

Analysis of Legal Framework of Joint-Stock Cooperative Bank

Mostafa Elsan*

Rahim Ghanbari[‡]

Seyed Mohammad Tabatabaieinejad[†]

Majid Reza Arab Ahmadi[§]

Received: 22 Mar 2017

Approved: 4 Sep 2018

Joint-stock cooperative company is not recognized in Commercial Code of Iran and the amendment bill of the Commercial Code adopted in 1968. This business entity has a unique description because of both being cooperative and having joint stock. It is a joint-stock company that is chartered based on Commercial Code of Iran, amendment bill of the Commercial Code adopted in 1968, and Principle 44 of the Constitution. Joint-stock cooperative Qarzol-Hasaneh Bank is not involved with commercial activity; the maximum share of each real shareholder is equal to half of company's capital at the time of establishment and during company's function. Ministry of Cooperatives and the Central Bank monitor activities of joint-stock cooperative companies. Joint-stock cooperative bank like joint-stock cooperative company should be subjected to amended bill of the Commercial Code adopted in 1968, enforcement Act of general policies of Principle 44 of the Constitution. Formation of joint-stock cooperative bank is not possible in practice unless violating the cooperatives regulations and doing activities that are out of jurisdiction of cooperative companies. It should be noted that cooperative banks are considered as nongovernmental banks, therefore they must obey regulations expressed in rules and regulations of non-governmental banks.

Keywords: Cooperative, Qarzol-Hasaneh (Free-Rate Loan), Ministry of Cooperatives, Central Bank, Principle 44, Joint Stock

JEL Classification: K41 · K22 · K19

1 Introduction

Limited Liability Partnership (LLP) Cooperative Company is an emerging phenomenon in legal system of Iran, which has been created whereby Act of Enforcement of Policies in principle 44 of the Constitution of Iran. In this

* Faculty of Law, Shahid Beheshti University, Tehran, Iran; m_elsan@sbu.ac.ir
(Corresponding Author)

† Faculty of Law & Politics, Tehran University, Tehran, Iran; sm.tabatabaei@ut.ac.ir

‡ Islamic Azad University Zanjan Branch, Zanjan, Iran; ghanbari0618@gmail.com

§ Faculty of Law, Islamic Azad University, Farahan Branch, Farahan, Iran;
m_r_ahmadi91@yahoo.com

context, it is theoretically possible to form financial credit banks and institutions and convert existing banks into LLP Cooperative Company.

Historically, cooperative banking is retail and commercial banking organized on a cooperative basis. Cooperative banks are larger institutions and like credit unions, cooperative banks are owned by their customers and follow the cooperative principle of one person, one vote. Unlike credit unions, however, cooperative banks are often regulated under both banking and cooperative legislation. They provide services such as savings and loans to non-members as well as to members and some participate in the wholesale markets for bonds, money and even equities. Cooperative banks are traded on public stock markets, so that they are partly owned by non-members. Member control is diluted by these outside stakes, so they may be regarded as semi-cooperative.

Cooperative banking systems are usually more integrated than credit union systems. Local branches of cooperative banks select their own board of directors and manage their own operations, but most strategic decisions require approval from a central office. Credit unions usually retain strategic decision-making at a local level, though they share back-office functions, such as access to the global payments system, by federating.¹

There are four qualities of cooperative banking. Customer participation, long-term relationship, sustainable society and solid basis are considered as four qualities of cooperative banking. The cooperative banking system is based on ethical believes (Omarova, 2016). An ethical bank, also known as a social, alternative, civic, or sustainable bank, is a bank concerned with the social and environmental impacts of its investments and loans.

The powers of direction, supervision and intervention on joint-stock cooperative bank and its relation with central bank and other financial service providers are problems that are discussed in this paper.

As a comparative study, the Italian government in the early 1990s decided to privatize the community-owned banks (savings banks owned by the province or region) and transform them into joint stock companies. These reforms would improve governance and also create incentives for new shareholders to inject fresh capital, rationalize costs, and provide opportunities for mergers. (Jassaud, 2014; Tarantola, 2009)

According to Italian approach for transforming these banks, there is only perhaps one case in which conversion to a joint stock company could be

¹ The Co-operative Bank; See: www.co-operativebank.co.uk (Last visited 2017-10-06); Phillips et al. (2013).

mandatory: in case of prolonged capital shortfalls and as a last recourse if it were to be necessary to facilitate bank resolution without using public funds. In all other cases shareholders should be able to maintain the cooperative structure, but in the case the general assembly decides so, the process of conversion to Joint Stock Company should be simple and possible. (Gutiérrez, 2008)

Whether banks should be formed as cooperative company in practice or not and in this process what requirements and limitations and challenges they needed are investigated in this study.

In the following 4 speeches, analysis of legal identity and position of LLP cooperative company is presented:

- Definition and advantages of joint-stock cooperative company (speech 1),
- Establishment of joint-stock cooperative company (speech 2),
- Legal identity of joint-stock cooperative bank (speech 3)
- Supervision on joint-stock cooperative bank (speech 4)

2 Definition and Advantages of Joint-Stock Cooperative Bank

2.1 Definition of Joint-Stock Cooperative Bank

In accordance to monetary and banking laws of Iran, establishment and management code of non-governmental banks and credit institutions, Article 1 of executive code of formation and supervision on joint-stock cooperative companies, joint-stock cooperative bank is defined as follow:

“A bank that is established based on the monetary and banking law following Clause 9 of Article 1 in the framework of constraints contained in Article 12 of amendment law of Article of Fourth Cultural, Social, and Economic Development Program Law of Islamic Republic of Iran and implementing general policies of Principle 44 of the Constitution obtaining permission from Ministry of Cooperatives and the Central Bank of Islamic Republic of Iran”. Like other joint-stock cooperative companies, joint-stock cooperative has been anticipated in Commercial Code of Iran and amendment bill of the Commercial Code adopted in 1968; hence, this bank is not considered as companies named in Commercial Code of Iran as well as their ruling principles and regulations. In fact, these kind of cooperative and joint-stock companies have a unique description; hence, they should be studied separately.

Cooperative banks are considered as governmental banks, hence, they must obey regulations expressed in rules and regulations of non-governmental banks.

2.2 Advantages of Joint-Stock Cooperative Bank

Joint-stock cooperative bank has some advantages compared with other banks. This bank not only benefits from Trade Law but also enjoys advantages related to cooperative companies. These advantages are as follows:

Aggregation of micro capitals, increasing creativity, job satisfaction among employees, and speed of tasks and deeds through division of labor are some of these advantages.

Some advantages in rules and regulations related to joint-stock cooperative companies, which are also related to banks that are formed as joint-stock cooperative, are as follows:

- 1) Declared taxable income of cooperatives is subjected to 25% discount.
- 2) The government support of non-governmental sector, is 20% higher for cooperatives compared with non-cooperative sectors.
- 3) Discount to employers' share of premium is equal to 20% for their employees in each cooperative.
- 4) Providing consultation, contributing to productivity promotion, teaching entrepreneurship skill, and job training for free
- 5) Paying subsidy to interests of bank loans and other costs of initial investment cooperative company
- 6) Advantages contained in Commercial Code of Iran for joint-stock companies
- 7) Cooperative stock are tradable in stock exchange market.
- 8) Foreigners can buy stocks of joint-stock cooperative company.
- 9) People below the age of 18, mentally disabled people, etc. can be shareholders if they have a legal guardian.
- 10) There is no prohibition for prisoners shareholding in these cooperatives.

3 Formation of Joint-Stock Cooperative Bank

According to Clause of Article 1 of Executive Code of Formation and supervision on joint-stock cooperative companies¹, joint-stock cooperative bank are formed in two ways:

- 1) Banks that are formed as joint-stock cooperative banks from the beginning based on Statute relevant rules and regulations.
- 2) Banks that are transformed to joint-stock cooperative banks based on the Clause of Article one of executive code amending Statute relevant rules

¹ Executive Code of Formation and supervision on joint-stock cooperative companies adopted in 2009

and regulations and following the principles of this code with the permission of Ministry of Cooperatives.

Although the procedure of transforming to joint-stock cooperative bank is highly complicated and debated, the process and formalities of formation of joint-stock cooperative bank are studied here.

Banks transform to joint-stock cooperative banks if relevant formalities are passed and banks obey all formalities and regulation related to cooperative banks.

Joint-stock cooperative bank has an aspect of joint-stock company in terms of establishment, structure and administrative structure. This bank obeys bill of Commercial Code of 1968, and follows Commercial Code of Iran in terms of commercial activities. Meanwhile, it obeys enforcement Act of general policies in Principle 44 of Constitution and other substantive regulations.

In summary, founders establish and organize the bank and receive the permission for subscription declaration after obtaining initial permission from the Central Bank to establish joint-stock cooperative bank, and from Companies Registration Office (Articles 6, 7, and 10 of Commercial Code Bill approved in 1968) for its name and notification. It should be noted that based on Clause (9) of Article 1 of enforcement Act of general policies of Principle 44 of Constitution, joint-stock cooperative company is considered a joint-stock cooperative company that is formed in accordance with Commercial Code of Iran and constraints mentioned in Principle 44.

In terms of naming of joint-stock cooperative bank, naming of banks is based on some regulations subjected to Clause (7) approved by Cultural Revolution Supreme Council related to Policy of Naming Streets, Public Places, and Institutions adopted in 1996.

In subscription declaration of joint-stock cooperative bank, people are asked to become partners in joint-stock cooperative bank providing company's capital. The only major difference includes limitations for share amount of each person in joint-stock cooperative bank, because every real person can only have 5% share in joint-stock cooperative bank while there is not such limitation in joint-stock cooperative company.

After subscription and forming the capital of joint-stock cooperative bank equal to quorum mentioned in monetary and banking regulations, founders' general assembly of shareholders is formed and selects managers and legal inspectors adopting report of founders, non-cash capitals and bank statute. After these formalities, the last step is registration of this bank as joint-stock cooperative company in Companies Registration Office. The first action is setting statute in which, bank is formed as "joint-stock cooperative company"

so that all of articles of statute should be matched with new nature and structure defined for the entity.

Although transformation of existing companies to joint stock cooperative company seems simple theoretically and only some changes in statute and management are required, when a company is established as a “bank” then such changes are highly complicated with numerous practical problems and challenges.

For instance, presence of various rules, bills and administrative agendas about adoption of the non-state banks’ statute would lead to serious challenge in which, it is a question that should bank statute be adopted where bank is changing to joint-stock cooperative company. Three theories can be presented in this field:

In first theory; statute of joint-stock company is approved in founders’ general assembly according to Article 17 of Commercial Code adopted in 1986 and then this statute should be specified by Clause (D) of Article 30 of Monetary and Banking Law of Iran adopted by Money and Credit Council. In support of this view, it can be argued that; first, Clause (B) of Single Article of Permission Act of Establishment of Non-governmental Banks (adopted in 2000) considers regulations related to activities of banks contained in the Monetary and Banking Law and interest-free banking without mentioning legal bill of banks administration. Second, Monetary and Banking Law of Iran was adopted when private banks were permitted to be active, whereas legal bill of banks administration was adopted with the aim of governmental management of banks; hence, it cannot be enforced for private banks. Third, the major objective of amendment law of articles from Economic, Social, and Cultural Development Plan of Islamic Republic of Iran and enforcement of general policies of Principle 44 of Constitution is to implement regulations of the Commercial Code for private institutions and to decrease commercial activities of government (acquired from Clause (5) of Articles 1 and 3 of Act of Principle 44). Therefore, approval of statute required monetary and banking formalities for private banks or privatizing banks are based on Monetary and Banking Law of Iran. Hence, privatization is considered as revival of those rules has not been capable of implementing through approval of legal bill of banks administration.

According to second theory, regardless of primitive reference of approval of bank statute (founders’ general assembly of bank as joint-stock company), statutes of privatized or private banks should be adopted by “general assembly” of banks, which is an institute with governmental structure, based on the clause (6) of Article 6 of legal bill of banks administration. It is

expressed that historically, legal bill of banks administration has been adopted after approval of the Monetary and Banking Law and it is specified in this bill that “from the approval date of this law, all banks including specialized, commercial former governmental banks and nationalized banks will be handled based on these regulations”; therefore, Clause (D) of Article 30 of Monetary and Banking Act of Iran has been violated.

According to third theory, which is wrongly publicizing, statutes of private banks are adopted in shareholders’ assembly, then opinion of stock market is obtained, and at that point it is approved by Board of Ministers. Implementation of this theory is accepted for some banks according to law¹.

Third theory is raised from some factors such as violation of specific monetary and banking rules and regulations, and wrong understanding of position and function of Money and Credit Council in Banking System of Iran. This council that was one of supreme councils became disbanded for a short time in August 2007. Currently, Money and Credit Council has been revived with its prior structure adopting “Law of Positions of Supreme Councils” in 2008 by Islamic Parliament and its approval by Expediency Discernment Council in 2008.

Of these three theories, the first theory is complied with non-governmental goals for banks, and Monetary and Banking Act of Iran due to mentioned reasons. However third theory, which was referral of final approval of banks’ statute to a non-specialized institution (board of ministers), is not acceptable².

Regarding transformation of banks to joint-stock cooperative banks, the most important change that should be noted in statute of joint-stock cooperative banks and establishment process of these banks is separation of management of these banks from governmental banking. Otherwise, structure of such banks would not be matched with amendment bill of the Commercial Code of 1968 and the title of “joint-stock cooperative bank” for them is against law. (Ehsan, 2015)

¹ According of Article 9 of Law of Article 44, statute of Cooperative Development Bank should be approved by Board of Ministers.

² In determination of formalities and establishment conditions for private banks and privatization of banks, it is not possible to refer to “regulations for establishment of non-governmental banks” approved in 2000, because these regulations have been violated subjected to petitions NO 356 and 357 approved in 2002 by General Board of Administrative Justice Court.

4 Legal Framework of Joint-Stock Cooperative Bank

Analysis of legal framework of banks that are established as joint-stock cooperative bank or are transformed to such banks is a difficult action. These banks not only have specific description of “bank” but also should have aspects of “joint-stock” and “cooperative” at the same time. Aggregation of all of these aspects in an institution, which is inherently a bank, has a determined activity scope and commercial act so that it is a difficult task.

Therefore, it is vital to analyze legal framework of joint-stock cooperative bank in order to study a specific type of these companies that is formed as banks.

4.1 Views on Joint-Stock Cooperative Bank

There are different views about the joint-stock cooperative companies and their legal aspect.

According to first theory, joint-stock cooperative companies have a legal framework distinguished from companies considered in Commercial Code of Iran, because the Enforcement Act of general policies of Principle 44 of Constitution has explicitly introduced these companies as joint-stock cooperative companies and condition of establishment, administration and dissolve are included in amendment bill of Commercial Code 1968.

In fact, joint-stock cooperative company can be formed of partners with real and legal characteristic including governmental or non-governmental and legal framework of this company is changed due to constraints in law for membership of certain individuals or shareholders in these companies.

In fact, properties defined for this kind of companies by enforcement Act of general policies of Principle 44 of Constitution make these companies closer to joint-stock companies than cooperative companies. However, these companies consist of 7 members like joint stock and cooperative companies.

Second theory expresses that it is required to define companies with new framework distinguished from companies existing in Commercial Code of Iran and bill of Commercial Code of 1968 in order to implement policies anticipated in enforcement Act of general policies of Principle 44 of Constitution.

In fact, it is required to establish joint-stock cooperative company with its specific characteristics in order to achieve objectives contained in enforcement Act of general policies of Principle 44 of Constitution and achieve macro-policies that led to approval of this law.

Distinguishing characteristics of joint-stock cooperative company is considered to strengthen this theory. For instance, some of shareholders might

have more shares compared with other shareholders in a joint-stock cooperative company so that they can control decisions of company made in general assembly of shareholders or board of ministers. However, a real person has not more than 0.5 shares in a joint-stock cooperative company.

However, although ownership of individuals in non-governmental banks, financial and credit institutions, and other monetary enterprises is limited in enforcement Act of general policies of Principle 44 of Constitution, this ownership will be limited to this kind of companies if the bank is established as joint-stock cooperative company.

Subject to Article 5 of enforcement Act of general policies of Principle 44 of Constitution, “non-governmental banks, monetary and credit institutions, and other monetary enterprises that are formed before and after approval of this law as well as governmental banks that their stocks are assigned, are permitted to be active only in framework of joint-stock companies and joint-stock cooperative companies. Permitted level of ownership of shares is equal to 10% for every public and non-governmental institution, directly or indirectly in joint-stock company or joint-stock cooperative, and this share is equal to 5% for real persons and other legal individuals. In this Article, transactions over the permitted level by each of individuals are canceled. Expanded allowed level of inherited share is included in this verdict and their heirs or legal guardians can sell in excess of the allowed level during two months after issuance of probate. Coercive increase in allowed level of share should be reduced to allowed level in this Article during 3 months.”

In fact, it can be stated that enforcement Act of general policies of Principle 44 of Constitution and regulations approved after it have created a new type of cooperative company. Because cooperative companies do not have a certain form and can be established in framework of joint-stock cooperative companies. However, decision-making method in these kinds of companies is different with other cooperative companies and it is not matched with procedure of common cooperatives that each member has a voting right. (Roozbahani, 2008, pp. 175-177)

According to Article 7 of Cooperative Companies Act, the principle of equality of votes of cooperatives' members is recognized and share difference has no effect on their voting rights. However, according to Article 12 of enforcement Act of general policies of Principle 44 of Constitution, “Ministry of Cooperatives is responsible to have required actions to form and develop joint-stock cooperatives and monitor them based on the following condition:

- 1) Maximum share of each real person, directly or indirectly, should not be more than 0.5% of company capital at the time of establishment and during activity.
- 2) Legal individual who are shareholders in joint-stock cooperative company have the maximum share ownership right to 10% whenever the company is nationwide cooperative or joint-stock cooperative. Other legal individuals have maximum ownership right of 5% of share matched with number of direct and indirect shareholders.
- 3) Each of governmental legal individuals and their total number are permitted to participate in cooperatives using their internal resources by observing this law that allows activities in 49% lower developed areas and 20% in other areas. Non-governmental public institutions are permitted to participate up to 20% for each of them and 49% in total. However, the share of all of direct and indirect non-governmental public institutions and governmental companies should not be more than 49% either in share or in seats of board of managers.
- 4) If all of shareholders or some of them do not use their priority right at the time of capital increase, non-shareholder employees have priority right to buy these shares.
- 5) General assembly in joint-stock cooperative, which number of their shareholders is more than 500, will be hold through blocking. All of shareholders can select an agent through block or participate in general assembly directly. To observe rights of small shareholders, blocking method is determined in a Code recommended by Ministry of Cooperatives and Ministry of Economic Affairs and Finance and adopted by boards of ministers.
- 6) All of shares are registered so that their ownership or transfer is subjected to registration in the office of the company that is observing share ownership limit contained in Statute in discretion of Boards of Managers. The share amount should not be exceeding the limit determined in the Article. Any agreement against this judgment is void.
- 7) Joint-stock cooperative companies can be the members of Chamber of Cooperatives.”

Therefore, the voting right anticipated in joint-stock cooperative company is based on the criterion of voting right determined in cooperative companies. It means that every member does not have voting right and limitation in share and capital amount in joint-stock cooperative company has effects on their voting right the same as cooperative companies.

4.2 Joint-Stock Cooperative Qarzol-Hasaneh Bank

One of banks that got establishment permission in 2007 is Qarzol-Hasaneh. Instruction of establishment and activity of Qarzol-Hasaneh Banks and supervision on them was approved by Boards of Ministers in 2007. This instruction is the establishment license and determinant of organizational details of these types of banks. Therefore, Qarzol-Hasaneh Banks should be added to composition of governmental commercial banks, governmental specialized banks, private banks, financial and credit banks.

According to existing regulations such as Law of Principle 44, it should be accepted that formation of Qarzol-Hasaneh Bank as a joint-stock cooperative company not only is not legally banned but also it is supported by law, because this kind of bank is compatible with the nature of “cooperation” that exists in framework of cooperative companies. However, it should be accepted that instruction of establishment and activity of Qarzol-Hasaneh Banks and supervision on them has been criticized in terms of Commercial Code of Iran. Some of features and critics of Qarzol-Hasaneh Bank are stated here:

- 1) Qarzol-Hasaneh Bank is established as joint-stock cooperative company with registered share (Article 4 of Instruction). Therefore, bank is a merchant as a type of private company. However, different Articles of Instruction indicate that Bank does not do any commercial activity in practice because “there is no interest for the bank deposits” (Article 26) and bank can receive the maximum amount of banking fee equal to 4% (Article 31). Although as it was mentioned, it is possible to establish this kind of bank as joint stock cooperative or transform it to joint stock cooperative company.

Qarzol-Hasaneh Bank is permitted to be active in the frame of free-rate contract (checking and saving accounts) (Article 25). In this regard, it seems that calling it a “bank” is wrong, because one of four principles in banking is “principle of benefit”. It means that the result of bank activity should provide benefit for depositors, and shareholders and provide capacity for capital increase and bank development (Bahmani & Ghafarri, 2005).

- 2) The purpose of Qarzol-Hasaneh Bank is providing free-rate loans to meet essential needs of real and legal individuals who do charity works (Article 4 of Instruction); hence, maximum amount of payable loan to each person should not be more than 100 million IRR (Iranian Rial), or not more than the amount of loan declared by the Central Bank for future years in accordance with inflation rate (Article 35 and its Clause 1). Granted loans of Bank are to meet essential needs such as occupation, marriage costs,

providing dowry, disease treatment, house repairs, scholarships, and contributing to build houses in villages (Article 27 of Instruction). Many of these Articles have no explicit implementation guarantee and there is not any adjustment between these Articles and common activities of a bank.

- 3) Investment level of real and legal individuals and governmental institutes in Qarzol-Hasaneh Bank is limited in order to prevent abuse and to compete with other banks (Articles 6-9 of Instruction).
- 4) Qarzol-Hasaneh Bank has been registered as “company” and is managed in the framework of joint-stock company; therefore, it has general assembly, board of directors, executive managers, auditor, and inspector (Article 20 of Instruction).

Qarzol-Hasaneh Bank is obliged to follow all Monetary and Banking Law of Iran (Article 5 of Instruction). It is anticipated that Qarzol-Hasaneh Banks are changed to serious competitors in banking scope, because they grant loans with lowest rate (up to 4%). Some of other banks have started programs to establish Qarzol-Hasaneh branches or specific Qarzol-Hasaneh unit in their selected branches in order to compete with such institutions. (Ehsan, 2015)

The major purpose of establishment of Qarzol-Hasaneh Bank is promotion of Islamic Banking and increasing number of granted loans to depositors. Also, since economic strength is one of the main bases in banking system, one of prominent goals of Qarzol-Hasaneh Bank is to create small businesses with minimum cost. Currently, Qarzol-Hasaneh Bank of Resalat and Qarzol-Hasaneh Bank of Mehr Iran have small businesses supporting programs.

4.3 Maximum Share Owned in Joint-Stock Cooperative Bank

Some constraints related to amount and maximum amount of capital have been determined in Executive Code of establishment and supervision on Joint-stock cooperative companies for each of real and legal individuals as well as governmental legal individuals in order to protect cooperation nature of companies. Therefore, maximum share owned by real and legal individuals in joint-stock cooperative bank is expressed as follows:

- 1) Maximum share of each real direct or indirect person should not be exceeding of 0.5% of company’s capital at the time of establishment or during activity.
- 2) Legal individuals who are shareholders in joint-stock cooperative company have the maximum share ownership right to 10% whenever the company is nationwide cooperative or joint-stock cooperative. Other legal

individuals have maximum ownership right of 5% of share matched with number of direct and indirect shareholders.

- 3) Each of governmental legal individuals and their total number are permitted to participate in cooperatives using their internal resources by observing this law that allows activities in 49% lower developed areas and 20% in other areas. Non-governmental public institutions are permitted to participate up to 20% for each of them and 49% in total. Non-governmental and public institutions are permitted to participate up to 49%.

However, the share of all of direct and indirect non-governmental public institutions and governmental companies should not be more than 49% either in share or in seats of board of managers.

If all of shareholders or some of them do not use their priority right at the time of capital increase, non-shareholder employees have priority right to buy these shares.

4.4 Participation in Decision-Making Process of Joint-Stock Cooperative Bank

General assembly in joint-stock cooperative which number of their shareholders is more than 500, will be hold through blocking. All of shareholders can select an agent through block or participate in general assembly directly. To observe rights of small shareholders, blocking method is determined in a Code recommended by Ministry of Cooperatives and Ministry of Economic Affairs and Finance and adopted by boards of ministers.

All of shares are registered so that their ownership or transfer is subjected to registration in the office of the company that is observing share ownership limit contained in Statute in discretion of Boards of Managers. This amount should not be exceeding the limit determined in the Article. Any agreement against this judgment is void.

Joint-stock cooperative companies can be the members of Chamber of Cooperatives.

5 Monitoring Joint-Stock Cooperative Bank

Dual natures of banks that are establishes as joint-stock cooperative and obey rules and regulations of them as well as monetary and banking rules and regulations, has made it vital to consider this dual or multiple nature of them when monitoring them.

In general, monitoring joint-stock cooperative bank is done through four methods. Although these supervising methods control accuracy of banking

operations and their compliance with bank statute and regulations, these methods are done through different approaches.

5.1 Supervision of Ministry of Cooperatives on Joint-Stock Cooperative Bank

Subjected to Article 2 of executive Code of establishment and supervision on joint-stock cooperative companies, “Ministry of Cooperative should monitor activities of joint-stock cooperative companies through following actions”:

- 1) Compliance of statute regulations with circumstances of Article 12 of law. In accordance with Article 12 of amendment law of some Article of Fourth Economic, Social, and Cultural Development Plan of Islamic Republic of Iran, implementing general policies of Principle 44 of Constitution, Ministry of Cooperatives should do required actions to establish and develop joint-stock cooperatives following conditions contained in mentioned law and supervise the accuracy of its implementation.
- 2) Presence of agent of Ministry of Cooperatives in meetings of general assembly. Therefore, in addition to presence of some individuals that their presence in general assembly is vital subjected to amendment bill of the Commercial Code adopted in 1968 and monetary and banking regulations, agent of Ministry of Cooperatives should be present in general assemblies of joint-stock cooperative bank.
- 3) Implementing blocking formalities such as block selection.
- 4) Obtaining case and annual reports of general assemblies.
- 5) Access to office of share transfer and transaction.
- 6) Providing registration license for each type of shares as well as any change in capital and statute or decision regarding dissolve of them.

According to clause of Article 2 of executive Code of establishment and supervision on joint-stock cooperative companies, “supervision of Ministry of Cooperatives on activity of joint-stock cooperative companies is complied with supervision on other cooperative companies that is declared by the same Ministry”.

This clause brings serious problems for position of banks and financial institutions that are formed as joint-stock cooperative, because managing of a bank through cooperative method, by considering constraints in such companies, might distort the commercial feature of the bank. Since there is not any apparent constraint for activity of these kinds of banks, the Ministry of Cooperatives might make it impossible for joint-stock cooperative bank

(financial and credit institutions) to provide commercial facilities and service or it might change the activities that are against the framework of banks as cooperative company.

5.2 Supervision of the Central Bank on Joint-Stock Cooperative Bank

Comparatively, two methods exist for financial services monitoring and joint stock cooperative bank is not an exception in these monitoring methods.

Financial services in general concept consist of banking and insurance. In first method that is common in Iran, banks are supervised by the Central Bank and insurance industry is supervised by the Central Insurance of Iran.

UK Financial Services Authority was established in England adopting Financial Services and Markets Act 2000 that is a supervisor for all organizations which are financial services providers. Therefore, UK Central Bank now is responsible for monetary policy-making but lost the authority of bank monitoring. “Integrated Supervisory Model” is applied for all financial services in Australia, Austria, Finland, Germany, Iceland, Japan, Mexico, South Korea, Hungary and Sweden; whereas, it is not used in some countries such as France, Swiss, and USA.

The advantage of integrated system is that it creates integration of ruling regulation and prevent different decisions that might affect each other because of the relation between financial services (insurance and banking) as well as their similar organizational system. (Schooner, 2002) However, implementation of integrated system in some countries such as Iran would consist of high costs, violation of many rules and regulations and approval of new rules and regulations to merge financial institutes.

In Iran, supervision of the Central Bank on banks’ activities is done through an Authority called “Banks Supervision Administration”. The objective of establishment of Banks Supervision Administration is to ensure the stability and soundness of banks and credit institutions through periodical supervision. The major purposes of this Administration are as follows:

- Direct supervision over banks, credit institutions, branches and representative offices of foreign banks that have gained establishment or activity license from the Central Bank in order to ensure compliance of their operations and activities with rules, regulations and orders of the Central Bank;
- Determining significant level of risks and their different effects on banks and credit institutions;

- Doing required actions to obtain measured data and information from banks and credit institutions and examining them to ensure of their quality and accuracy by sending direct inspection groups;
- Selecting suitable method to evaluate various risks of banks and credit institutions;
- Examining and commenting on professional competency of introduced individuals for banks' positions such as chief or deputy for abroad branches;
- Prosecution of complaints of real and legal persons against violations of rules of the Central Bank by banks, credit institutions, branches and representative offices of foreign banks;
- Assurance of enforcement of instructions related to preventing financial offenses in banks and credit institutions;
- Examining and commenting on demand of banks and credit institutions to open or close a branch or representative office inside or outside of country based on the Clause of Article 30 of Monetary and Banking Law of Iran and regulations related to permission issuance;
- Investigation, commenting, and responding to letters sent by Audit Court, General Inspection Organization and supervisory units of other organizations through the Central Bank authorities in order to be investigated or responded;
- Holding meetings with managers and authorities of banks, credit institutions, branches and representative offices of foreign banks in order to notify the results of inspections and debate on the matter to remove problems and implement rules, approvals and notified instructions.

Supervision over affairs of banks and credit institutions consists of four parts including banking regulations and studies, supervising financial position of banks, supervising banks' interest free loan funds and currency exchange offices. Banks Supervision Administration can prepare required rules and frameworks to implement this supervision¹.

Although the Central Bank is the executive authority of banking supervising, it should be noted that Islamic Parliament, Government Board, and Ministry of Economic Affairs and Finance, as agents of people in legislation or in position of law enforcement and or in case of the order from government board, may possibly apply some specific limitations to banks.

¹ Taken from Iran Central Bank Website (WWW.cbi.ir)

It should be mentioned that supervision of the Central Bank over banks activities is a concept different with “monetary and banking policy-making”.

6 Conclusion and Recommendations

Joint-stock cooperative bank in terms of establishment, structure and administrative structure, obeys and follows the Commercial Code of Iran in terms of its commercial activity. Meanwhile, this bank obeys enforcement Act of general policies in Principle 44 of Constitution and other regulations in terms of substantive regulations.

Analysis of legal framework of banks that are established as joint-stock cooperative bank or are transformed to such banks is a difficult action. These banks not only have specific description of “bank” but also should have aspects of “joint-stock” and “cooperative” at the same time. Although transformation of existing companies to joint stock cooperative company seems simple theoretically and only some changes in statute and management are required, when a company is established as a “bank” then such changes are highly complicated with numerous practical problems and challenges.

Regarding transformation of banks to joint-stock cooperative banks, the most important change that should be noted in statute of joint-stock cooperative banks is separation of management of these banks from governmental banking and the government. Otherwise, structure of such banks would not be matched with amendment bill of Commercial Code of 1968 and with their title of “joint-stock cooperative bank” and it is against law.

Dual frameworks of banks that are establishes as joint-stock cooperative and obey rules and regulations of cooperatives as well as monetary and banking rules and regulations, has made it vital to consider this dual or multiple natures of them when monitoring them. Establishment and supervision methods over joint-stock cooperative companies have been specified in executive code and obviously, this supervision does not violate supervision of the Central Bank and intra-organizational supervisions anticipated in enforcement Act of General Policies of Principle 44 of Constitution.

Finally, it seems that formation of banks in frame of “joint-stock cooperative company” is highly difficult, because it is opposed to nature and objective of banking (being commercial and performance transparency); and it is the same objection to Qarzol-Hasane Bank that was examined in this research. Support of cooperatives should not be interpreted as ability of cooperatives entering to all scopes such as prominent and significant banking

scopes. To be sure, the formation of joint-stock cooperative bank though in practice it may be, however, violating rules and regulations related to cooperatives and entering to some scopes and doing some activities which are out of jurisdiction of cooperative companies. The title of “joint-stock cooperative company” indicate this fact that the company has an ambitious and multiple positions naturally, which is established to achieve some goals that have not been gained yet or might not be achieved in future.

The authors suggest that to prevent the existence of uncertainties about how they function in order to pass the law and the lack of precision in the legislation with regard to this case and legislators must apply appropriate measures.

Remember that the framework of the special joint-stock cooperative bank should be fully transparent through legislation. The importance of cooperative activities in the form of joint-stock commercial community has been acknowledged by the joint-stock cooperative bank, however, the uncertainties in how to manage the company's legalities, demonstrates the necessity of the legislation in this field.

References

- Amendment Law of some Article of Fourth Cultural, Social, and Economic Development Program Law of Islamic Republic of Iran and Enforcement Act of General Policies of Article (44) of the Constitution adopted in 2007.
- Bahmani, M., & Ghafarri, M. (2005). *Banking Principle*. First edition, Tehran: Supreme Banking Institution of Iran Press.
- Constitution of the Islamic Republic of Iran.
- Elsan, M. (2015). *Banking Law*. Fourth Edition, SAMT Pub
- Gutiérrez, E. (2008). *The Reform of Italian Cooperative Banks: Discussion of Proposals*. International Monetary Fund (IMF) Working Paper, WP/08/74, March 2008.
- Iranian Executive Code of Formation and supervision on joint-stock cooperative companies adopted in 2009
- Jassaud, N. (2014). *Reforming the Corporate Governance of Italian Banks*, International Monetary Fund (IMF) Working Paper, WP/14/181.
- Law of Cooperative Sector of Islamic Republic of Iran.
- Monetary and Banking Law approved in 1972 by Finance Commission of the House (National Assembly and Senate before the revolution).
- Nadège, J. (2014). *Reforming the Corporate Governance of Italian Banks*. International Monetary Fund (IMF) Working Paper, WP/14/181, September.
- Omarova, S. T. (2016). Contracting for Ethical Banking, *Journal of Things We Like (Lots)*, Vol. 2016.

- Omarova, S. T. (2016). Contracting for Ethical Banking. *Journal of Things We Like (Lots)*.
- Phillips, S., Willey, S., Doran, M., & Stoner, W. (2013). The Cooperative Bank's Restructuring: Will This Be a Case of Lessons Learned, *Pratt's Journal of Bankruptcy Law*, 9(5), 436-442.
- Reform Bill of Commercial Code 1968.
- Roobahani, N. (2008). *Enforcement Act of General Policies of Principle 44 of the Constitution Communicated By the Supreme Leader*. Tehran, Legal Department, parliamentary affairs and settlement of funds, first edition, Office of Legal Affairs of the Parliament
- Schooner, H. M. (2002). Central Banks Role in Bank Supervision in the United States and United Kingdom. *Brooklyn International Law Journal*, Vol. 28, 2002-2003.
- Tarantola, A. M. (2009). Cooperative Banks and Competition: Local Vocation and Governance Issues. *Taormina*, 27 February.
- UK Financial Services and Markets Act 2000.