

Liability of Mother Company through the Control of Subsidiary Company with Inadequate Capital in the Law of Germany and Iran

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DOI: 10.22096/law.2022.113674.1517

[Received Date: 17/02/2022 Acceptance Date: 05/06/2022]

Abstract

Corporate groups are collections of independent mother and subsidiary companies that their performances as a single economic unit are controlled by a common source. On the one side, these companies in front of individuals economically appear as a single economic unit, for the fact that group members (subsidiary companies) work under the control and guidance of mother company in order to achieve collective goals and interests, and at the same time legally, each of these subsidiary companies has independent legal personality and its own rights and obligations. German law as the leading system in the field of corporate groups law, while accepting independent legal personality principle and limited liability rule, due to the governance and control that mother company has over the subsidiary with inadequate capital (inadequacy of capital) and disproportionate to company's economic goals, knows mother

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company liable for payment of the debts and fulfillment of the obligations of subsidiary company to the third parties. In the law of Iran the liability of applying company with inadequate capital based on legally accepted principles including implicit agreement on optional piercing, follow the real intention, representation theory and prohibition of abuse of right theory (limited liability privilege) seems justifiable.

Keywords: Subsidiary Company; Mother Company; Corporate Groups; Control Theory; Inadequate Capital.

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