Private Law Studies Quarterly
Online ISSN: 2588-6622
Volume: 53, Issue:3
Homepage: https://jlq.ut.ac.ir/
Autumn 2023

Research Paper

A Reflection on How to Perform Seaworthiness Obligation in Autonomous Vessels from a Legal Perspective

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Abstract

In maritime law, the duty of the carrier to make the vessel seaworthy is one of the fundamental obligations in the contracts of carriage of goods by sea, so that the non-performance of this obligation may lead to the contractual liability of the carrier towards the owner of the goods. The aforementioned obligation is considered to be a multifaceted obligation, one of the important aspects of which is the hiring of a competent crew to sail the vessel to its intended destination. Therefore, if there is no crew on board or the crew recruited does not have the necessary qualifications, there is no doubt that the vessel is unseaworthy.

The recent emergence and expansion of artificial intelligence has impacted nearly all industries, including shipping. Large companies in the shipping industry are currently focused on constructing autonomous vessels using this technology. The vessels are constructed with the main approach of relying solely on artificial intelligence for navigation at sea, without the intervention of a crew. This replacement of the crew with artificial intelligence raises fundamental legal questions. One such question is how the carrier can fulfill its seaworthiness obligation without the presence of a crew. In this regard, it is important to consider whether existing international rules can be applied to autonomous vessels or if new rules should be created to account for the unique nature of this vessel class.

From a technical perspective, autonomous vessels can have varying degrees of autonomy. However, current research primarily focuses on fully-autonomous vessels. The full degree of autonomy in this category of vessels means that the vessel is able to make decisions and determine the necessary

* **How to Cite:** Arian, Mohammad (2023, Autumn).“A Reflection on How to Perform Seaworthiness Obligation in Autonomous Vessels from a Legal Perspective” *Private Law Studies Quarterly*, 53,3:, 373-396. DOI:10.22059/JLQ.2024.357366.1007756
Manuscript received: 16 April 2023; final revision received: 20 September 2023; accepted: 8 October 2023, published online: 15 November 2023

actions without the intervention of humans and solely by relying on its operating system. In response to the above-mentioned questions, different approaches have been proposed. While emphasizing the effectiveness of existing traditional rules, some believe that based on the concept of "functional equivalence," existing international rules can also be applied to this category of vessels. In fact, according to this approach, artificial intelligence in fully autonomous vessels is supposed to do the same work that crews do in conventional vessels; therefore, based on the functional equivalence, the existing rules can be applied to artificial intelligence. On the other side, another group, referring to the "black box" problem of artificial intelligence, believes that the reformulation of the doctrine of seaworthiness should be put on the agenda in such a way that the seaworthiness of the vessel can be assessed by evaluating the algorithms used in artificial intelligence. The said problem can be explained in this way: although the input data and the output result of artificial intelligence are comprehensible by humans, humans cannot understand the decision process taken by artificial intelligence and its reason. There is, therefore, no way to evaluate whether the algorithms used in artificial intelligence are suitable for the intended sea voyage or not, and inevitably, the concept of seaworthiness must be reformulated. Finally, the third approach finds the solution in revising the existing rules because the nature of artificial intelligence requires that appropriate rules be imposed to assess the seaworthiness of autonomous vessels, and the existing rules cannot be interpreted in such a way to be applied to the mentioned vessels.

Keywords: Seaworthiness, Autonomous Vessel, Artificial Intelligence, Crew, Hague Rules.

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue:3
Autumn 2023

Homepage: https://jlq.ut.ac.ir/

Research Paper

Claim Without Legal Merit

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Abstract

As Subsection 7 of Article 84 of the Iranian Civil Procedure Code states, the claim is called without legal merit when even if true, has no legal basis. For example, if 'A' pays 'B's debt to 'C' without 'B's permission, 'A's claim against 'B' to recover the payment is without legal merit; Because even if true, 'A' may not legally recover the payment from 'B'.

Although valuable studies about claims without legal merit have been done so far, the blank of some topics related to claims without legal merit is still felt in Iranian law: Firstly, there has not been a proper analysis of the origin of the claim without legal merit. Second, there are important challenges in identifying claims without legal merit that have not been studied so far. One of these challenges is whether the remedy sought has a role in considering a claim without merit or not. The other challenge is whether the plaintiff's acknowledgment has a role in considering a claim without merit or not. Third, According to Article 89 of the Civil Procedure Code, dismissal is the sanction of filing a claim without legal merit. However, considering the court's entry into the substance of the claim to recognize the claim as having no legal merit, is this sanction appropriate for the Iranian legal system or not?

* **How to Cite:** Elsan, Mostafa; Bahramy, Ehsan& Hashemi, Seyed Reza (2023, Autumn).“ Claim Without Legal Merit ”*Private Law Studies Quarterly*, 53,3: 397 – 419.
DOI: 10.22059/JLQ.2024.360980.1007777
Manuscript received: 14 August 2023; final revision received: 15 September 2023; accepted:8 October 2023 , published online: 15 November 2023

The lack of research on these topics has prompted the authors to write this paper. At the end of this paper, which is written with a descriptive-analytical method and by referring to library sources, the following results are presented:

1. The claim without legal merit has significant records in Shia jurisprudence. In this realm, one of the conditions of admissibility of the lawsuit is that the claim must have a legal merit. An "invalid claim" is a term that is considered equivalent to a claim without legal merit.

2. In addition to the term "invalid claim", "non-enforceable claim" is also considered in Shia jurisprudence. According to this term, if the legal relationship between the parties is something that the defendant may terminate at any moment, such as a revocable contract, the court is faced with a non-enforceable claim.

3. In contrast to an invalid claim, a non-enforceable claim has a legal merit. In this claim, the court may bind the defendant and issue an award against him, but the defendant may prevent the award by revoking the contract. Therefore, there is a significant difference between invalid and non-enforceable claims, and the latter must be heard unlike the former.

4. The claim is called without legal merit when even if true, considering the "remedy sought", has no legal basis. Therefore, as an example, if the plaintiff claims that only the offer and acceptance of the donation were made between him and the defendant (without pointing to the delivery which is one of the elements of the formation of the donation), but the remedy sought is the termination of the contract in which the donation is a condition of that, it should be said that the claim even if true, has a legal merit.

5. Although most of the jurists have linked the claim without legal merit to the plaintiff's acknowledgment of the lack of legal merit, if the plaintiff has remained silent regarding the lack of legal merit, we still face a claim without legal merit.

6. According to Article 89 of the Civil Procedure Code, dismissal is the sanction of filing a claim without legal merit. However, the close relationship between the lack of legal merit and the substance of the claim requires the issuance of a judgment as a proper sanction of the claim without legal merit.

Keywords: Conditions of Admissibility, Invalid Claim, Non-enforceable Claim, Procedural Pleas, Subsection 7 of Article 84 of the Civil Procedure Code.

Declaration of conflicting interests

The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The authors received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue:3
Autumn 2023

Homepage: https://jlq.ut.ac.ir/

Research Paper

Accepting the Registration of Real Estate of Unknown Ownership in Iranian Law

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Abstract
The general registration framework has been dismantled with the implementation of the registration law of 1932 and the identification and rating of real estate in the Bureau of Distribution of Official Notices and major registration. Today, we are facing the acceptance of the registration of unknown property and the continuation of registration operations exclusively with the implementation of general registration regulations. Although the notice distribution office is the basis for accepting the registration of properties of unknown ownership, according to Article 11 of the Registration Law, which mentions the acceptance of the application for the registration of "possessor as ownership", and according to Article 24 of the Code of Regulations, which requires ownership possession to be confirmed, to accept the registration of property, and according to the orders of the supervisory board and the Supreme Registration Council, enshrined in Article 35 of the Civil Law and Article 11 of the Registration Law, first of all, referral to the notice distribution office is done to the extent that its contents are not contrary to the facts. Secondly, in the event of a conflict between the contents of the distribution book and the current possession, considering that the contents of the distribution book are presumptive on ownership and possession, proof of ownership, the possessor is granted the application for acceptance of the registration.

* **How to Cite**: Borzouei, Abbas (2023, Autumn).“ Accepting the Registration of Real Estate of Unknown Ownership in Iranian Law ”*Private Law Studies Quarterly*, 53,3: 421 – 443.
DOI: 10.22059/JLQ.2024.365216.1007801
Manuscript received: 3 April 2023; final revision received: 8 July 2023; accepted: 8 October 2023, published online: 15 November 2023

This article is written in a descriptive-analytical manner. The author seeks to study how effective the provisions of the declaration distribution office are in accepting the registration and whether the provisions of the notice distribution office are proof of the applicant's ownership or proof of ownership. In the assumption that the owner of the property is someone else, will the acceptance of the registration necessarily be done from the person in whose name the property is registered in the distribution office of the notice or his/her heirs or from the owner of the property? Assuming that the possessor accepts registration, is possession as ownership sufficient to accept registration, or are other reasons necessary to prove ownership?

In answering this question, one should make the difference between various assumptions:

a) In accepting the registration of the real estate of unknown ownership, although according to paragraph 272 of the collection of registration circulars, it is necessary to first refer to the Bureau of Distribution of Official Notices and ask the person whose name is registered in the Bureau of Distribution of Official Notices or his/her heir or the person who transferred the property from the person has been purchased in Distribution of Official Notices or by his/her heirs (directly or through an intermediary), the registration will be accepted. However, the procedure of the Supervisory Board and the Supreme Registration Council, which is admissible, is that in the conflict between the current possession (material and sensory) and the Bureau of Distribution of Official Notices, the current possession prevails. The possessor must accept the registration with the right to object of the other party (at the stage of periodical advertisement) because the notice distribution registry in the name of a person is circumstantial evidence of ownership. In contrast, according to Article 35 of the Civil Law, possession as ownership is circumstantial evidence of ownership, which is stronger than the presumption.

b) If the possessor, in addition to the possession, directly or indirectly claims the purchase of the property from the taxed person in the distribution office or his heirs without presenting the purchase documents or their documents are denied or doubted, in this case. Suppose the distribution office accepts the registration from the person charged in the distribution office, the heir, or the person who purchased from them, with the right of objection for the possessor (claimant of purchase by not presenting proof of purchase or denying his/her proof). In that case, the possessor who claims to purchase from the taxed person has admitted to his/her previous ownership Distribution of Official Notices, etc., and to accept the registration, he/she must prove the property transfer to himself/herself. This shall be done following articles 36 and 37 of the Civil Law, which he/she did not provide the purchase documents or was denied and the doubts raised and its proof need to be examined by a judicial authority. Therefore, for the time being, a declaration of acceptance of registration is made from the person charged in the distribution office, and the person claiming to buy can, after the publication of the advertisement, object to the acceptance of registration from the other party and the issue to be determined in the judicial authority.

c) According to the text of Article 11 of the Registration Law and its supplementary note, possession as mere ownership can be sufficient for acceptance of registration, and Article 23 of the Registration Regulations does not indicate its insufficiency. Of course, in practice, the applicant for registration usually submits an affidavit or other documentation of ownership to the registration office along with the application. On the other hand, the registration representative conducts a local inspection and investigation to verify the ownership possession, which is to verify the ownership possession, not insufficient possession as ownership.

Keywords: Registration statement, Distribution of Official Notices, Ownership Possession, Public Registration, Real Estate

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue:3
Autumn 2023

Homepage: https://jlq.ut.ac.ir/

Research Paper

A Contractual Risk of Invalidity of Intellectual Property Certificates in the Field of Industrial Property

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Abstract

This article investigates the contractual risks associated with intellectual property certificate invalidation in industrial property. To enjoy legal protection, intellectual property, including inventions, trademarks, and industrial designs, must be evaluated by the registration authority, and a certificate must be obtained. The certificate, issued based on the principles of authenticity and validity, becomes susceptible to uncertainty as beneficiaries can request its cancellation from the court, posing a significant risk to contracts related to intellectual property. The declaration of invalidity and its retroactive effect alter the legal status of transactions grounded in intellectual property, introducing complexities and challenges. This article explores the challenges posed by intellectual property certificate invalidation, aiming to provide a comprehensive understanding of the risks and offer preventive measures to mitigate potential contractual accidents.

This research addresses the contractual risk associated with the invalidation of intellectual property certificates in industrial property. The legal principle of authenticity and validity of these certificates, a prerequisite for legal protection, introduces uncertainty. Concerns arise about the legal status of transactions based on the related intellectual property, given the potential for any beneficiary to challenge the certificate's validity in court.

The main issue is the retroactive effect of a judgment that declares the certificate invalid, which affects the legal status of previous transactions. Invalidating the certificate presents a significant contractual risk because parties unaware of this possibility during contract drafting may lose

* **How to Cite:** Sadeghi, Mohsen; Mohtashami, Mitra (2023, Autumn).“ A Contractual Risk of Invalidity of Intellectual Property Certificates in the Field of Industrial Property ”*Private Law Studies Quarterly*, 53,3: 445 – 464. DOI: 10.22059/JLQ.2024.358394.1007765
Manuscript received: 27 May 2023; final revision received: 11 August 2023; accepted:8 October 2023 , published online: 15 November 2023

privileges, such as compensation for damages. This study aims to clarify the intricacies of invalidating intellectual property certificates and offer practical solutions for managing this contractual risk effectively.

This study adopts a descriptive-analytical method, leveraging a comprehensive library review to investigate the contractual risks of intellectual property certificate invalidation. The analytical approach allows for exploring legal principles, previous research, and risk management strategies within industrial property contracts. In examining the retroactive effect of certificate invalidation, the study dives into the legal intricacies and establishes a conceptual foundation for understanding the associated contractual risks.

The research aligns with a risk management approach, aiming to identify proactive measures to address these risks effectively.

The primary question is identifying legal solutions to mitigate the risks associated with intellectual property certificate invalidation in industrial property contracts. The hypothesis posits that implementing preventive measures, such as warranty conditions and non-challenge clauses, can effectively manage these risks. The research comprehensively understands the legal landscape surrounding intellectual property certificate validity, offering practical insights into risk allocation and cost reduction through contractual safeguards.

The theoretical framework of this research is grounded in the principles of intellectual property law, particularly in industrial property. Authenticity and validity serve as a foundational element, forming the basis for legal protection. The theoretical framework also considers the retroactive effect of judgments declaring certificate invalidity, acknowledging the profound impact such judgments can have on the legal landscape of intellectual property transactions. By delving into the intersection of legal risk and contractual risk, the research establishes a theoretical foundation for understanding the complexities associated with the invalidation of intellectual property certificates.

Research Questions include: what are the legal implications of declaring intellectual property certificates invalid in industrial property contracts? How does the retroactive effect of judgments declaring certificate invalidity impact prior transactions? What legal solutions can be identified to mitigate the contractual risks associated with intellectual property certificate invalidation?

Hypotheses include the retroactive effect of intellectual property certificate invalidation significantly alters the legal status of prior transactions. Proactive measures, such as warranty conditions, non-challenge clauses, and credit extension guarantees, can effectively mitigate the contractual risks associated with intellectual property certificate invalidation. The research comprehensively explains the contractual risk introduced by intellectual property certificate invalidation. It identifies the theoretical underpinnings of the problem, emphasizing the importance of the authenticity and validity principles in industrial property contracts. The retroactive effect of judgments declaring certificate invalidity is analyzed, revealing its potential to impact the legal standing of past transactions. The

research suggests preventive measures, including warranty conditions, non-challenge clauses, and credit extension guarantees, as practical strategies to allocate risk and reduce the costs of contractual accidents associated with intellectual property certificate invalidation.

In conclusion, this research sheds light on the contractual risks arising from the invalidation of intellectual property certificates in industrial property. The theoretical framework, rooted in the principles of authenticity and validity, provides a solid foundation for understanding the complexities of legal protection in intellectual property transactions. The retroactive effect of judgments declaring certificate invalidity emerges as a critical factor, potentially altering the legal landscape of prior transactions. By addressing research questions and hypotheses, the study underscores the importance of proactive measures, such as warranty conditions and non-challenge clauses, to effectively mitigate the identified contractual risks.

The achievements of this research contribute to the existing body of knowledge by offering a comprehensive analysis of the legal implications and risks associated with intellectual property certificate invalidation. The suggested preventive measures serve as valuable insights for legal practitioners, policymakers, and stakeholders in industrial property. Ultimately, this research enhances our understanding of the intricate relationship between legal and contractual risks, paving the way for more informed and resilient approaches to managing intellectual property risks in contractual agreements.

Keywords: Revocation of Certificate, Retroactive Effect, Invalidity Risk, Not Challenging Term, Warranty, Certificate Validity, Legal Risks, Non-Challenge Condition.

Declaration of conflicting interests

The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The authors would like to acknowledge the financial support of Institute for Management and Planning studies (IMPS) for this research.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue:3
Autumn 2023

Homepage: https://jlq.ut.ac.ir/

Research Paper

Legal Analysis of Confession, Denial, and Oath by the Executive Manager or the Liquidator of bankruptcy on Behalf of the Company

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Abstract

One of the main problems in suing legal entities, including companies, is their confession, denial or oath. At first sight, it seems they cannot take oath, confess, or deny, but a closer look shows the opposite. In the lawsuits for or against the company, the Civil Procedure Code and the Commerce Act consider the executive manager and the liquidator as the claimant, respectively. The legislature does not consider such a position for contractual representatives. In all these cases, the other party in the lawsuit requires confession or an oath of the executive manager, and the company will need to deny or doubt the other party's claims. The executive manager's writings in the commercial notebooks are counted as the company's written confession. Therefore, it seems that the company's confession, denial, and oath are also imaginable, and it is on merits possible to deem the confession or denial of the executive manager or liquidator of the company as confession or denial of the company and require the executive manager or liquidator to take oath on behalf of the company. They can accept to take the oath, although they are unlikely to be able to refuse to take the oath. In this regard, some reasons are presented, such as a natural bankrupt person; in this case, the executive manager, despite the company's bankruptcy, has not lost his standing completely and still can accomplish some work on behalf of the bankrupt company. All of these, in addition to companies, will apply to all types of legal entities.

This descriptive-analytical research will show that the legislator considers contractual representatives the parties' lawyers while legal representatives are the parties to the case. In this regard, the executive

* **How to Cite:** Gholizadeh Manghutay, Ahad (2023, Autumn).“ Legal Analysis of Confession, Denial, and Oath by the Executive Manager or the Liquidator of bankruptcy on Behalf of the Company ”*Private Law Studies Quarterly*, 53,3: 465 – 487. DOI:10.22059/JLQ.2024.361317.1007781
Manuscript received: 6 August 2023; final revision received: 23 September 2023; accepted:8 October 2023 , published online: 15 November 2023

manager is not a contractual but a legal representative. The reason is that he is not determined by his principle (company) but according to the rules laid down in the law.

In analyzing the subject of this article, it is necessary to discuss assuming the impossibility of confession, denial, or oath of a legal person; considering the executive manager and the liquidator as the claimant; differences between the places of legal and contractual representatives; means of confession, denial, or oath of the executive manager or liquidator on behalf of the company; and the possibility of bankrupt businessman's intervention in commercial lawsuits.

The precedence of assuming the legal status of contractual and legal representatives as the same by most practitioners and analysts has led to misconceptions. But as the hypothesis of this article, the legislator clearly differentiated between the two groups, granted them different rights and powers, and thus made it possible for a legal person to confess, deny, or take an oath.

The research showed that contrary to what is known, legal entities can confess, deny, or take an oath, and each of these cases is done by their legal representative (executive manager) or deputy (liquidator or head of the bankruptcy liquidation department). Since legal persons do not enjoy the capacity to exercise rights and discharge obligations, the legislator somehow principally considers the legal person and his legal representative the same. The legal representative is also considered the claimant, and his position differs from the contractual representative's (lawyer) position.

Not only the claim of rights but also the recovery of all the company's rights is with the executive manager. Therefore, in principle, he has all powers granted by the legal person. He can either confess or deny or take oath in the name and for account of the legal person. The company's components and crew cannot confess, deny, or oath on behalf of the company. The Board of Directors is also not a legal representative (executive) of a legal person.

The executive manager is not a contractual agent but a legal representative. The liquidator is a substitute for the bankrupt. Unlike a contractual representative, a legal representative cannot object as a third party to a decision for or against his principle but may request a retrial. Absent the guardian (executive manager), a legal claimant cannot file a lawsuit or hire a lawyer. If his former guardian has hired a lawyer (a contractual representative) for it, that lawyer will also be dismissed by the deterioration of the guardian's position.

By law, the legal representative must be presently the principles' representative to confess, deny, or oath on behalf of him for the events of his current or previous tenure. Given the current executive manager's dominance over all the old and new information in the company, it seems that he can also confess or oath (independently or supportively) about events before his appointment based on recorded documents of those events. Of course, it appears that he cannot refuse or cancel such an oath and cause the claimant's dominance over the company's assets.

The legislator has exceptionally allowed the bankrupt, with the court's permission,, to intervene outside the incapacity into a dispute currently set by or against his substitute (liquidator) as a third party. Bankrupt legal entities need their legal representative (executive manager) to exercise this right.

Keywords: Confession, Denial, Oath, Executive Manager, Liquidator of Bankruptcy.

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.

Private Law Studies Quarterly

Online ISSN: 2588-6622
Volume: 53, Issue:3
Autumn 2023

Homepage: https://jlq.ut.ac.ir/

Research Paper

Increase in Companies' Capital from Revaluation of Assets: Concept and Legal Dimensions

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Abstract

Commercial companies start working with capital that may change over time. One of these changes is the increase in the price of the company's assets compared to the day of acquisition. Therefore, the value of the company's assets goes far beyond what is recorded in the company's financial books, and by revaluation, the price of the company's assets can be updated, and accordingly, the registered capital of the company can be increased. Revaluation of assets is bringing the real and nominal capital of the company closer. But the question arises whether companies can or should undertake revaluation. The other question is, how has Iran's legal system stipulated the revaluation results, process, and formalities?

This library review research is done through the review of writings and research carried out on the issue of revaluation of assets. In this process, it is tried to reevaluate properties that have zero depreciation or close to it because otherwise, the company's net profit can be severely affected by depreciation and reduced. Asset revaluation has positive points, such as clarifying the value of assets and raising companies' credit ratings. It also possesses negative points, including the continuation of possible losses to the company, lack of real capital entering the company, increase in the amount of depreciation of assets, etc. Perhaps the most important positive effect of revaluation, especially in the case of companies admitted to the stock

* **How to Cite:** Mousavi, Seyed Amirhesam; Ramezani Akerdi, Akerdi. (2023, Autumn)" Increase in Companies' Capital from Revaluation of Assets: Concept and Legal Dimensions
"*Private Law Studies Quarterly*, 53,3: 489 – 511. DOI:10.22059/JLQ.2024.356308.1007750
Manuscript received: 15 April 2023 ; final revision received: 26 July 2023; accepted: 8 October 2023 , published online: 15 November 2023

exchange, is the transparency of transactions and the prevention of damage to minor shareholders because companies may cause the market value of the company to go far away from its real value by preventing or not prioritizing the revaluation of assets. Also, the big shareholders acquire the shares belonging to the small shareholders at a small price.

Therefore, perhaps based on the theory of stakeholders, it could be claimed that revaluation or at least providing the basis for revaluation is among the tasks of the board of directors of the companies. In addition to small shareholders, the beneficiaries of the revaluation are also third parties because, through the revaluation process, they can have a clearer view of the real assets of the companies. In the relevant laws of Iran, there are no specific rules regarding the method and formalities of evaluating the assets. Still, according to the legal principles regarding the effects of the revaluation of assets, it seems that the extraordinary general assembly should approve such a matter of the company. It also seems that the revaluation of assets could be considered as the company's withdrawal from the scope of Article 141 of the amendment bill of the Commercial Act. According to this article, after a company loses more than half of its registered assets, its capital must be reduced, or the decision to liquidate it should be taken. It seems that by using the revaluation of assets, it is impossible to prevent the implementation of Article 141.

Another issue is the relationship between revaluation of assets and tax rights. In the laws related to the revaluation of assets, if a company decides to sell the revalued property after the revaluation of assets, the difference between the book price and the revaluation price is recognized as profit, and the company must pay taxes. If the revaluation was not done, the company is not obligated to pay taxes, except the property transfer tax. Therefore, it seems that the tax regulations should be amended in this regard, and the price increase, which is the result of inflation, should not be recognized as profit. The authors propose the following: include the subject of renewal in the commercial law; determine the exact mechanism for revaluation of assets; oblige the company's board of directors to reevaluate assets in certain time cycles; and amend tax regulations.

Keywords: Revaluation, Stock, Reduction of Capital, Tax, Company.

Declaration of conflicting interests
The author diclares no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The authors received no financial support for the research, authorship, and/or publication of this article.