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LEGAL ANALYSIS OF THE RELATIONSHIP BETWEEN DIRECTORS AND CORPORATIONS

ZEYNAB NAVABI MOGHADAM, ALIREZA MOSOUDI

Islamic Azad University, North Tehran Branch, Tehran, Iran

ABSTRACT

The powers of the directors in the company are directly related to directors understanding of their position in the corporate and their relationship with the company. If the director is considered a corporation lawyer, his powers as any lawyer would be limited to cases explicitly granted to him by the client (company) and any action would be beyond the powers of the blunt. However, if a director of the company is considered as one of the principals of the organization and a part of its governing body, he will have the authority of corporate governance. Directors on the nature of the legal relationship with the company, has presented several ideas expressed in this research will be discussed. The nature of the legal relationship between directors and the company plays a decisive role in determining the civil responsibility of directors. As acceptance of any of the opinions expressed in this regard, has changed and creates a fundamental change in the civil liability of directors; according to some theories, directors liability is a contractual responsibility and to the other, it must be considered as a non-contractual civil liability of directors. Agent theory and the theory of the principal being the base have been suggested by the legal theories, as a result the analysis of relationship directors and company now been addressed in this study.

Keywords: Law, Civil Liability, Directors

STATEMENT OF PROBLEM

Law aims to regulate social relations were so that no one tries to harm others and if someone harms others, he should accept the responsibility of the consequences of their actions and compensate the harm for

the victim and somehow restore the situation to the case of the former. Explanation of civil liability laws in society are the most important issues of law because they prevent the collapse of the social order. According to article 328

of the civil law: If anyone destroys the property of another person, he will be held responsible and must either produce its equivalent or its value, whether or not the property was destroyed intentionally and whether it was the actual property or profits there on that were destroyed; if he causes defect or damage to such property, he is responsible for the depreciation in price. The formation of large industrial enterprises, commercial banks, insured, transportation networks and large investments are needed to cope with hundreds or even nationals of a country as well as abroad. Therefore requires small capital from across the country or even abroad gathered in the form of a joint stock company or other corporation is used. Businesses and especially corporations are one of the most influential people in social relations. In practice, the involvement of all stakeholders or partners in corporate governance is not possible, or some of them are not interested in interfering in the affairs, business by the Board of Directors, which is elected usually the major partners. Board as an actuator arm, plays a significant role in the success of the company. Economic and financial decisions of the company's directors, the company could be forced to bankrupt, or the improvement and better work it. In business one way to protect the

rights of partners, directors monitor and track the activities of their violations. The jurisdiction of directors in companies directly related to the understanding of the relationship between directors and shareholders are now considered to be full and unlimited powers of directors will be in front of third parties. The facts and their economic and social interests arise. In other words, when a legal theory does not meet the requirements of companies in the world today, have abandoned and another approach that is more consistent with the requirements, put into existence. This article aims to analyze the powers of the directors of the companies in the Iranian legal system is written with regard to principles intended to relationship directors in corporations.

Agent theory

According to this theory, directors, lawyers or company's partners and the relationship between them is in accordance with the rules of contract law. Considering the fact that some lawyers, directors, partners and others the company lawyer are the representatives of the company, the present study deals with and examines the issue in two separate paragraphs.

First paragraph: directors as corporate agent

According to believers believe in this theory, the Commercial Code in 1311 to

explicitly define the jurisdiction of directors of joint stock companies did not, however, explain the responsibilities of management companies in Article 51 provides:

"The Managing Director is responsible for the Company is the responsibility of the lawyer to the client". The content of this article is that of joint stock companies subject to commercial law in 1311, is repeated in the case of other commercial companies, or the companies, partnerships, relatively complex and non-equity shares¹. With regard to the relationship between the director and shareholders (partners) by the legislator and the head lawyer of shareholders (partners) is, to limit the powers of the head of the company must comply with the legal rules. Thus, with regard to the regulations governing legal agent in civil law, particularly Article 667 of the said Act, the idea, according to it the lawyer and client contract is permissible if he can dismiss lawyer and Director of the Company in accordance with Article 48 of the Commercial Code and Article 107 of the Commercial Code approved a bill to amend section 1347 of the company is revocable². Legislator as well as Article 46 of the Cooperatives Act 1350 provides: "The responsibility of the Board of

Directors of the Company, the responsibility of the lawyer to the client." The theory that the earliest theories about the relationship director with the company, repeatedly used been by Iranian lawyers³. Article 51 of the Commercial Code for joint stock companies, the bill to amend some of the provisions of the Commercial Code adopted in 1347 copies, but also on other businesses is necessary. Some authors⁴ believe that even with the elimination of the representative directors are shareholders, whether they have written: "These people (board members), the trustee and the attorney of the shareholders are considered to be legal." However, executives have said the law theory and analysis of the relationship between the partners in terms of contract law, has serious flaws as follows:

1. The law requires the attorney to act on behalf of the client, while the Managing Director is basically the name of the company and acts on behalf of the company⁵.
2. Joint property management is provided that lawyer representing the main attributes: top lawyer, revocable, the death and stone,

³Safai, Seyyed Hossein - Qasemzadeh, Seyed Morteza, civil rights, individuals and incapables, Tehran, SAMT, Eleventh Edition, 1384, p. 168.

⁴Froohy, Hamid, earlier, p 161.

⁵- Katouzian, N; general rules of contract, Volume II, Tehran, corporate publishing, fourth edition, 1376, p. 57.

¹Articles 121, 164, 144, 185 of the commercial law
²- Saqary, M., commercial law, scientific edition, 1343, pp. 255- 258.

each of the partners leave the group disbanded, and the authority and responsibility of the director as counsel. But the situation is not legal entities: the majority of the members selected by the directors, and they are not representative of the minority, and stone, one of the partners died, the director is dismissed, no partner has the right to dismiss the director, the director of the competent authority may not find that any member⁶.

3. With regard to the powers of the directors of companies, partnerships have been assumed by the law assumes whether the client's behalf and specify the scope and authority representative or the lawyer will perform legal acts. While in the case of legal entities, but there is a will for the directors and that will be considered by the legal entity. If the company is limiting the powers of director and despite these limitations, the director performs an action which is prohibited, it must be said that the company is not responsible and Corporate Responsibility is limited to actions that the director has done in their

jurisdiction; In part because the client is provided with a lawyer, he is responsible for. Partners are lacking, contrary to the provisions of the Civil Code Madh662 said: "It is a law that his client should be able to make it here ..." and assuming agent Director of the partners (clients) directors for now, despite the authority, will be free of charge, which is contrary to rational arguments and accepted principles of corporate law (authority with responsibility), and the spirit of Article 121 of the Commercial Code⁷ will be true⁸.

4. The provisions of Article 51 of the Commercial Code, which states that: "the responsibility of Director of the Company is the responsibility of the lawyer to the client." It pointed out that he will be treated as trustee and attorney for the mandate⁹.
5. In spite of Article 51 of the Commercial Code, the directors of the Company are honest and responsible, because due to irresolvable personality rights to

⁶According to Paragraph 3 of Article 678 of the Civil Code and Article 954 of the same law

⁷" the responsibility of the manager or managers of joint and several as provided in Article 51"

⁸Erfani, Mahmoud, Management Board, Journal of law and political science at Tehran University, No. 44, Summer 1378, pp. 78-79.

Katouzian, N, former, pp. 57-58

nature, directors can end the legal personality of the lawyer, not a lawyer partners. Otherwise, directors should be held responsible partners have a majority stake, and minority shareholders will benefit from his duties¹⁰. Because of these serious problems, some of the authors of Business Law in the old system had tried to present interpretations of company directors and corporate lawyer¹¹.

Second paragraph: directors as corporate agent

Those who suggested this idea believed that legislation of Article 51 of the Commercial Code states the responsibility of the directors against the partners¹², and does not indicate the relationship between the director and partners. In fact, unlike it seems, this Article does not obligate the managers as responsible against the partners but they are subject to responsibility and loyalty against the company¹³. In support of this view of the director are the company's lawyer not a lawyer of partners,

it can be referred to¹⁴, that obligates the director responsible for the company knows and this responsibility is true if the director has the authority given to him by the company, Otherwise, he is not responsible for the company on the legal basis because the relationship between director and company is based on subordinate liability¹⁵. Many lawyers consider directors as the representative and corporate lawyer. However, Dr. Sotoude Tehrani¹⁶ states that the theory stating the directors as the Company lawyer and representative of the shareholders is not favored a lot today, because the Company has special principles and by accepting the legal personality for the company the company's directors became one of the pillars of and their duties are delegated to them under the law and have the responsibility of the authorities but rather against the company not the partners of the company. Some others¹⁷ according to article 51 of the Commercial Code of 1311, which became applicable by the formulation and implementation of reform

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¹⁵Asghari Agh Mashhadi, Fakh - Tafreshi, Mohammad Isa, the nature of the relationship managers of corporate rights, Journal of Administrative Sciences and Economics, University of Isfahan, the eighteenth year, the second issue, Summer 2006, p. 78.

¹⁶Sotoude Tehran, Hassan, earlier, p. 151.

¹⁷Nasiri, M, ibid, p. 156

¹⁰Pasban, Mohammad, rights of businesses, Tehran, the, third edition 1387, p. 175.

¹¹Sotude Tehran, Hassan, earlier, p 166. Saqary Mansour, former, pp. 255-258.

¹²- Tafreshi, M., legal developments in the corporation after the Islamic Revolution, thesis, Tarbiat Modarres University, 1996, p. 107.

¹³ Pasban, ibid, p.179

in part of the Commercial Code adopted in 1347, states that the board is considered as the agent of the stakeholders. However, according to the new legislation the relationship between agent and shareholders is not stipulated by law, and legislation considers the relationship between the board and the company. In other words, today the Board of Directors of the company is not the agent of the shareholders. Others¹⁸ also explicitly consider the company directors as the agent of the company. English law also explicitly defined directors as the agents of a commission¹⁹. But the theory is not immune to the problem; In fact, apart from Article 51 of the Commercial Code, the director of the company and corporate law theory has no solid legal basis and faced with the fundamental problems. Including the previously mentioned, the law assumes that the director is the agent with both client's behalf and specify the scope and agents authority for the agent to perform legal acts. While in the case of legal entities, there is nothing but the directors will that is considered the will

¹⁸ - By virtue of Article 299 of the Commercial Code adopted in 1347 as part of the reform bill.

¹⁹ - Ebadi, MA, Business Law, Tehran, treasure of knowledge, Fifth Edition, 1989 p. 109.

of a legal entity²⁰. And this is also entered objections to this theory. Another problem is that this theory is not inconsistent with the provisions of Article 662 of the Civil Code law based on the need to act by the client; as previously expressed primarily in practicing law, agent is exposed to the client. This means that our clients can personally act about the law, but such an argument is not acceptable to the Company; after appearing as a legal entity, only the directors can act on behalf of the company and that the company is unable to perform desired actions and it cannot be said that the company or the shareholders are aligned with or having the same responsibility of the director as the agent²¹. In spite of the prescriptions of Article 51 of the Commercial Code for joint stock companies, clearly Article 118 bill in full for corporate executives stock options, the theory about the relationship between directors and the company still has some followers and supporters.²² However, according to the following hard on the relationship between a director and the company believes in the theory of the law: First, under Article 118 of the Commercial Code approved a bill to amend section 1347,

²⁰ Katouzian, Naser, *ibid*, p.58

²¹ Asghari Agh Mashhadi, Fakh - Tafreshi, Mohammad Isa, *ibid*, p. 80

²² Nasiri, M., p.156

"Except on matters under provisions of the law decisions and actions of public bodies in a particular jurisdiction, directors have all the powers necessary to administer the affairs of the company provided that their decisions and actions of the company. Limiting the powers of the directors in the Articles of Association or by decision of the General Assembly is valid only in terms of the relationship between directors and shareholders and is void and null against third parties. In accordance with Article 135 "All actions against third parties penetrating and valid CEO and one cannot excuse failure to comply with formalities related to the way they choose their actions is invalid. "However, if the directors of the company under civil law are the agents, in such cases, the company (client) will not have any responsibility against third parties. For, Article 674 of the Civil Code provides that: "... On what they [agents] have done, is outside the scope of power of client and clients will have no liability unless expressly or implicitly authorized the lawyer to apply manure. Second, under Article 661 of the Civil Code if the agency is absolute, it is only related to manage the client's property, whether in the management of non-seized property. for example, rental property and the current account of matters relating to the administration, while selling

property and transferring it among other things is given to capture the meaning of the word. As buying and selling for civil lawyer normally is out of office property, the company's business is out of the administration. Therefore, to say that his lawyer has absolute business directors

In this case, the right to just administrative directors of the company and of the other possessions are prohibited, while the purpose of the establishment of business affairs and commercial transactions (purchases and sales), respectively. According to Article 118 of the Commercial Code adopted in 1347 as part of the reform bill company directors have more authority and administration of the affairs of the company²³.Of all these cases, the other main forms of agent theory, either by the company or on behalf of the shareholders, whether in companies or in other commercial companies, this theory does not comply with the requirements of the modern business; because the theory of law applicable to the transaction with a company, Jurisdiction of directors with reference to the Statute, management contracts, and obtaining the community approvals Despite these studies may vires action director, and the company does not assume responsibility,

²³Consistory, N, civil rights, legal contracts, religion bail, Tehran, Behnashr Press, 1985, p. 159.

while such studies are very time consuming and with the principles of business ethics, i.e. the speed dictated by the condition, further, in many cases, especially in international transactions, it is very hard and sometimes seems impossible to establish jurisdiction to investigate these cases²⁴.

The second chapter: the theory of civil responsibility of Directors

According to Article 667 of the Civil Code: “ The agent must, in his handlings and performances act in the interests of his principal, and must not exceed the limits of the authority which the principal has explicitly given him, or the authority which is inferred by custom, usage, and circumstantial evidence”. In general, the agent should perform his responsibilities with honesty. And if as a result of failure or delay and neglect of duties by agent, the client realized the damage, he will be responsible for it. Because by agency the agent has the obligation to practice law and is responsible for damage caused by a lack of commitment²⁵. In other words, if an agent, in spite of the contract applicability and the implementation of its

provisions to avoid or delay in doing so at the expense of the client and in this way damage, both materially and spiritually, the client, the agent will be responsible for the damage. Contract law should not be allowed to create the illusion that agent is self-governing contractual obligations; It is true that whenever the agent wills, he can terminate the contract law but as long as the action is not taken to terminate the contract and the law firm is committed to implementing its obligations under the law, the agent is responsible for the consequences of violation²⁶. So, if the damage caused by the fault of the lawyer representing the client noticed that lawyers traditionally considered responsible, according to Article 666 of the Civil Code²⁷ the agent is responsible for compensation because the agent is as third parties to the client in this case and according to the regulations is liable and let not his responsibility in the conduct of the defense agent²⁸. But if the agent in the law is not committed any fault and yet, the client realized losses, the agent cannot be considered responsible because the agent has done something that was about

²⁴Skini, R. - Al Hashem Sharifi, inspired by al-Sayed, an analysis of the powers of the managers of joint stock companies according to the principles of relationship managers now in the legal systems of the British Journal of magazine, No. 17, Winter 2000, pp. 4-5.

²⁵Imam, Hassan, Civil Rights, Volume II, Tehran, Press-Islamia, the eighteenth edition, 1384, p. 303.

²⁶Katouzian, N., certain contracts, Volume IV, Tehran, Inc. publication, the sixth edition, 2010, p. 177.

²⁷ Article 666 - If the principal suffers loss owing to the fault of the agent, and if the agent is by common custom considered to be the cause of the loss, he will be responsible.

²⁸Imam, Hassan, *ibid*, p 304

authority of the client and has done based on his client will²⁹. According to the above, based on the theory of law, the responsibility of the director of a contractual liability, the directors of a commercial company only can be considered responsible for the obligations of its contract (law) that are listed in the Statute and the minutes of the General Assembly, and in this way the company is violating the damage. Considered to be responsible for the management, according to this theory does not prove his guilt; Breach of commitment itself is at fault, as described in the previous chapter, owes when the compensation is exempt to prove inevitable external factor such as a disaster, such as floods and earthquakes prevented the implementation of commitment and breach is not attributable to him. The mere failure to perform or delay in performing its obligations, causing damage to the company, the company is demanding. The company partners and third parties, since the parties are not represented by directors, does not include directors of their responsibilities under the law and cannot be analyzed based on the above mentioned article.

The second chapter: the theory of agency and limited authority

²⁹Imam, Hassan, *ibid*, p 304

Contrary to the idea that the power of agent is due to the power of the client and to the extent that he determines, in theory of the legal agent, the authority of the agent is due to the wider authorities and powers of the agent and he is the agent in all matters pertaining property and financial rights. Also, unlike the attorney representing the client can do it, the legal representative is the only representative who has the right to act. The legal representative of the company's directors, corporate governance rests with them. Company executives the right to legal agent. According to the Commercial Code and Articles of Association of the company, the company's external relations with third parties and in the internal relations with shareholders and other organs of the company are under their authority³⁰. In other words, directors are the legal representatives of the company or all shareholders companies and the link between the director and the company is the relationship between the agent and genuine³¹. Company directors based on the legal agent theory, agent theory, although some bugs is eliminated, but the basic problems faced are as follows:

³⁰Katebi, Hosseinqoli, *Business Law*, Tehran, Press photographer, Fourth Edition, 1974, p. 83.

³¹Mohajer, Abbas, *managers in companies*, the Bar Association Journal, No. 133, 1975, p. 62.

The legal representative, representative of the original cannot be determined, but will be determined by law or by court, whereas in the question, the original (business) in the ordinary general meeting, management determines the principle of law its role in determining the legal representative is not in the business of determining directors³².

The legal representative if the representative to act outside its jurisdiction, resulting in harm to the person himself must be responsible for damage to the original is no responsibility.

However, any deal that corporate directors have concluded with third parties, the company is committed and the company cannot give the excuse that the directors do not have to deal not implemented, unless the directors have been out of action³³.

Legal representative is eligible as long as the law is not revocable. However, under Article 107 of the Commercial Code approved a bill to amend section 1347, directors are revocable by the Company.³⁴

Location directors guardian and the guardian is not applicable, however, the mole against them will be incomplete or blunt. In these cases, there are two characters and one on behalf of the other

measures, while a legal personality and its management organization is a character. Director of the legal person as the required activity, and to express to him and that the language cannot be superior to the legal person³⁵.

This theory, like the theory of law, is about the liability out of contract, Director does not guarantee legal person; while today it is accepted that legal person, as human beings is directly responsible for the damage caused by organizational and decision-making organs of the person. Implementation of this seems unreasonable and does not seem compatible fair representation theory of directors (As a character and an official from the legal person). It must be admitted that the fault of directors (the decision) is the fault of a legal entity.³⁶

As you can see, the aforementioned drawbacks are mainly related to corporate and non-compliance of the theory of joint-stock corporate executives. However, the other provisions such as Article 118 businesses there is no trade law reform bill, but on the contrary, transactions outside the powers of the directors, as stipulated the company does not extend in the Statute of the powers of the directors.³⁷

³²Asghari Agh Mashhadi, Fakhr - Tafreshi, , *ibid*, p 43.

³³*Ibid*, p.44

³⁴ *ibid*

³⁵Katouzian, Nasser, *ibid*, p. 67

³⁶ *Ibid* pp.58-59

³⁷Article 105-Any expenses which may be necessary for the enjoyment of a right of easement are a charge upon the owner of that right, unless an

And makes it possible for the company to contract out the powers of the director is not under obligation; This is the mind that theory was true in the case of in official companies contained in the Commercial Code and relationship directors in these companies is now subject to legal representation theory.

The civil responsibility of Directors

Regardless of the objections against the theory of representation, if the relationship director now be analyzed as legal representative, since the origin of the idea of representing the legislative decree, its origin is not certain contracts, the contractual relationship between the director and the company was established and this is simply to create legislative decree. The responsibility to contractual issues are resolved and the director responsible for the company's shareholders on the idea of a non-contractual liability.

The directors can only assume responsibility for legally binding commitments and defy and its violation causes damage to the company or the shareholders. In addition, according to responsibility of the Director under this theory, proving a causal relationship between the fault and the fault of the director and the damage is necessary. So given the lack of specific contractual

agreement to the contrary has been arrived at between him and the owner of the property.

relationship theory and considering the relationship between directors and the company is analyzed in terms of a legal representative, everyone, including the company's shareholders and third parties who is affected by a breach of legal obligation by the Director is able to lodge complaint against the director. On the other hand, the outside the authorities is not binding agent for the original. Source granting agency, about the authority's representative decides. The contract represents the will of the parties, and legal representation law also establishes the boundaries of his powers³⁸. If the Director as the legal representative of his powers limited, leading to corporate responsibility and corporate transactions will not be required vires director. As they also suggests violate Article 105 of the Commercial Code.

Unity of directors and company or directors as the pillar

The idea of unity shows that in terms of that element of decision-making and managing director of the company, with full powers to manage the company, his attempted act is no the act of the company and so basically no limit to recognize the authority of the director. However, the relationship manager is now a relationship of trust that each representative has the

³⁸Ibid pp.83-84

original. However, this trust, it seems that the tasks, duties and responsibilities than a trust relationship between lawyer and client or guardian and simple as there is a relationship of trust against particular that its effects are determined by law. There are in fact two different managers each credit is due: The credibility of the company's management, directors will represent the legal person and are considered part of the body, However, personal credit, as human beings who represent the province, make decisions for their company. The first credit will actually be attributed to the legal person; but what they do in the personal authentication may be their responsibility³⁹.

Part of the Commercial Code reform bill approved in 1347 for managers who act as panel as an element of the pillars of the authority and powers of the Company's forecast that goes beyond the limits of the competence of lawyers in front of the client; If it was possible that he could undoubtedly be considered the head of the lawyer is willing to resign at any time without having to justify his resignation; But the principal, element of the pillars of the company and special powers of attorney in the form and do not fit the jurisdiction of civil and criminal liability is personal. For this reason, in general, tends

³⁹Katouzian, Nasser, *ibid*, p.68

to be the time to give that authority to shirk their responsibilities and under the obligations⁴⁰. Second, under Article 17 of the aforementioned bill, the company is formed after provisions and specific procedures after determining Site and the acceptance of them. So managers are one of the elements of Company and they cannot be a lawyer or legal representative of the company⁴¹. Since, attorney or legal representative, is not the original and in other words the agent is the legal representative of original one according to legislation. As you can see, in the formation of a joint stock company, the managers are the prerequisite prior to the formation of the company and hence managers cannot be considered as the attorney of a client that does not exist⁴². In addition, the provisions of Article 589 of the Commercial Code, which stipulates that "the decisions of a legal person under the law or the articles of association by the competent authorities have taken a decision." Pillar theory of business managers confirmed that, as in it is instead representative of the so-called "authorities" is used. It is clear that the authorities would necessarily "representative" is not a legal person.

⁴⁰Tafreshi, Mohammad Issa, analytical discussion of the rights of corporations, Volume I, Tehran, Tarbiat Modarres University, 1999, pp -136-138.

⁴¹*Ibid* pp.93-94

⁴²*Ibid* pp. 136-138

The effect of theory on civil responsibility of directors

This theory works on the civil liability of directors, the responsibility for the third party more to the eye. As mentioned above, according to this theory, the dichotomy between personal and corporate managers (at the time working for the company) does not exist and management of components and elements to be considered. Therefore, the action those managers have now taken action and other legal entities with the obligations that must be fulfilled by administrators. Therefore, in case of damage to third parties caused by the harmful actions of companies, managers are responsible for compensation will be considered. The pillars of the theory, as a member of the company's directors and will be considered as the brain of the company. If you accept this view, managers have extensive powers And the right to take any action or decision on the company provided that the scope of the subject company and in particular does not possess public authority. The effect of the adoption of the opinion is that any action that managers do, as the company have done that, then it should also have responsibility for these actions. Of course, this lacks of responsibility should not be a result of personal fault of the manager. Article 135

of the Commercial Code approved a bill to amend section 1347 which provides: "All actions of directors and CEO effective against third parties and is valid and cannot be avoided with the excuse of non-performance considering their actions is invalid. "

CONCLUSION

The jurisdiction of corporate directors today is more than what has been mentioned in legislation and is originated from social and economic realities and the materials. Limited power management and due process are numerous and cumbersome trading, as advocacy and representation theory are required does not match with the speed and security business requirements in today's world. As such, the legal systems have minimized the formalities for full development of the powers of the directors and corporate transactions. The full powers of the directors with the theory of "unity" or "pillars" of proper justification has been recognized and accepted and admitted in Iran's legal system. However, the agents have the full powers of the directors of the company with third parties; but in relation to company directors, directors must act in the context of the designated authority and in case of exceeding authority, the company may be responsible for the funds,

directors sometimes also called agents or representative.

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