are not personally obligated or jointly liable for the company's commitments in a special or solidarity manner."

Thus, they do not bear any personal or joint obligation related to the company's commitments unless there is an explicit provision to the contrary. However, if the managers neglect to perform their duties, ignore the management of the company's affairs, or act recklessly in violation of the provisions of the law and the company's system, they are held accountable for this negligence and mismanagement, and liability arises as a result. The act issued by the board members may not constitute a crime punishable by penalty, but it may be considered an error resulting in damage, thus entailing their civil liability without their being acquitted of criminal liability (Shafiq, 1956, pp. 656-657).

This liability is realized in the following cases:

- In case the board members violate mandatory legal provisions, such as if they neglect to submit the instruments issued by the company to the competent financial markets, they bear the liability resulting from that wrongful and erroneous act.
- If the members violate the provisions stipulated in the company's articles of association.
- If the members commit mismanagement in the company's affairs or breach their duty to manage it prudently, they are held liable for the damages resulting from their erroneous actions.

It is clear that the damage resulting from a decision issued by the Board of Directors with a collective will is considered a form of shared error, which entails joint liability among the board members regarding compensation for the damage resulting from these errors. The court may estimate each member's share of liability according to the gravity of the error he committed (Shafiq, 1956, p. 659).

First Requirement: The Impact of Mistakes on the Company

The mistakes committed by the members of the Board of Directors have a significant impact on the company's entity and its financial and administrative stability. These mistakes may lead to a decline in performance, loss of market confidence, or even expose the company to legal accountability. The impact of these mistakes on the company becomes more dangerous if they involve violating laws or harming the interests of shareholders. Hence, holding the perpetrators of mistakes accountable is a necessity to protect the company and ensure its proper management.

Article (153/First) of the Iraqi Companies Law No. 21 of 1997, as amended, stipulated: "The company is liable for the acts and actions of the chairman and members of the Board of Directors towards others, and they are liable for the damages that afflict the company or others as a result of their breach of the provisions of this Law, the articles of association, or the company's internal regulations, or any error they commit in performing their duties" (Iraqi Companies Law No. 21 of 1997).

Laws and jurisprudential trends hold the members of the Board of Directors liable for the damages that may afflict the company, shareholders, or others. The company may claim compensation for those damages through a decision issued by the general assembly, specifying the type and value of the claim and appointing who represents the company in conducting its procedures. If the general assembly refrains from taking this step, any shareholder has the right to file a lawsuit on behalf of the company, known as a (derivative lawsuit).

A shareholder may file a lawsuit against a member of the Board of Directors claiming compensation for the damages that afflicted the company as a result of his actions. The effects of this lawsuit revert to the company as the affected party, so that rights are collected in its name and the benefit returns to it, with the possibility of granting the shareholder who filed the lawsuit compensation for his expenses. A shareholder may also file a direct lawsuit if he suffers independent personal damage, such as being deprived of profits (Komani, 2015, pp. 237-238).

Or taking a special procedure for his own right. This lawsuit is distinguished from the previous one in that its effects are limited to the shareholder himself without extending to the company or other shareholders.

The members of the board of directors of a public joint-stock company are considered agents of the shareholders, and consequently, they are liable for the mistakes they commit while performing the management tasks assigned to them (Khalil, 2011, p. 80).

This liability is of a contractual nature based on the contract of their appointment to their positions. The issuance of any decision by the general assembly dismissing the civil liability lawsuit arising from those mistakes has no legal effect in facing the right of the affected parties to claim compensation (Al-Khouli, 1970, p. 276).

Article (159) of the Jordanian Companies Law No. 22 of 1997 and its amendments stipulated that the chairman and members of the board of directors of a public joint-stock company are liable jointly and severally to the shareholders for any negligence or omission issued by them in managing the company's affairs (Khalil, 2011, pp. 79-80).

In contrast, the laws subject to comparison have addressed this, and the last paragraph of Article (102) of the Egyptian Companies Law No. (159) of 1981 confirmed: "The competent administrative authority and every shareholder have the right to file this lawsuit. Any provision in the company's system that provides for waiving the

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lawsuit or suspending its filing pending prior permission from the general assembly or taking any other procedure shall be void."

This rule corresponds to what is stated in Article (245) of the French Companies Law No. 537 of 1966, which allows the company and every shareholder to file a derivative lawsuit against the members of the Board of Directors individually or collectively, for the mistakes they committed during the company's management that resulted in damage, such as if the board members misuse the powers granted to them in managing the company to the detriment of the shareholders (Al-Qalyubi, 1984, p. 471).

Second Requirement: The Impact of Mistakes on Others

If an error is committed or the managers cause damage that affects others, such as the company's creditors, these others may recourse against them to claim compensation. This liability, in its scope, is considered tortious liability due to the absence of a direct contractual relationship between the others and the board members.

Jurisprudence has differed in determining the legal nature of the Board of Directors' position vis-à-vis the company. One opinion considered it in the position of a subordinate to it, while another opinion considered it part of its entity, and some considered it an agent on its behalf.

Despite this divergence of views, the prevailing trend is settled on the fact that the company is civilly liable for the mistakes committed by its board members during the performance of their duties, and the affected others may recourse against it for compensation, while the company reserves the right to recourse against the members who caused the error to collect what it paid as compensation (Shafiq, 1956, p. 667).

Others, such as the company's creditors, may also exercise the company's right to file a contractual liability lawsuit against the board members through an indirect action (action oblique) (Suwailem, 2010, p. 362).

A condition for accepting this lawsuit is that the company retains its right to file it. If the general assembly approves the budget and the annual report of the Board of Directors and issues a decision granting discharge to the board members, the creditors' right to initiate the derivative lawsuit lapses, and they are left only with recourse through a tort liability lawsuit subject to the statute of limitations stipulated in the general rules (Taha, M.K., 1997, p. 279).

Examples of personal mistakes that may entail the liability of board members towards others include their dissipation of funds deposited with them by others for the benefit of the company, engaging in unlawful competitive activities, preparing an incorrect budget that conceals the company's deteriorating financial situation and presenting it to a bank, which prompts it to grant it credit facilities and thus exposes it to damage, as well as pledging the securities belonging to clients deposited as collateral for the company's creditors without obtaining the consent of their owners (Taha, M.K., 1997, p. 279).

Article (120/Third) of the Iraqi Companies Law No. 21 of 1997, as amended, emphasized: " A member of the board of directors is prohibited from practicing, on his own account or on behalf of others, an activity of the type of activity practiced by the company, or to be a partner in a company that practices such an activity, unless he obtains the approval of the general assembly."

Article (97) of the Egyptian Companies Law No. 159 of 1981 stipulated the same prohibition, nullifying the violating actions.

Also, Article (149/A) of the Jordanian Companies Law No. (22) of 1997 prohibits the manager from engaging in activities competing with the company's activity (Iraqi Companies Law, Egyptian Companies Law, Jordanian Companies Law).

Chapter Three: The Type of Liability of Board of Directors Members

The Board of Directors in a joint-stock company is considered the body responsible for directing its course and making its fundamental decisions. The Iraqi legislator in the Iraqi Companies Law No. 21 of 1997 and its amendments, in Article (117), was keen to empower it by granting it broad competencies and powers that enable it to manage the company's affairs and carry out all necessary work to achieve its objectives. However, the law set clear limits for these powers by the general assembly, either by the company's system or by explicit legal provisions. Thus, the Board of Directors is obligated to adhere to these mandatory texts and may not exceed or violate them (Muhammad, Y., 2016, p. 280).

Given the importance of the role undertaken by the members of the board of directors of a joint-stock company, the Egyptian legislator in the Commercial Law No. 17 of 1999 paid special attention to their legal status, imposing upon them a distinct civil liability in case of the company's bankruptcy. This liability is of a special nature, differing in terms of nature and conditions from traditional civil liability, considering the nature of the tasks they perform and their direct impact on the company's financial position (Al-Sanhouri, n.d., p. 229).

Civil liability originally aims to compensate the affected party for the damage that befell him as a result of an act committed by another person without involving intent of deterrence or punishment, in accordance with the general provisions stipulated in the Civil Law. However, this liability according to that law is not sufficient to deter

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or punish company managers who contribute through their actions to harming the company. From this standpoint, the Egyptian legislator in the aforementioned new Commercial Law established special provisions, as indicated by Articles (704/2, 704/3, 588), to hold board members accountable when it is proven that they deviated or caused - wholly or partially - the company's bankruptcy and the consequent holding them liable for the company's debts and mistakes, whether in a solidarity or individual manner, according to the estimation of the subject judge in each case separately (Muhammad, Y., 2016, p. 280).

First Requirement: Rules of Civil Liability for Board of Directors Members in a Joint-Stock Company

Concept of Civil Liability: "It is the obligation to repair the damage resulting from the error that is considered its direct or indirect source. Some have stipulated for the establishment of liability the existence of damage and a person responsible for causing it who undertakes to repair it" (Muhammad, K., 2009, p. 8).

Types of Civil Liability:

Contractual Liability: Contractual liability is a type of civil liability based on the breach of an obligation arising from a contract. This liability is based on three essential elements: contractual fault, damage, and the causal relationship between them. The contractual fault is the fundamental element in contractual liability. The opinions of civil law commentators have varied regarding defining the concept of this fault. A segment of jurisprudence defines contractual fault as an abnormal behavior of the debtor in which he deviates from the expected behavior of an ordinary person in fulfilling his contractual obligations, constituting a breach of what he committed to under the contract (Al-Sanhouri, n.d., p. 656).

Contractual liability is realized in principle from the debtor's breach of his obligations stipulated in the contract, whether wholly or partially, provided that this breach results in damage to the creditor, whether material or moral, actual or expected, provided that there is a direct causal relationship between the occurring breach and the resulting damage. The Iraqi law summarized that contractual liability occurs upon breach of contractual obligations (Darwish, 2019, p. 40).

Tort Liability: Tort liability in old French law was based on fault, which was adopted by the Napoleonic legislation in its provisions, where this liability was considered personal liability requiring the proof of fault by the injured party, which formed the general rule stipulated in Articles (1386, 1303) of the French Civil Code. However, alongside this traditional liability, a tort liability of an objective nature appeared, which presumes the fault without the need for the affected party to prove it. The Iraqi law summarized it as (upon breach of general legal obligations) (Kawthar, 2013, p. 317).

Tort liability, according to what is settled in jurisprudence and judiciary, is based on three main pillars: fault, damage, and the causal relationship between them. The affected party cannot claim compensation for the damage that befell him unless he proves, first and before anything else, the existence of a fault attributable to the responsible party. Due to the increasing cases of damage occurring daily, both jurisprudence and judiciary, followed by the legislator, tended to adopt a presumption whose essence is that the occurrence of damage is evidence of the existence of fault, unless the responsible party proves that the damage arose from a foreign cause not attributable to him, thus exempting him from liability.

The researcher believes, from the above, that the issuance of any erroneous decision by the chairman and members of the Board of Directors may have serious consequences, as the resulting damage may reflect on shareholders and others, provided that the pillars of tort liability are available as established by the Jordanian legislator. It is worth mentioning that the liability of the board of directors towards shareholders and the company is mostly contractual, where compensation is not deserved except within the limits of their lost gain (Darwish, 2019, p. 40).

The Egyptian legislator addressed in Article (102) of the Companies Law No. 159 of 1981, amended by Law No. 94 of 2005, the issue of civil liability of Board of Directors members, where it decided the rule of non-dismissal of the civil lawsuit filed against them as a result of the mistakes they may commit during their performance of management duties. This means that the Egyptian legislator was keen to ensure the survival of the right to pursue board members civilly without a special statute of limitations, as long as the error arises from their practice of their functions within the company (Al-Qalyubi, 1984, p. 992).

In contrast, the Iraqi legislator did not overlook this aspect, as Article (53) of the Iraqi Companies Law No. 21 of 1997 stipulated the liability of board members for damages inflicted on the company or others as a result of violating the law, the articles of association, or the internal regulations, due to negligence or dereliction in performing their duties. However, the Iraqi law did not specify an explicit text regarding the non-dismissal of the civil lawsuit, but rather subjected it mostly to the provisions of the general statute of limitations according to the general rules in the Civil Law, which may open the door for judicial interpretation in this field (Iraqi Companies Law No. 21 of 1997).

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As for the Jordanian legislator, the Jordanian Companies Law No. 22 of 1997 and its amendments included similar provisions, as stated in Article (159) that the chairman and members of the board of directors of a public joint-stock company are liable jointly and severally for damages inflicted on the company, shareholders, or others resulting from actions arising from negligence or violation of the law or internal regulations. It also allowed shareholders and others to file liability lawsuits against them. However, the Jordanian law did not explicitly stipulate the non-dismissal of these lawsuits by the statute of limitations, which means their subjection also to the general rules, unless a special text to the contrary exists (Khalil, 2011, p. 80).

The researcher believes that the Egyptian legislator uniquely provided an explicit text that decisively stipulates the continuation of the civil lawsuit against board members without being bound by the statute of limitations, thus protecting the rights of shareholders and preserving the interests of the company. However, the Iraqi and Jordanian legislators were content with establishing civil liability without specifying a similar rule regarding the non-dismissal of the lawsuit, which opens the field for applying the general principles of civil liability and their interpretation by the judiciary.

Second Requirement: Criminal Liability of Board of Directors Members

It is certain that the chairman and members of the board of directors of a public joint-stock company bear criminal liability for the mistakes they commit during their management of the company or when they breach the duties assigned to them towards the company and its shareholders, provided that they commit acts that are considered crimes or the Companies Law stipulates the imposition of criminal penalties on their perpetrators. These penalties vary according to the type and nature of the committed act (Al-Atbi, 2007, p. 24).

The Iraqi Companies Law No. 21 of 1997 concluded its provisions in Article (218) with punitive provisions applied to those who violate its texts, including those related to the Board of Directors, where the refusal of one or more members to submit records and any documents related to the company to the competent authority is considered an act that entails criminal liability, punishable by imprisonment for a period not less than one month and not exceeding six months and a fine not less than (500) five hundred dinars.

In contrast, the Egyptian Law No. 159 of 1981 stipulated in Article (214) similar obligations, imposing financial and criminal penalties on those who refuse to submit the company's books or documents to the regulatory authorities (Khalil, 2011, p. 94), with a difference in the amount of the financial penalty and the imprisonment period according to the gravity of the violation.

As for the Jordanian Companies Law No. 22 of 1997, it emphasized in Article (278) the obligation of board members and employees to cooperate with the competent authorities, confirming the criminal liability that may be incurred by board members if they commit acts that warrant this liability, including refusing to hand over documents or data, a violation that requires imprisonment or a fine or both according to what the competent court estimates. The researcher believes that the three legislators agreed on criminalizing this refusal with varying scopes and severity of penalties (Salih, B. & Wali, n.d., p. 255).

CONCLUSION

In conclusion of this research, which addressed the issue of mistakes of board members in joint-stock companies, we have presented the role defined by the law for board members, then we analyzed the nature of the mistakes they may commit and their impact on other parties.

The aspects of liability incurred by board members in public joint-stock companies, whether from the civil or criminal perspective, have been clarified. The research concluded with a set of findings, followed by proposing a number of recommendations that we found important based on what we reached through the study.

FINDINGS

1. Board members are liable to the company and shareholders for damages arising from violations of the provisions of the law or from error or negligence in their duties.
2. The issuance of any erroneous decision by the chairman and board members may have serious consequences, as the resulting damage reflects on shareholders and others.
3. The provisions of comparative Arab legislations show their keenness to limit mistakes within the framework of developments in company activities. These provisions form a preventive framework aimed at avoiding potential mistakes in management practices.
4. It is evident that the legislator has provided some legal protection for the funds of public joint-stock companies from the actions of the chairman and board members by setting conditions and restrictions and obligating board members to adhere to them.

RECOMMENDATIONS

1. It is hoped that the legislator will intensify penalties and strengthen civil obligations on managers and board members in case they cause the company's bankruptcy, due to its negative impact on the national economy.
2. The person holding the position of General Manager in a public joint-stock company should be a shareholder in it.
3. Necessity requires that the Iraqi Companies Law include explicit and clear texts that accurately define the powers of the Board of Directors, with a statement of the limits and restrictions imposed on them, ensuring that those powers are not exceeded or misused, in line with the principles of sound governance and the protection of the interests of shareholders and others.

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