



## Role of Authorized Signatories in Corporation's Legal affairs

Bakhtyarabaslo and Leila Noroozi

Islamic Azad University Central Tehran Branch, Faculty of Law, Tehran, IRAN

Available online at: [www.isca.in](http://www.isca.in), [www.isca.me](http://www.isca.me)

Received 16<sup>th</sup> February 2014, revised 10<sup>th</sup> May 2014, accepted 7<sup>th</sup> June 2014

### Abstract

*According to span of legal regulations about LLP companies and importance of this companies among commercial companies, this article is to study nature of stock companies Authorized Signatories representations to clarify whether these representations are coincident with mandatum or legal representation, from the other point, explaining general theory about nature of Authorized Signatories representations is not possible without studying and analyzing legal nature of representations. For this matter at first we should study subjects like concepts, natures and types of representations. For reaching desired goals, documental and library studies have been used. According to research results, Authorized Signatories representation is a distinctive and independent nature of advocacy representation and this representation is categorized in article 10 of civil code.*

**Keywords:** Representation, contractual representation, legal representation, right of signature, indefinite contract.

### Introduction

There's no definition of 'representation' in Iran civil code. But acceptance of 'representation theory' in Iran law can be presumed from articles 196 and 247 of civil code. In this regard, article 196 of civil law stipulates: one that transact, that transaction is considered only for that person unless during contract he stipulates its contrary or its contrary is proven after contract. Also article 247 of civil code stipulates: property bargain is not incisive without proxy, administration or province unless owner of property is inwardly satisfied but if owner or his surrogate gives his permission after the bargain, this transaction is correct and incisive<sup>1</sup>.

Although in spite of representation theory presumption from above, representation definition in Iran's law due to lack of general regulations on representation, is not properly analyzed and explained and its subjects are sporadic, even though, it seems that this legal gap can be filled with definition of 'mandatum' (Articles 656-683) because advocacy is a mean to submit representation. Advocacy is an agreement which one will put someone else as his deputy for an affair (Imami, 266, 1366). Therefore although there's no definition of representation in our laws, but according to topics above we can say that: representation is an legal act whereby the represented can participate in place and in name of the original in coagulation of a contract that will directly affect the original party. (Imami, Pishin, 266) some jurist defined representation as an assignment (Imam Khomeini, 308, 1387)<sup>2</sup>.

### Methodology

**Legal nature of a representation:** In Iran's civil and commercial codes, legislator has not defined a definition and general regulations of representation, from one point matching

general representation theory with specific examples such as legal credits, without explaining legal nature of representation from point of views such as determining effects and related provisions is not possible.

Of course we should remind that examples of representations (both civil and commercial) are vast and abstracting an unique nature for all of them is not possible and because each element of a matter is part of that matter, in fact by putting all the elements involved we can create a matter and we might, in this particular topic, resort to common elements for all specific matters.

**Existence of represented and original person:** Representation is a relation between original party and represented that based on it, represented is authorized to perform legal changes in name and place of original party. Effect of representation is delegating which means original party take all actions of represented as his own and allow represented to perform some changes to names and account (Jafari, langaroudi, 284, 1388)<sup>3</sup>, therefore representation is only legit when an original is introduced. Original can be both an actual person and a legal person. This element is essential in all types of representation such as civil and commercial. (Katuzian, 652, 1388)<sup>4</sup>.

On the other hand, without a represented individual, there will be no discussion about representation matters so subjects of representation are defined around represented. Represented can be a legal or actual person. (Hajiani, Pishin, 115)<sup>4</sup>.

**Competency in seizing other people affairs:** Represented is considered one only in authorities submitted by original and outside of those authorities, his title is not verified thus for represented to commit to original party, he should act under his

submitted authorities ,in another word, for changing, seizure and possessions competency and authority are required. (Katuzian, Pishin, 665) so represented is not considered one outside of his authorities whether this authority is obliged by law or person's will or court. This element in all type of representation is necessary.

In all types of representation, what forms basis, matter and root of a representation is that represented should act under name and account given to him and effects of his actions are pledged to original party and this property is common in all types of representation, and the only privileges of representations are sources and origins that gave them authority and power to act by represented. This might originated by law regulation, courts or person's determination.

## Results and Discussion

**Origin of Authorized Signatories:** Published advertisements of stock companies reflect that signatory holders are listed as authorities for signing under documents and papers. According to companies article of incorporation (statute), board of directors should choose signatory holders and their authorities who might be an individual or a party to sign or attach to the seal. Anyway for board of directors to give their authorities to someone else, they must be allowed by statute because representing board of directors is like standing for him therefore authorities given to signatory holders by board of directors under banner of statute are actually part of the board's own authorities that because of proceedings being collective (Hasani, 245, 1381), performing them by board of directors is not possible, thus this statute allows board of directors to submit this authority(signing papers and documents) to peoples titled signatory holders. (Farahnakian, 502, 139) about legal signatory holders of companies, there's no discussion neither in regulation of reformed bill ,part of commercial regulations approved in 1347,nor in the regulations of commercial law ,therefore signature right is given to usual members of board based on former agreements and approval of statute. (Eftekhari,136,1386) so this authority(signature right) has statute origins. About choosing signatory holders from board of directors it should be stated that although signatory holders are usually chosen by members of board (CEO and manager) but there's no necessity or requirements that signatory holder should be member of the board. Because of lack of law stipulation on this condition of signatory holders, whenever we doubted existence of conditions for this topic (Mohammadi, 1385, 135), principle is that conditions apply to non-members of board therefore the signatory holders can be non-members of stockholders (Sotude Tehrani, 189, 1389).

In other point choosing CEO of a company, whom like signatory holders has signature right, does not require to be member of board (rashedi ashrafi, 99, 1y 387). Although signatory holders are chosen by boardof directors and their authorities and payments are indicated by them, these people are

represented of corporation and every action they do will go under the name and account of corporation. Therefore they are actually represented of corporation that is chosen by board. It's obvious that legislator concerning representation of corporations follows a point that delegate lawyer, is accounted as represented and lawyer of client (original party). So some believe that if delegate lawyer using his authorities appoint a lawyer for the client, intermediated lawyer will be client's actual lawyer

So according to this viewpoint, if members of board are lower than its legal least number, representation of signatory holders will not be disbanded because they represent legal members of corporation not members of board (if a lawyer is allowed for substitution and have chosen a lawyer, with death of first lawyer, advocacy of intermediated lawyer will remain).

**Jurisdiction of Authorized Signatories:** Article 125 regulation of reformed bill part of commercial regulations approved in 1347,stipulate that authorizations of CEO are limited to amount chosen for him by board of directors and article regulations are specifically for Colon the other hand, article 7 of companies registration approved in 1310/3/11,with later modification states that authorities of CEO are within range chosen by boards and companies registration bareu and its essential that this limit would be base of CEO authority range. (Hasani, Pishin, 99) so unlike boards of directors that according to article (118.g.h.r.j) have complete authority on companies affairs, CEO only has authorities given to him by boards.

According to article 125 of legislation modification part of commercial Law approved in 1347 and also article 674 of civil code client in terms of advocacy (representation) must do all lawyer (represented) has done on range of his advocacy so lawyer will face no personal responsibility unless he acted outside his authorities in that case lawyer is personally charged with civil responsibility (legal assistant of former presidential, 159) as a result it should be said that:

Authorities range of signatory holders are indicated by stated statutes and boards of directors and more than this they have no authority because according to regulations, represented is called one only under authorities submitted and outside of authorities that client has given to him he can't represent his client and from the other hand the client is responsible in range of authorities given (Hayeri, Shahbagh, Pishin, 123). So client is not obligated to what represented does by crossing the limits of his authorities, in addition, in suspicious cases that client has not indicated lawyer's authorities, one should suffice to righteous amount and don't count some actions as lawyer's authority. (Katuzian, Pishin, 298). In other words, represented authorities by citation to independence principle and lack of representation principle (Barikloo, Pishin, 202) must be narrowly interpreted. From other hand, necessity of represented not exceeding from ranges of his authorities have been confirmed by many civil codes (article 876, 359, 667, 1257, 669).

There's a regulation similar to regulation mentioned above for representation of corporations. So the only actions that will commit corporation to 3<sup>rd</sup> party contracts and authorized signatories are those submitted to authorized signatories. More than that corporation has no obligation on sealing the contract and so anything located outside of represented authorities are functioned by prying contracts regulations(Imami,pishin,312).as a result:

There's no way to Accept this opinion that authorized signatories comparing with board of directors of corporations against 3<sup>rd</sup> party have absolute authorities and actions out of authorities agreed in corporation statute against 3<sup>rd</sup> party are vitiate and commit corporation against 3<sup>rd</sup> party, because resorting to absolute authorities for represented even more than authorities that client has given him is against rules, regulations, and appropriate representation matter. That's why it's an exception. Because it's an exception, it needs legal stipulations and must be interpreted in authorized resources. Extending this expectation (absolute authorities of board of directors)to other resources needs legal stipulations so without any stipulation we return to our starting point that commits corporation in range of authorities that was assigned to authorized signatories.

## Conclusion

According to topics discussed above, it can say that authorized signatories representations are specific and independent nature of lawyer representation. This representation is put under banner of article 10 of civil law but it's not advocacy because everything that is not prohibited by law is allowed. Mentioned principle is counted as a rational principle and society's logic follows it.so anything that can be commitment subject, can be the subject of private contracts. The majority is that subject of contract must not belong to obligatory regulations. Authorized signatories representation is the same. Nature, origin and credit of this representation have effects that are dependent to nature and reagent of this particular agency and have both parties viewpoint out side of any certain contracts or traditional distribution. For representing, there's no necessity that representation is done under the frame of certain advocacy contracts because advocacy is one of many ways of representation in frame of contracts. There are other ways for representation in frame of contracts and that's giving representation under the article 10 of civil code. From one point according to juridical laws and regulations, if objection to a contract is in question with desired law.

Verdict is that the contract is official and one can't breach contract because of these oppositions.

## References

1. Imami hassan, civil code,4<sup>th</sup> publish, second volume, (1366)
2. Imam Khomeini, tahriralvasile, translated by Muhammad baghermusavihamedani, second publish, (1387)
3. Jafarilangaroodi, alfaregh, 1, 2<sup>nd</sup> publish, (1388)
4. Katuzian, general contracts regulations, 3, 5<sup>th</sup> publish, (1388)
5. Imami, Hassan,civilcode first volume,26<sup>th</sup> publish, (1385)
6. Imami, Hassan, civil code, volume 6, 6<sup>th</sup> publish, (1364)
7. barikloo, alireza, fundamental and corporation contracts, first publish, majd publishments, (1388)
8. hayerishahbagh, ali, civil code, volume 2,3<sup>rd</sup> publish,ganjanesh publishments, (1384)
9. Imami, Hassan, civil code,6<sup>th</sup> publish, 6, (1364)
10. Katuzian Naser, legal affairs,10<sup>th</sup> publish (1384)
11. Katuzian Naser, introduction to science of Law, 49<sup>th</sup> publish, (1385)
12. Katuzian, Naser, certain contracts, 4, (1389)