Manger Performance Control by Derivative Claim

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Abstract

The major discussion in company approach system is managers' control. Since ownership and company control are separated in decision-making. So invest owners cannot involved in decision-making and control of company. Also major shareholders can control company due to have majority of share by their votes. On the other hand company controller unused their power due to benefit contradiction and considered their personal benefit and fronded or illegal action. One of major control tools derivative claim. This major purpose is support of shareholders and company. This legal mechanism can inhibit violation of right and company benefit. This control tool determine for support shareholder and this claim situation in Iran & France law system.

Keywords: Control, Personal claim, company claim, Managers civil responsibility.
Introduction
There is no discussion as derivative claim title about manager’s responsibility in France legal literature. This discussion philosophy is that possibility of this claim is not present and they act against their coworker’s behalf their past managers. So rule maker accept claim state possibility from partners and different shareholders as on expectation. Since company have originality base on legal personality independent principle and can state this claim. So there is no reason for state claim by partners and stockholders. So managers and controllers are factor for loss to company and occupied company property and act against treaty. So it is possible to state claim behalf partners and shareholders for support of company property rights. So different regulation present approaches for support of company and shareholders. The right of derivative claim give to shareholders for support of beneficiary persons in kamen law. Rule – maker accept claim state behalf partners and shareholders for support of company and beneficiary persons and pointed to company partner right in 1966 business law. Rule- maker pointed to claim state possibility against responsibility in 267rd article verified 1950. So since cases of business law bill 1950 is derivate of France business law 1966 and this article history return to France law and there is similarity between Iran & France law. We should note according to researches by Iranian lawyers, comparison between 276 & 277rd article show derivative claim was in kamen law. And it is seems since we have similar bases in Iran 7 Franc law, so it is necessity at first we should evaluated France law revolution and then kamen law. It is worth nothing rule maker recognize them in the business law of France or in civil law of claim state behalf partners or company shareholders. Indeed partners deprived from derivate claim in England law before Harold fast principle. English 2006 laws recognize this right and apply this claim as one of minority shareholders and can extend this situation (Pasban, 2004, page 87).Derivative claim term don't use in legal documents and 267rd article of French business law center to our legal system and they use company claim term and it was better to use current them. And they use derivate claim. Derivative or company claim is claim state behalf company shareholder or partners against loss manager. Iran business law 267rd article are sign of derivate claim. In this research they evaluated whether this research in 2 country law is management or rule- maker for development and efficiency and whether legal trend apply in support doubt of them. It make support right of shareholder and on the other hand restricted barrier predicted in this right and shareholders don't tend to use them. So we analyzed that surround source revolution in 2 legal system such as legal procedure and legal doctrine go toward comparative law revolution. So we will analyzed that modifications of business law is about coordination with comparative and theoretical discussion.

1: Company claim distinction of other claim, but responsibility claim in France law divided to 2groups: personal claim and company claim. Personal claim are claims that its original losing by one or more manager to company creditors or thirty person or apply loss to one or more shareholders. As an example fraud behavior of managers motivated shareholders to increase their invest level in their company with incorrect balance sheet. So every shareholder can act for pay loss. And if fault manager approved, they pay loss them (Juglart et polite 1980, p4 80). The major barrier for this persons claim is approavation necessity that loss apply should be direct and realized. In the other words it is distinct loss applied to company. Company claim is claim that its origin is loss to one company by one or two manager and this loss apply to company not stockholders and stockholders tolerated loss from company.
As an example since manager’s fault it is like one credit fault that one customer cannot pay it and this action lead to apply strict loss to one company and company bankruptcy.

This claim documented to managers fault of legal regulations. This company claim is in 2 groups since company loss that is due to past manager’s fault. And it is due to past managers and present managers are individuals that complained against them and this claim state is due to loss compensation on company and if it stated behalf managers. But if managers lead to loss due to fault of legal regulation and parents & stockholders are directly loss. Can shareholders state claim against their partners if managers be as their legal person representatives or they can say since their loss don't directly apply to managers stockholders has not right to state claim. If we assumed they don't apply loss. Derivative claim is solution for their challenge. This kind of derivative claim is stated by company member against company managers. And this person or person state violation against them. This individual has not qualification for state claim against violated managers and pay loss to persons if win in the war.

Forming legal fields for derivative claim

Legal personality’s notion is one of company unit structures. This notion is barrier for stockholders against managers and extend derivative claim include circle and expect state claim from stockholders and partners against managers and on the other hand company legal personality is place for justification derivative claim and they let to company internal organs to control and progressed to state claim and internal organization condemn.

Support cover company legal personality of company internal organizations

Today in companies manager in our legal systems have company legal personality. So they should responded to company and third persons can state their claim to company Mrs. Winey and Mr. Jordan believed we can assumed 2 bases for company special responsibility. If we analyzed it that company cannot has will for it, so their responsibility is due to responsibility of another action (First basic). On the other hand they can have legal personality and is one independent identity and have responsibility although this person will stated by another person. Doctrine and law support this issue. (Viney 2007, p 1080). Also legal procedure stated several time that (Legal personality is respond person to faults andshould pay loss due to it to loss person. And detained them company organizations (cass 2e Civ, Avril 1977). Also legal procedure stated this several time legal person is respond person to organization fault and should pay its loss to the person and loss person should ask these organizations according to 5rd article of 1995 and again this issue approved (Cass-Resive 2007 Avril 1977). And tribunal confirmed this issue at 2008. Tribunal violated this command and organization should respond to these faults that organization fluted them. In other words one organization fault is the company fault and they should not separate each other. (cass.com, 3 Juan 2008). So company organization are scare due to legal personality support.

Company is major sacrifice for fault in management and supervision trend, derivative claim plan base.

Responsibility study about company activities show one special feature in this filed. Although company should accept responsibility of their organizations But company is for company managers and controllers and stated as major sacrifice for loss enter (2-2-1). So we should claim state possibility behalf partners or stockholders in
derivative claim and provide possibility for vacillating compensation loss to indirect scarification persons.

Direct or indirect loss company
It is possible that company be direct sacrifice of management trend faults. These faults can be due to company managers and controllers performance. For example incorrect selection of managers lead to direct lasting of company invests or cannot realized benefit. As an example according to high tribunal commands show the reality that Mr. M.X lost his credit in the view of her customers. And not have trust show in his behavior and set his properties and don't act for deliver goods and assign bank loan to themselves between company and employees and company behave to 998823 Frank loss and it fault lead to company rain and company significantly loss. So court voted correctly and legally ( cass.com.28. Mai 2002).
In addition, these controllers now can also cause a direct damage to their company. Inspector’s errors can cause loss accounts, misappropriation of corporate opportunities discovered, and it is a direct loss. Commercial Branch of the Supreme Court, dated 19 October 1999: "Inspector confirmed the account and hurried along with the company's accounts by mistake because the high volume of documents normalize the situation there customer accounts and the situation was unusual to attract his attention. However, a serious review of the standards of the profession was able to express all the considerations and tips and with a bit of intelligence and alertness led to the discovery of the embezzlement, Therefore, the Supreme Court ruled that the losses incurred by virtue of the loss of opportunity to explore the alleged embezzlement cases is justified ( Cass. 1e civ., 20 mars 1989)."
Outside the governor can now illegal form of licensing and operation of a facility refuses structures. Companies may participate in the standings rating agency, rating the company’s lower than expected estimates. Banks may have a disproportionate loan repayment capacity of a company to be awarded. The company may also victims of errors indirectly taken control and management. In these cases, representatives and owners signed on behalf of the company and damage to the company's litigation charge. May be due to error or managers and controllers, now personally committed to third party compensation the company can act against them and proceed to the lawsuit. For example, the company may be obliged to pay for losses caused by the impossibility of implementing a contract this situation occurred because the company director ( Cass.3e civ., 2juill. 1974) or the company is responsible for paying damages and compensation to a worker dismissed or due to corporate accounting expert error in setting the tax offices and rearrange them to pay fines for late returns ( Grosbois, 2012, p609). Here the question arises how the company can act against these managers because presumably, in cases where the managing director of the injury suffered by companies to plan their fights against them. In the paragraph immediately to examine the lawsuit against the companies pay executives.

Legal nature of the claim for compensation to the company
As well as natural persons and legal entities to full capacity for the vindication of their rights. These individuals have the option to sue in the courts, in order to defend their rights to their lawsuit. So shareholders would not be able to perform this task on behalf of the company and as a main rule, fights partners in the name and on behalf of the company not permitted. In a lawsuit for compensation to the company in terms of who was the cause of damage, Must be distinguished. Assumptions that cause damage to a third party company or shareholder of the company, Liability claims against directors considered a classic case. In this case filed by
legal representatives to act is now. But when the damage caused to the company is the result of company directors compensation is practical follow-up to the company itself shall act towards it and this claim, as the litigation on behalf of the Company (the company claims) to be attached. The lawsuit primarily through practical legal representative for the company itself. However, it is possible that in cases of this type followed by the representatives of the company completely stopped. As a result of violations of or damage to the company's former executives and all managers are delinquent or more of them; But experience has shown that corporate executives are not willing to litigate against themselves or their colleagues (Grosbois, 2012, p608). In this case, because managers against their lawsuit, the company is not able to litigate personal. So the question arises how the property management company protected against fraud. Filed a lawsuit on behalf of shareholders has been called the challenge Solutions and thereby protect the property and interests of the company and the common law derivative action is discussed under the heading tool (Merl, ...., P 488).

5-1843 matter of civil law allow this action to all partners and shareholders and each of the members of the company can be compared to the fight against executives plan to take action. He is a member of the company is burdened judicial costs without directly benefit from its outcome. Basically, some French lawyers claim the benefit of the distinction between classical and considered insignificant contest but others are not useless this resolution and believe that a lawsuit has been filed against the company by the classic action Company shareholders through which they can take action against offending directors and claim any damages caused to the company. However, lawyers have expressed hope that the range and scope of the right to impose it by law and the jurisprudence spread (Ripert, 1989, p139).

On the basis of the proceedings of the partners and shareholders against the directors of the Company and there is disagreement between experts. How can it be justified that a member of the company's legal representative to sit and litigation against the directors? In the eyes of some experts in French, a member of its company reserves the right direction, which is a party to the contract. He is now a member of the collective decision-making organ, the organ of the General Assembly and the Assembly appointed the company's management and as director of the company on behalf of one or more client installation and assembly of shareholders must give its activity report and the authority necessary to punish an individual member of the director is capable of. The authority for members of duct Uninstall Manager is shown. However, lawyers have expressed hope that the owners have the right and the scope of its application extended by law and judicial procedures (Ripert, 1989, p139).

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Mr. Winkle to review the nature of the proceedings partners and shareholders for the company's shareholders in the name and for the company. He thought with multiple
arguments on behalf of the company's shareholders to sue the company denies. The lawsuit Winkle company shareholders in the company, the person who can freely engage seriously addressing the Activity Manager or you do waive such monitoring without being required to report in this regard to the company or other shareholders of the company. However, if a member company representative and a substitute or alternative company representative know will be required to report to the company. In his view, the right to bring a lawsuit on behalf of shareholders or members is almost like an indirect lawsuit. Article 1166 of the Civil Code defines indirect France claims that: "Creditors can run all rights and claims owe him and on his behalf lawsuit unless those rights and claims which the debtor is a unique person". The Court of Appeal of Versailles, March 29, 1987: Due to the fact that Article 252-225 1966 law gives shareholders the right to litigate legal name of the company and this right is only available for a lawsuit; It is inferred that he was withdrawing from member companies and their pursuit of justice, prevented by other shareholders in the company does not plan to pursue a lawsuit. According to Mr. Winkle Shareholder Company representative but is not a substitute for it. He acts in the context of their own interests, not the interests of the company, although instead of the company and the company name to the lawsuit. As creditors of the company against the debtor company, the company representative and is pleading the cause of damage, they admit, however, that the lawsuit filed by shareholders against directors indirectly infringing on behalf of creditors is different; Because indirect shareholder lawsuits filed against the company's creditors that is, Not obliged to pay out to prove that seeking definite, criticism and demands of its debt, the Company has so she substantive action is a lawsuit that is done to replace the company's legal representative and inefficient (Vinckel, ... , p .). It should be noted that certain present and eligible indirect lawsuit is seeking a condition. Only those indirect foreclosure to have certain ambitions, however, and can be charged. So if one debt is hurry or it's time don't arrive or has not ability to legal debt cannot be base for indirect claim. Indeed company in this situation don't need to approved it. (Kia, 2014, page 23) And court don't present on cash or certain sum according to civil 1 vote at 4 January 1983. Some Iranian lawyers say possibility of such claim behalf some shareholders against general manager (Skini 1995, pages 144-175). So according this notion lawyers say managers and general manager don't demand this loss on company due to managers problem (Ibid., page 174). As we can see in France law possibility of state claim in assumption for company loss is like indirect claim. But some other masters called business law as match derivative claim. But other say unless difference between these cases and mechanism, this cases match to derivative claim and have their basic principle. And according to 260rd article of English company’s law this claim include 3 companies and are personal shareholder stated claim, managers violation for some responsibilities against manager commitment and this money are assign to company. (Pasban 2016, 101) In other words derivative claim is the claim that state behalf shareholder for company and due to management violation. This definition is match to 267rd article and finally derivative claim is proper for it. In other words the similarity between 276rd articles with derivative claim is shareholders don't want beneficiary in state claim and claim stated as company name and should compensated for company. There are 3 requirements or derivative claim element in 276rd article and it is. Claim state shareholder, loss due to manager’s violation and all becomes assign to company. (Ibid., 101). In addition we should say such claim called derivative claim in business bill verified 2012. According to bill of 90rd article: Person or persons that all their shares are 1/5 of company share and can state claim due to boss
violation or problem and general manager and demand compensation all loss to company and it calls derivative claim.

Derivative claim in legal system

In France law

The permission of claim state come in 1843-1845rd article of civil law and 222-223, 222-252rd article. According to 1843-5 France civil law: ((In addition to state claim for compensation loss to person one or more member of company can stated claim against managers and for company and representative of company. And if managers act to them and then they pay loss to company. Every requirement in treaty that say state claim behalf shareholders is depend on primary opinion or association decisions called them. General associations decisions should not limited share owners right about manager responsibility state claim. Rule- maker predicted this case in 222-223rth article of business law: ((The managers are responsible for compensation personally and base on case against company or thirth person and violation of regulations or mistake in their managerial affairs. According to legal cusses in France law shareholders can personally or collectively is 120-125rd article act for state claim. And in the France law state claim behalf partner and shareholders is their right and they don't need permission or primary opinion of association before state claim shareholder or company member can stated claim with any share and even by one share evenif claim origin will be enter person to company. Rule- maker predicted one resistant possibility behalf responsible managers. And managers can be cause for loss enter to company and refuse claim. So derivative claim state behalf shareholders and partners is one mechanism for support of company and minority shareholders. Derivative claim state is one special right for shareholders and partners. (cass.crim 12, 2000) And they should have member of share in clotted to be their representative.

Iran law

The first Iran business law verified in 1900-1901. Then rule- maker verified another rule in 1900 and violated past law.

In this law we see another organization as derivative claim and don't predicted like this claim. But some lawyers believed stated such claim behalf shareholders is not possible base on managers theory believed all managers are partners and very partners have share relative to her. And every partners can apply loss relative to her. And every partner can apply loss relative to her share of manager and condemn it and claim is assign to company (Azami Zangeneh).Another master believed one of shareholders or some of them followed them. And if it will be certain, fault approved is for some peoples that state claimed and if shareholders stated claim managers should pay loss. (Sotoodeh Tehrani 1980, page 193)

But it should not clearly enter to Iran law system with business law bill at 1990 and 276 & 277rd article is the subject of this bill. And modified bill is:

The person or persons that their share sum is 1/5 of company share can stated claim if they see boss fault or problem due to cost of manager and against general manager demand all loss of company. If the boss command or every manager based should compensated loss and tribunal cost for company and some cost behalf condemn person and if boss condemn or every member of manager penal will before company and some cost behalf them. They will return to pay all cost and loss and in the 277rd article stated that ((Treaty regulations and general decisions should not restrict shareholders right about manager responsibility.

http://www.ijhcs.com/index.php/ijhcs/index
In the new aw business shareholders stated this claim right behalf shareholders stated this claim right behalf shareholders in 473rd article.

We can see in this case: person or persons that their share are 1/5 share of company invest can stated claim if the managers violated and company inspector can stated claim against them and want compensation behalf them. And this command is behalf company and they are qualified for costs and loss.

Derivative claim situation
It stated in the case that legal filed and legal framework for derivative claim. In this part situation govern on state claim of right show here.

Claim should stated against general manager of manager panel
In the France derivative claim is one limited legal following of its use domain and this claim should be of manager panel or general manager. According to 1843-5 of civil law and 1-223-22, 1-225-252 of France business law, this right provide right for company shareholders for stated claim behalf shareholders against violated general manager and stated as one expectations. French judicial procedure of turning it lays claim to a general principle of exclusion and demands that it filed a lawsuit in a text specific legal requirements predicted. France issued several opinions in this area in the first instance civil Branch of the Supreme Court, dated January 30, 1980 show this issue are: "Component as exceptions in cases where the law has forecast in other cases only representatives of a legal person are able to sue in the courts Company Name (Cass.1re civ. 30janv. 1980) or Commercial Branch of the Supreme Court dated February 8, 2011, admissibility of responsibility claims by shareholders against the company and third party contracting company requires proof of a personal loss, is separate and segregated losses the company (legal entity) is affected by it, So the precedent in French law and legal texts to sue on behalf of partners and shareholders in the name of the company against any other organs of the company, its mean people like inspect the books, employees, creditors and others not. While that may benefit partners and shareholders rational and justified in the name of the company in a lawsuit against the persons (other than members of the Board and CEO) have but law and precedent them from lawsuits against parties other than directors are prohibited (Cass. Com., 8févr. 2011). In this respect, the lawsuit claims indirectly derived from the breakdown. The lawsuit in French legal standing to request the annulment of decisions or appeal the court ruling against the company by shareholders not, But only on the civil liability of company managers to plan. So one of the differences indirect action and derivative litigation in this matter is that in the case of fraudulent transactions debtor has the right to revoke indirect creditor is while derivative lawsuit to invalidate the decision or the decision not to affiliate managers (Terre et ...,? / ?, P1133) while in other countries such as Britain and America the action plan is not limited to corporate executives and in addition include the inspection of accounts, employees and creditors ... it is. America's legal system, shareholder or shareholders can harm against any person to sue a company has arrived. Read the case may be individuals such as managers and employees within the company and people outside the company. So there is a limit to which a person is guilty only of board members or executives. In English law, the case against the director and the derivative can be brought against someone else, or both. (Dissertation doctor Sajadi, p. ...). In Iran, as in France, in accordance with Article 276 of the Commercial Code reform bill called derivative claims "board member or CEO of a corporation" is. So according to the material other than board members or managers of other persons or defendants the
dispute cannot be read. Should Note that one of the innovations of the new law allowing trade in Article 473 proceedings against the inspector is derived.

The need to litigate on behalf of participants and beneficiaries prohibit third parties from filing the claim

The French legal system is possible only by the partner or shareholder derivative lawsuit may be, this type of litigation in practice many restrictions to the right to be accompanied. Only members are allowed to bring a claim has been interested third parties, other partners and stakeholders are not allowed to bring the dispute, The lawsuit is one of the special rights of the company and in the absence of a specific legal text can now have that right to other persons who are related in some way to recognize (Terre, ...., P1133).

When it comes to the acting Director of the losses of third parties are for example a person who has an interest in the company, For example, sponsor or corporate debt securities for collateral cannot be derived on the basis of a lawsuit filed against the offender managers because of the membership is not considered a third party. Thus, they fight through derivative (contest) could attempt to institute legal proceedings against the offending managers but also through private litigation and initially there should be a separation of duties has proven error to personal fight against the director of the project. Civil Second Branch of the Supreme Court, November 12, 1987 involving means: "Given the fact that only those shareholders who either individually or collectively to bring suit against the managers act now and due to the fact that the vote on 19 July 1984 Mr. M.Z other shareholders and was not able to sue for damages to compensate for a known, the Court of Appeal has ignored the law. Cases. 2e civ., 12 nov. 1987)."

According to the lawsuit derived only from members of the French law and only against members of the Board and CEO is possible. It is the view of most jurists France that precedent should the scope of derivative action plan as well as other company executives and even people outside the company to expand so that third parties are able to receive the damages to the company. French lawyers are derived from the perspective of expanding the scope of the proceedings in a way that includes all organs formal or informal company is essential. Although legal bodies should direct claim against third parties are protected. However, these organizations should be held accountable for their actions against the company. However, this type of lawsuit occurs only in rare cases. As previously observed, only on rare occasions have become corporate executives or former executives act against their colleagues. Spirit of the profession, encouraging them to make a claim against your fellow man does not tolerate. Also, company executives have little desire to bring a lawsuit against inspect the books that your behavior has not revealed error. On the other hand the lack of action to the action of the legal representative of the company, may be the result of a conflict of interest between the company and directors, Why did he have to name the person who is now his acquaintances or against a member state company that owes to its position as representative he knows the action lawsuit. Derivative action provides the possibility of improving these problems; of course, if the opportunity is given to shareholders that the cost of the derivative lawsuit against the company, the more important of these claims is confronted by shareholders (Grosbois (M), P610).

French case law derived from the expansion of the scope of the foreclosure refuses. Maximum partners and shareholders, it is accepted that a parent company can sue in the name of the company and its satellite subsidiaries to pay. Criminal Branch of the Supreme Court on December 13, 2000 confirms this situation: "Considering the amount of one billion francs
Court decision on granting compensation to Company A through litigation against the company's executives have been brought by one of the shareholders of the company. Appeals Court announced the verdict that the company will not only be able to claim for damages caused by the loss incurred due to misuse of company property management company property It can also damage caused by misuse of company property also require a satellite companies Cass. Crim., 13déc. 2000))

As previously observed, in addition to self-juristic person (company), third parties may incur losses due to the problems occurred in the company are indirectly; That is the assumption that losses will not be imported directly to shareholders but they also indirectly affected the performance results are managers. For example, business partners and suppliers needs a firm or firms to win work in the firm managers receive health and may be due to the performance of managers and their reputations were at risk of crisis and bankruptcy with its creditors lost and are affected. However, the right to have a lawsuit on your behalf Company Name but can proceed with a lawsuit indirect reference to universal rights, and there is a definite demand, criticism and demand for litigation exists. In this case, it may be too late when they have succeeded in proving such ambitions. (Reference)

Was seen as a derivative lawsuit closely resembles indirect claims (compared with lawsuit by company representative). Derivative lawsuit simple solution to replace another person's legal representative, but non-active instead provides for a lawsuit. Since the company first victim errors occurred in the regulatory activity stream so, for compensation to company (legal entity) in most cases the possibility of compensation and indirect losses sustained by third parties as well as provides. Lawyers believe that France is in these cases that third parties are able to participate easily wall damage (damage caused by the error control) received through the derivative litigation.

Should add that the excessive claims pursuant to the disruption of the functioning of the Board. In the French legal system by the partners or shareholders sue company executives cite the violation of legal provisions or regulations or according to made management errors. But in practice since the adoption of the Law of 24 July 1966 to allow proceedings against directors because of errors committed by the partners or shareholders is given only fifty final decision has been issued. Because of the limited partners and stakeholders in the follow-up of the first phase should be sought in court costs why should the costs of the proceedings to sue the person or people who have not paid in advance. While there is no direct interest in the follow-up to their damage and harm to the company, if it is proven the Company will deposit account (reference site). In addition lawsuit by partners and shareholders leads to an imbalance in the balance of forces has been on the job and in addition, there is a time limit of three years, another reason for the lack of appeal to be filed on behalf of partners and stakeholders. The right to institute legal proceedings against the directors of the company within three years from the date of occurrence of damage and hide it in the event since the unfolding of the event is raised. About crime, foreclosure is raised within ten years.

1. Penal Chamber of the Supreme Court, on December 13, 2000. :“Considering the amount of one billion francs court order to grant compensation to a company that has been filed by one of the shareholders. Appeals Court announced the verdict that the company will not only be able to claim for damages caused by the loss incurred due to misuse of company property management company property It can also damage caused by misuse of company property also require a satellite company .nk:

The need to "shares" of the company

In Iranian law, in addition to the above limitations and conditions of the joint stock company is one of the conditions, derivative litigation. In other words, the first conditions for such a claim shares of the company to its shareholders intend to pursue its directors have. While in France, all members of the Company by virtue of Article 1385-5 of the Civil Code have the right to institute legal proceedings against directors without the required quorum is certain in this regard, each member company of the number of shares to be able to sue in the name of even one share of the company. While carefully the wording of Article 276 and 277 of the Commercial Code, as "a person or persons that the total stock of at least one-fifth of the company's shares" or "shareholders" equity necessity of participation in such schemes, it can be a good fight, what the other companies mentioned in Article 20 of the Law on trade - with the exception of the Company's shares - the company's capital is divided into shares and the partners used instead of shareholders. So with the new bill as law, business partners, or shareholders of the company, despite the other conditions foreseen in Article 473 can be against those who have been counting on the material, a derivative class action suit filed.

In France, the right for all of the company's partners, so the positive innovations of the new bill passed right litigated commercial law firms other than shares. (Sajjad .... ???)

The necessity of the shareholder at the time of litigation

Including requirements for proceedings in French law of the shareholder at the time of filing is necessary. The person who filed the lawsuit are not required to prove that the offense or fault occurred when he was a shareholder. In our legal system seems for further support of the company that eventually leads to the support of shareholders and also prevent the misuse of Article 276 L.a.q.t managers and Taking into consideration the fact that when litigation is one-fifth of existing shareholders is sufficient for the action and other conditions such as shareholder of an offense or fault managing director or board of directors is not required. In order to prevent false claims, the legal system in America, claimed trial at the time of the act or omission must have derived the harmful, the company's shareholder. Therefore, if the offense bits, stock transferee cannot be transferred to another person than the former Abuse derivative lawsuit appeals homeopathy forcible transfer due to inheritance unless it is made. English law cannot be seen in the lack of new shareholders who share was transferred to him can also be compared to previous violations managers and other persons, fights derived property. America precedent in some States stressed the need for continuity of ownership of the date of occurrence of the error until sentencing and transfer of shares between the date of the occurrence of an error in judgment led to the decline of the action plan by the carrier sees. In French law to protect the rights of shareholders or members, there is no minimum bet stock even a shareholder derivative action plan with any amount of stock can be attributed to the act while the rights of the claimant shareholder derivative in addition to other conditions to be litigated, by virtue of Article 276 person or persons that at least one fifth of the total shares of the company's total shares will be able to litigation derived. While the quorum defined in Iranian law is one of the main obstacles for derivative litigation. Perhaps because of these provisions by the legislature to prevent false claims by shareholders against company executives.

The question is, if less than one-fifth of the total stock holders will be filed against the directors or CEO, is the duty of the court? Since the law seems there is at least one-fifth of the total stock holders is required, the design of such quality that stated a claim is not legally admissible and the court shall issue an order to audition. As previously stated in Article 473
of the new Commercial Code as well as Article 276 L.a.q.t there is a quorum of at least one-fifth of the company's capital holders to present a derivative action is necessary compliance with legal and other systems of major changes in Iranian law provides for eliminating or modifying this requirement.

**Conclusion**

Although study legal article related to derivative claim show we see significant change from 24 June 1966 and 1347 business law that are guide for rule-maker in verified regulation related to Co LTO, but France lawyers have not much discussion about its domain and importance in maintain company benefit law and partners and stockholders benefit. Revolution trend in this filed show rule-maker attention and interest to extend this filed and support of partners and stockholders in every 2 systems. It seems extend derivative claim and remove barrier in these 2 law systems can considered as one approach for certain of company shareholders and maintain their benefits. Although lawyers extend different discussion in this filed and extend this filed for support of third person beneficiary but we have some barriers for this unit benefit shareholders and partners for state claim against manager panel members. For example company LTD necessity of company against manager is one of major barriers in 267rd article and in business bill verified 2012 removed this barrier and every companies members can stated claim and we hope we can have positive pace for maintain this rights and beneficiary groups.

Tribunal cost is on claim state in the Iran and France law and since major and direct stockholders are major beneficiaries of this claim and partners and stockholders claimed by company name and they don't directly benefit it, it seems removed this barrier of facilitations like tribunal cost decrease improved efficiency of this legal organization. So Iran rule-maker predicted new claim in 473rd article against claimers. And in the last changes and business tribunal bill want derivative claim to don't pay these costs and supported derivative claim. One of other barriers is necessity for stated derivative claim behalf owners of 9/5 company share. Indeed we cannot see this requirement in other country law and even we cannot see it in France law. So we can see this limitation in new rule verified 2012 and it seems this rule is benefit for coordination with legal system and support of stockholders. Finally extend this derivative claim and it's increase is one proper approach for support of legal person special benefit and others beneficiary persons and revolution in this legal system show tend for extend this derivative claim and support this legal organization.
References