

Supporting Multinational Corporations in the Laws and Regulations of the Islamic Republic of Iran

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ABSTRACT — After World War II, multinational corporations have expanded their activities around the world. The characteristics of these corporations include very high economic strength, high competition between companies with domestic regulations, and the power of their influence on the sovereignty of nations and the internal regulations. We can say that the presence of multinational corporations unconditionally can have a devastating impact for developing countries, such as Iran. However, this does not mean that these corporations should be boycotted and ignore their benefits for the host country. Thus, the doors of the country's economy must be open and receptive to foreign investors. But along with the legal control of such corporations and investors, the systematic control of activities and behavior of multinational corporations is essential. Investigating legal responsibility and legal protections of these corporations is the subject matter in this research. We try to examine supporting the multinational corporations in the Islamic Republic of Iran.

KEYWORDS: Multinational Corporations, Iranian Law, Legal Personality, Legal Protection

Introduction

In recent years, the extent and development of multinational corporations have been unimaginable not only in terms of volume but also in terms of geographical scope. Thus, many of these corporations are larger than many countries of the world in terms of volume of economic activity, income and capital reserves. These corporations have part of international production, global trade and control over the technology. Controlling over such great economic power enables them to monitor and control their political power and use their power whenever it is necessary to achieve their economic and political goals. They can create financial and currency crisis, causing the country to be faced with a political and economic collapse by moving their monetary reserves from one country to another one such as the East Asian financial and economic crisis in 1997. Multinational corporations have the highest efficiency of the changes caused by globalization in the economy (Samavati, 2006: 66). In today's world the need for exchange of goods and technical knowledge between countries has made inevitable the activities of multinational corporations at an international level. Economic and financial power of corporations threatens not only developing countries, but also industrialized countries. Thus, the government's treatment to them is cautiously with fear and hope. For example, in Iran foreign investment laws enacted in 1955, and monetary law enacted in 1975 have limited activity of foreign companies in some fields (Khodabakhshi, 2008: 83). However, restrictive regulations could not impede the penetration of multinational corporations in the domestic economy and play a role in this field. Exploitation of natural resources, particularly oil extraction and implementing a number of development projects by foreign companies in our country are inevitable activities of these corporations. Hence, we should consider issues about the regulations governing the relationships between multinational corporations and other persons. Some manufacturing companies and financial institutions have established branches or agencies abroad; thus, we should consider whether such companies are multinational or not. Therefore, we should first recognize multinational corporations. Multinational or transnational economic unit is composed of companies with diverse nationalities. In other words, if a company establishes one or more subsidiary companies abroad with the nationality of the country of their registration, that company will be multinational (Zakir Hussain, 2003: 82). UN experts have accepted this definition. So it can be said that multinational companies consist of a parent company or the subsidiary company. Parent companies are associated with subsidiary companies through stock ownership, management control, acquisition of a majority stake, and the majority of voting rights (Zakir Hussain, 2003: 82). Thus, foreign subsidiary company with independent legal personality has the legal status of an internal business company, but the branch has no independent legal personality. Thus, a company which has a branch in another country cannot be considered multinational.

Appellation of transnational corporations

In the 57th session of the UN Economic and Social Council in 1974, the term “transnational” was selected which meant the institutions beyond the boundaries of the country (Khabazpishe, 1989: 23). From a macroeconomic perspective, it is undeniable that transnational corporations are highly effective in sustaining the growth of industrialized countries. Transnational corporations have earned tremendous revenues for these countries using natural and human resources, and increasing production quality. In

terms of macroeconomic, the transnational corporations are considered as excellent examples of management in our time. By studying the overall global system there is no doubt that transnational corporations are aggravating factors for interdependence of countries (Teimuri, 2006: 94). According to UN figures the number of multinational corporations in the world in 1992 was reported more than 35,000 units which covered about 170 thousand branches of foreign subsidiary companies. Now, 30 percent of the world's productive assets belong to multinational corporations (Mujtahidi, 1994: 71). Transnational corporations are growing rapidly day by day in a way that they expand their industrial and commercial section. Some experts have predicted that the above-mentioned companies in the near future include 300 to 400 multinational companies and more than 70 percent of total industrial output in the world. These predictions are not far from reality because now five developed countries, including America, Germany, Japan, France and the UK have multinational corporations and 25 percent of global production. Relying on such power, multinational companies challenge government authority and threaten their authority. Multinational companies can be effective in introducing newer industries, creating industrial and commercial zones, new methods of production, promotion of technology and services.

The nature of transnational companies

Even today, there is no consensus on the precise definition of transnational companies. Some lawyers believe companies which have expanded their activities in the world in a way that legal systems are unable to organize their activities are considered transnational. On the other hand, companies that are active based on coordination between two or more countries are considered multinational. UNCTAD selected the term "transnational" and believed that transnational corporations can no longer be regarded as the followers of international law. The only function of transnational corporations is the direct foreign investment. Therefore, international law of foreign investment was born. Moreover, it is necessary to consider the participation of transnational corporations in securing public interests, that's mean, the fundamental interests of the international community such as human rights, labor rights, etc. (Bahman Tajani, 2004: 137). Another definition is provided by multinational corporations, including: Companies have performed a considerable amount of investment in other countries (Taghavi, 1386: 11). It is also said that transnational corporations have foreign sales volume equal to domestic sales volume. Sometimes it is said that transnational corporations are companies that have lost their national characteristics because of a massive international property. From the economic perspective, transnational corporations are considered as a chain of companies around the world and function of a parent company. In contrast, multinational companies are considered as a chain of companies around the world and function of at least one parent company (Schmidt, 1999: c 1/55). The term "economic enterprise" covers all forms of participation in the business such as credit institutions, investment banks, and so on. Economic entities, regardless of the type of legal entity in the host country, are the main actors of the world trade. Now what is certain about transnational companies is expanding the scope of their activities at least in two or three countries in the form of companies with an unimaginable turnover of 300 to 450 billion dollars per year. It is not possible to organize their activities in a legal system and even some believe that transnational corporations after the government are the most powerful actors in the international arena.

Legal and functional nature of transnational corporations

Now, in spite of the astonishing progress of science, industry and technology, the majority of collective activities are done in the form of legal entities. These activities go beyond legal entities as the obvious examples of business activities for transnational corporations (Teimuri, 2006: 22). The point to be noted is that there are two basic elements in multinational companies: Unity and multiplicity: unity means the unity of decision-making, unity of action, unity in human, financial and technical resources, and such unity indicates identity. The company has a certain characteristics and distinct from any other entity. Parent company and subsidiary companies may constitute a single series. Therefore, the company can be a complex communication system which the elements have an organic connection. Transnational companies follow a hierarchical relationship between them. Decision-making process in transnational corporations is in the form of a pyramid. The relationship between center and periphery is one of the main characteristics of multinational companies. In law, this relationship can be explained by the concept of sovereignty. In this regard, practical or legal decision is considered as the policy (Henry Ford, 1981: 93). Multiplicity means the presence in many countries. Transnational companies have multiplicity:

First, they have a fairly large number of companies which have a distinct legal personality.

Second, the companies have been formed according to the domestic law of different countries and have different nationalities (Kashi and Arani, 2007: 87).

Thus, it can be said that multinational companies have multiple nationalities. According to the multinational company, the interests of the main institution depend on the interests of subsidiary institutions. Legally, this issue is considered as the courts conflict (territorial jurisdiction) between the governments.

Legal strategies for investigating the positive function of multinational corporations

Based on research and studies in the world and within the country, foreign direct investment affects economic growth is one of the most important accelerators of economic growth in developing countries. Foreign investment in general and the activities of

multinational corporations in host countries; especially developing countries are useful and enhance the economic development. The usefulness of the activities of multinational corporations does not mean that they are free to do anything. Thus, legal control of multinational corporations should be considered. Legal control means the limitations that multinational corporations have in their investment in the host countries (Nasiri, 1991: 75). Legal control of multinational corporations is generally separated into three parts:

1. Self-control: means that the multinational company controls the activities of their subsidiary companies and prevents their various violations and transgressions. However, it is difficult to prove the shortcomings of the parent company in this obligation.
2. Internal Control: means the host country control the status and activities of multinational corporations through the adoption of appropriate rules and regulations. Therefore, the appropriateness of the rules and regulations must be emphasized and multinational corporations can invest in different countries appropriately (Merati, 2008: 43).
3. External control: this also means international control of multinational corporations that international institutions should intervene in this matter. Institutions such as UNCTAD (United Nations Committee on Trade and Development) and Organization for Economic Cooperation and Development take action through publishing guidelines and recommendations. Large multinational companies who do not want to damage the good name and business trust in the host countries that have been acquired over the years follow these rules (Merati, 2008: 44).

Criminal support for multinational corporations

One of the controversial issues in criminal law is the criminal responsibility of legal entities. The lack of doctrine and approach in this field makes the laws of the country and consequently the courts, often conflicting in dealing with this problem. The different approaches depend on the theory of criminal liability of legal persons. Article 142 of the new Penal Code adopted in 2011 in this regard states: In the criminal responsibility, the principle is based on natural person's responsibility and legal person has the criminal responsibility when he/she has the power of decision-making or control from a legal person; criminal responsibility of legal persons will not prevent criminal responsibility of natural persons (Lotfi, 2011: 49). Committing crimes by legal persons should be limited to criminal cases that are compatible with the nature and issue of the legal person. If the issue of the legal person is business affairs, crimes against property and ownership are compatible with the nature. A legal person is responsible for the action when the action of natural person has the potential or actual benefit (Nabipour, 2010: 135). Judicial decisions are based on the responsibility of the parent company for the environmental damage caused by the subsidiary companies; especially, when the parent company has the strict control over its subsidiary companies. By accepting criminal responsibility, punishments related to legal persons such as temporary closure, confiscation of assets, confiscation of property, fines will be also applicable for multinational companies (Qorbania, 1998: 64). The law of some countries, such as the "Cuban penal code", the implementation of all types of criminal cases (both financial and non-financial) in the case of legal persons may be regarded as valid and they talk about the closure of legal entities as alternative sentences instead of execution and imprisonment and some other countries prevent the implementation of financial crimes such as fines. French Supreme Court states that fines are considered as penalties and penalty is personal in cases where the law considers as an exception. Therefore, it is not possible to warrant fines against a company which is a legal person and only has civil liability (Teimouri, 2006: 39).

Civil support for responsibility of Multinational Corporation

Legally, civil liability has two main meanings: in the broad meaning, civil liability is the legal duty to do against another person (Shahidi and Yazdanian, 2000: 35). In the narrow meaning, civil liability is person commitment to damage compensate for the otherwise (Shahidi and Yazdanian, 2000: 36). If a multinational company violates its contractual commitments of any kind, it will be responsible to cover losses. However, is the parent company responsible for enforcing contractual obligations of the subsidiary companies? Forasmuch as the subsidiary companies have independent legal entity from the parent company, they are solely responsible for their performance of contractual obligations. In the event of non-performance and violations of contractual obligations, if the subsidiary companies are unable to afford to cover losses on violations of the deal, the parent company will be responsible for compensation. In the narrow sense of civil liability, it must be said that multinational companies are responsible to cover losses from acts of employees, shareholders and subsidiary companies. The reason is that the legal person can be on the side of a real commitment and have a civil liability and subsidiary companies do not usually have enough financial resources; thus, the parent company is responsible for the subsidiary companies. It is necessary to aggregate the elements of civil liability (certain losses, direct and uncompensated losses, committing harmful acts, and the causal relationship between harmful and harmless act) (Teimuri, 2006: 37). Forasmuch as the management of subsidiary and parent companies is interwoven, the existence of subsidiary companies in the hierarchy of the administrative and managerial structure reflects the responsibility of the parent company for the subsidiary companies. Moreover, subsidiary companies usually have less facilities and financial capacities for compensating the damages to third parties. In many cases, third parties make a transaction with the subsidiary company with respect to the credibility of the entire company. Therefore, it is expected that the parent company is responsible for the loss or bankruptcy of the subsidiary companies.

Domicile and nationality of multinational company

Domicile is an important element in determining the scope of the person's status. Domicile is considered as a legal center for every person and place that person legally settles there. Since legal persons can be the contract party with other persons, they must have a domicile to allow tracking them in any circumstances (Ghamami, 2004: 116). It is very important to determine the domicile in order to determine the nationality of legal persons. Iranian law like the law of France, Italy and the US consider the domicile as the important center for the affairs. In contrast, countries such as Portugal, Spain, Sweden and Switzerland, have chosen the standards for determining the domicile (Merati, 1999). The term "nationality" can be applied in principle for natural persons and there is a difference between the nationality of natural and legal persons. Although legal persons have a nationality like natural persons, implementation of standards for political support of legal persons, especially multinational companies, is very difficult (Zaker Hussain, 2003: 116). There are three criteria used between legislative and judicial systems in different countries to determine the nationality of the multinational companies: Place of registration and organization, the main center of corporation, and control system. The first and second criteria are accepted in many legal systems. The third criterion is used in cases of certain targets. When determining the nationality, the issue is not to which country the multinational company is attributed; rather, the issue is to determine the conditions based on which the laws will be applicable to the company. Thus, there is no conflict between the rights of a country's rules to determine the legal validity of a branch and the country's behavior towards the branch and considering it as a "foreign company" (Fatouros, 1986: 197). The most important effect of the nationality is dividing people into nationals and foreigners. Governments treat these groups differently. For the first group, governments consider it as granting rights and privileges and political support. For the second group, governments consider it as creating various constraints (Merati, 1999: 65). According to UN experts, multinational company is a company which establishes a subsidiary company (i.e. that the majority is owned by parent company) to expand its activities in the industry centers around the world and investment in developing countries and use of facilities in such countries. Thus, in a multinational company, there are some subsidiary companies and one parent company (Nasiri, 1991:145). There is no certain response for international legal precedent in this regard that the diplomatic protection of legal persons is based on effective nationality of the company (naturalization of the majority of shareholders) or on the basis of legal nationality (the main center and place of registration) (Nasiri, 1991: 149-152). The problems of multinational companies are not due to lack of real bond with the host country; rather, they are due to the strong bonds with many countries. Hence, a multinational company is an entity which has a multiple nationalities. Contrary to what is true about natural persons having dual or multiple nationalities, the governments having multinational companies can consider them as the foreign companies. The nature of a multinational company is based on the weak bonds with the host country. A claim was submitted in case of Barcelona Traction Light and Power Company (conflict of Belgium against Spain). Belgium requested the Court to dismiss the two preliminary objections which had been joined to the merits. It further asked the Court to judge and declare that the conduct of Spanish authorities towards Barcelona Traction was contrary to international law and that Spain was obligated to proceed to make reparation. Spain requested the Court to uphold the preliminary objections in question and to declare that Spain had violated no rule of international law and, consequently, did not incur any international responsibility towards Belgium. In its judgment of February 5, 1970 (hereinafter referred to as second judgment), the Court rejected the Belgian claim by fifteen votes to one, twelve votes of the majority being based on the reason set forth in the judgment, namely, the acceptance of Spain's third preliminary objection. It thus appears that the attention of the Court was centered upon the third preliminary objection of Spain, namely on the question whether Belgium was, under international law, entitled to present a claim to Spain on behalf of Belgian nationals, shareholders in a company, for damage allegedly inflicted by that State upon the company, which was incorporated in Canada (Ziaee Bigdelli et al., 2008: 199). It seems that if the company has three criteria of nationality, it can ensure the political support of the source government (assuming that the government is autonomous in the implementation of diplomatic protection). Thus, the companies whose legal status is more complex are under unclear circumstances.

Conclusion

In fact, in many cases the key factor to drive growth depends on technological progress and does not require the financial investment. According to this perspective, the concept of growth receives the new formulation in a country and the flow of knowledge in growth strategy has the similar importance in comparison with capital flows. When confronting these issues, national policymakers must provide strategies. Internal control with principles and rules of incentives and sanctions is necessary. On the one hand, Promotion and Protection Act of foreign investment in Iran were imposed against behavioral rules of the investment companies. On the other hand, it contains rules that try to create attractive investment for foreign investors. Furthermore, we find that laws and regulations that govern multinational corporations provide the context for the progress and success of these corporations. Using management methods for material and human capitals and compliance them with the culture, beliefs, and patterns of the Islamic-Iranian model, we can create rules and regulations applicable to companies and provide a context for Islamic multinational corporations.

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