

Criminal Liability of Directors

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Overview

- Criminal liability of directors in the UAE is mainly covered under:
 - Federal Decree-Law No. 31/2021 On the Issuance of the Crimes and Penalties Law.
 - A number of statutes including Federal Law No. 4/2000 Concerning the Emirates Securities and Commodities Authority and Market (ESCA or SCA) and Federal Decree-Law No. 32/2021 On Commercial Companies.
- Federal Decree-Law No. 50/2022 On the Promulgation of the Commercial Transactions Law contains provisions relating to circumstances which leads to dishonouring of cheques and the related fines and penalties.
- In certain circumstances, directors are construed as liable for the criminal offences committed by the corporate bodies they represent.
- Most of the criminal offences that can be raised against directors are based on their powers to represent and bind the corporate bodies they act for and therefore such offences can apply equally on any other employee of the company that has powers similar to the powers of a director.
- With regard to criminal offences alleged against directors, both UAE onshore companies and freezone companies (including DIFC and ADGM) are governed by Federal Decree-Law No. 31/2021 and Federal Decree-Law No. 50/2022.

Definitions

- *Drawee*: Generally the bank.
- *ESCA*: Emirates Securities and Commodities Authority.
- *ESCA Regulations/ The Regulations*: Securities and Commodities Authority Decision No. 3/2000 on the Disclosure and Transparency Regulation.
- *Memorandum and articles of association*: Legal documents that shareholders sign to establish companies. The memorandum and articles of association are the constitution under which a company operates. It is common to have memorandums (for limited liability companies) or both memorandums and articles (for public and private joint stock company) or just articles of association for freezone companies.

Practical Guidance

General framework

Criminal liability of directors can be assessed as follows:

- Personal liability: Federal Decree-Law No. 32/2021 provides for personal liability of the directors for acts of fraud and abuse of power, or any other acts committed in contravention to the law while performing their duties.
- Corporate liability (of a corporate body): Federal Decree-Law No. 31/2021 goes beyond the provisions of Federal Decree-Law No. 32/2021 which appears to be limited to acts of the company chairman, board, and executive management which apparently would include directors.
- Article 66 of Federal Decree-Law No. 31/2021 provides that juristic persons will be held criminally liable for crimes committed by their representatives, directors, or agents acting on their behalf or in their names which is also likely to be interpreted to include employees as well. However, juristic entities may only be sentenced to a fine not exceeding AED 5 million, unless otherwise provided by law including confiscation etc.
- Corporate criminal liability is also recognised under Federal Decree-Law No. 20/2018 On Combating Money Laundering Crimes, the Financing of Terrorism and the Financing of Unlawful Organisations, which states that a legal person can be criminally responsible for a crime if it is committed in its name or for its account intentionally.

There are also two principles that have been upheld in respect of the above as follows:

- Criminal liability of directors under most of the texts of law do not necessarily apply on directors by virtue of their titles but rather on the basis of the abuse of powers granted to them. Therefore, most of the texts imposing a criminal penalty of an officer or director provides for a waiver in case such officer or director was not part of any such abuse or the decision-making leading to the breach or objected to it or abstained from supporting it.
- No liability can be imposed without text. Courts are restricted to apply penalties that are not imposed by a text of law.

Criminal liability of directors can be instigated on a different basis such as:

- Liability for breach of fiduciary duties (this includes cases involving breach of trust and embezzlement).
- Liability for breach of their professional duties involving:
 - confidentiality;

- conflict of interest; and
 - maintenance of accounts and books.
- Liability for breach of obligations relating to the company's responsibilities towards its creditors and shareholders.
 - Liability towards third parties for fraud and dishonoured cheques.

Position under the different statutes

Federal Law No. 4/2000 and the Regulations

Federal Law No. 4/2000 along with its amendment Federal Law No. 25/2006, is one of the laws in the UAE that clearly applies criminal offences to certain breaches committed by directors of companies listed in both the Dubai and Abu Dhabi stock markets. Federal Law No. 4/2000 lists specific crimes, which can be attributed to directors as follows:

- **Furnishing false information and market manipulation:** It is not permitted to provide false information, statements or data that can affect the market value of a specific security or an investor's decision to purchase or not to purchase a particular stock. Any breach to this rule is punishable by law as follows:
 - imprisonment for a period of not less than three months and not more than three years; and
 - a fine between AED 100,000 and AED 1,000,000; or
 - either of these penalties.(article 36 of Federal Law No. 4/2000 and article 37 of the Securities and Commodities Authority Decision No. 3/2000).
- **Use of insider information:** Any use of insider information by a director of a company to purchase or sell securities from their respective company is not permitted. It is also not allowed to use confidential information in order to achieve personal monetary gain or to spread rumours regarding the selling or buying of securities otherwise the transaction is considered void (articles 37 and 39 of Federal Law No. 4/2000 and article 39 of the Securities and Commodities Authority Decision No. 3/2000). Any breach to this rule is punishable by law as follows (article 41 of Federal Law No. 4/2000):
 - imprisonment for a period between three months and three years; and
 - a fine between AED 100,000 and AED 1,000,000; or
 - either of these penalties.
- **Investment transactions by interested individuals or entities:** The chairman and the members of the board of directors of a company of which securities are listed in a market that is licensed in the UAE will be liable to:
 - imprisonment for a period of not more than three years; and
 - a fine between AED 100,000 and AED 1,000,000; or
 - either of these penalties.
- **If an individual is involved directly or through others in any transaction relating to the securities of the company, before:**
 - disclosing through the market where the securities are listed on the details of the sale or purchase transaction including amounts of securities involved, their values and the quantities and prices thereof, and any other information required by the market; and
 - obtaining the approval of the market's board of directors for such transaction. Any transaction executed without the referenced disclosure and approval will be considered void (article 38 of Federal Law No. 4/2000 and article 38 of the Securities and Commodities Authority Decision No. 3/2000).

Dishonoured cheques under Federal Decree-Law No. 50/2022

As per article 663 of Federal Decree-Law No. 50/2022, the cheque bearer may exercise its legal right to demand compensation or payment to the drawer, the endorsers and other obligors, if presented within the legal period and it is dishonoured, and the dishonour is proved by a protest. In lieu of the protest, the dishonour may be proved by a statement issued by the drawee together with stating the presentment day.

Anyone who commits either of the following actions will be subject to pay fine of not less than 10% of the cheque value, with a minimum AED 5,000 and not more than the value of cheque:

- Intentional and counterfactual declaration of lack or insufficiency of honouring payment for cheques.
- Dishonour of cheque drawn at the bank in bad faith, while it has honoured payment to the bearer of a cheque for which no valid protest is presented.
- Abstention from stating the particulars referred to in article 663 of Federal Decree-Law No. 50/2022.
- Abstention from partial honouring of a cheque or issue of a certificate to that effect or delivery of the original cheque. If the honouring payment is less than the amount of the cheque, the drawee will make partial payment insofar the available amount, unless rejected by the bearer. The drawee will, in case of partial payment, mark the same at each

partial payment on the back of the cheque, and the original cheque and a certificate of the payment will be delivered to the bearer.

Further, as per article 674 of Federal Decree-Law No. 50/2022, anyone who endorses or delivers a bearer cheque to another person, while they know that the cheque has no outstanding balance to pay its value or cannot be drawn, will be subject to pay a fine of not less than 10% of the cheque value, with a minimum of AED 1,000, and not more than the value of the cheque. In case of recidivism, the penalty will be doubled. This essentially implies that individuals who knowingly issue a cheque without adequate funds or with the intention of dishonoring are likely to face substantial fines.

Furthermore, under article 675 of Federal Decree-Law No. 50/2022 anyone who commits either of the following actions will be sentenced to imprisonment for a period of not less than six months and not more than two years and/or pay a fine of not less than 10% of the cheque value, with a minimum of AED 5,000, and which will not exceed double the value of the cheque:

- Instructs or requests the drawee, before the drawing date, to dishonour a cheque issued other than the cases set out in articles 651 and 656 of Federal Decree-Law No. 50/2022.
- Closes the account, withdraws the whole balance therein or knows of closing of the account before the issue of the cheque, or before the presenting of the cheque to the drawee for drawing, or intentionally causes the freezing thereof.
- Intentionally executes or signs the cheque in a way that prohibits honouring thereof.

In case of recidivism, the penalty will be doubled.

According to article 676 of Federal Decree-Law No. 50/2022 everyone who commits either of the following actions will be sentenced to imprisonment for a period of not less than one year and to pay fine of not less than AED 20,000 and not more than AED 100,000:

- Forges or fabricates a cheque or attributes a cheque to a third party by making a change in the particulars thereof by addition, excise or other means provided in article 251 of Federal Decree-Law No. 31/2021 referred to, or any other substitute article, for purpose of harming others, and to be used in the purpose for which the cheque is forged.
- Knowingly uses a forged or fabricated cheque.
- Knowingly accepts amounts paid by a forged or fabricated cheque.
- Uses or unduly utilises a cheque validly executed in name of another person, or which use is associated with a fraudulence crime.
- Knowingly imports, manufactures, possesses, acquires, sells, offers or provides equipment, tools or technological software, information or data used in the commission of forgery crime.

Based on the above provisions, such bounced cheques can result in criminal charges, including fines and imprisonment, in the UAE under the following circumstances:

- Intentional closure of account or withdrawal of funds to prevent any payment of cheque.
- Intentional and false declaration of insufficient funds.
- Knowledge as to non-payment but the individual still proceeds with the issue.
- The bank is instructed by the issuer of the cheque to dishonor the cheque prematurely.
- Execution of a cheque in a manner which prevents its payment.
- Forging or fabricating or altering the cheque and its components to harm others.
- Knowledge regarding usage of a forged or fabricated cheque.
- Accepting amounts paid by a forged or fabricated cheque.
- Using a cheque validly executed in the name of another person with fraudulent intent.

Breach of trust or embezzlement under Federal Decree-Law No. 31/2021

Any director can be subject to a jail sentence or to a fine, if they are convicted of embezzling, using or dilapidating amounts, bills or any other movable property belonging to the company they work for whenever the said movable property is delivered to them on the basis of a deposit, lease, pledge, loan for consumption or proxy.

Article 453 of Federal Decree-Law No. 31/2021 which relates to “breach of trust”, states that any person who has received movable property like money, documents or any other kind on the basis of a deposit, lease, mortgage, loan for consumption or agency, and embezzles them in order to inflict damage to the rightful owners, the crime would be treated as a misdemeanour. Such person will be punished by imprisonment of up to three years or a fine.

Article 454 of Federal Decree-Law No. 31/2021 also states that, “any person who takes possession of lost property owned to another, with the intent to own it, or who knowingly takes possession of a property held by them by mistake or due to a force majeure, will be liable to a jail sentence for a period not exceeding two years or a fine not less than AED 20,000.

Additionally, in accordance with article 455 of Federal Decree-Law No. 31/2021, any person who embezzles or attempts to embezzle a movable property that they have mortgaged as a collateral for a debt in their liability or in the liability of another

person, will be liable to the penalty prescribed in the preceding article. The same penalty will be imposed against the owner appointed as a receiver on their own movable property under a judicial or administrative seizure, who embezzles any of the same.

Fraud in commercial transactions under Federal Decree-Law No. 31/2021

Article 451 of Federal Decree-Law No. 31/2021 states that whoever succeeds in appropriating, for them or others, movable property, a deed or a signature thereon, cancellation, destruction or amendment thereof through deceitful means or use of a false name or capacity, and whenever this leads to deceit of the victim, will be subject to a jail sentence or a fine. Further, whoever disposes of an immovable or movable property being aware that it is not their property and that they are not entitled to dispose of it and disposes of it knowingly, or contracted, it whenever such act of disposition causes prejudice to others, will be sentenced to the same penalty.

Should the object of the crime be the property or a deed belonging to the state or any individual mentioned in article 5 of Federal Decree-Law No. 31/2021, this will constitute an aggravating circumstance. Any attempt to commit the crime will be punishable by a jail sentence not exceeding two years or a fine not above AED 20,000. When condemning the recidivist to a jail sentence for a period of one year or more, the court may order putting them under control for a maximum period of two years, provided it does not exceed the period of the adjudicated penalty.

In case of bankruptcy of a commercial company, its board of directors and its managers will be sentenced to the penalties prescribed for fraudulent bankruptcy including imprisonment should it be established that they committed any of the matters defined below:

- If they contributed in having the company stop payment whether by making false statements on the subscribed or paid-up capital.
- If they contributed in having the company stop payment by publishing an incorrect balance sheet, by distributing fictitious dividends or by fraudulently taking for themselves more than what they are authorised to take according to the company's articles of association.
- Concealing, destroying or altering the company's books.
- Embezzling or concealing part of the company's assets to the prejudice of its creditors.
- Admitting fictitious debts or made the company liable to part of it, whether in its books, balance sheets or other papers or in their verbal avowal or by abstaining from submitting papers or explanations being fully aware of the consequences of such abstention.

This will not apply to a director or manager if it is established that they did not take part in the incriminated act or has objected or made reservations to the resolution passed in its concern.

Bribery and bribing officials under Federal Decree-Law No. 31/2021

Articles 275-287 of Federal Decree-Law No. 31/2021 (as amended by Federal Decree-Law No. 36/2022) governs the anti-bribery practices in the UAE. The applicability of bribery provisions to individuals has expanded and includes foreign public servants, employees in the private or public sector as well as employees of international organisations in addition to its applicability on public servants and persons entrusted with public service. Any act of bribery by a public official, foreign public official or an employee of an international organisation is punishable with temporary imprisonment. The Emirates of Dubai and Abu Dhabi have their own supplementary regulations in this area. For the Emirate of Dubai specifically, Dubai Law No. 37/2009 on the Procedures for the Recovery of Illegally Obtained Public and Private Money is the relevant legislation. For Abu Dhabi, it is Abu Dhabi Law No. 6/2016 On Human Resources in the Emirate of Abu Dhabi (including article 53 of Abu Dhabi Law No. 6/2016) which serves to curb corrupt practices.

Additional pieces of legislation that govern this area include:

- Federal Decree-Law No. 49/2022 On Human Resources at the Federal Government.
- Regulations governing the declarations by travellers entering or leaving the UAE carrying cash or negotiable instruments.
- Federal Law No. 7/2014 On Combating Terrorism Offences.
- Dubai Law No. 4/2016 On Dubai Economic Security Centre.

Federal Decree-Law No. 32/2021 On Commercial Companies

Article 346 of Federal Decree-Law No. 32/2021 states that providing false statements or statements in violation of the law will be punished:

- by imprisonment for a period of no less than six months and not exceeding three years; and
- a fine of no less than AED 200,000 and not exceeding AED 1,000,000; or
- either of these two penalties.

Whoever intentionally records in the company's memorandum of association, statute, prospectuses of subscription to shares or bonds, or other documents of the company, false statements or any statements in violation of the provisions of Federal Decree-Law No. 32/2021, as well as anyone who knowingly signs or distributes these documents will be punished as stated above.

Article 346 of Federal Decree-Law No. 32/2021 states that providing false statements or statements in violation of Federal Decree-Law No. 32/2021 will be punished:

- by imprisonment for a period of no less than six months and not exceeding three years; and
- a fine of no less than AED 200,000 and not exceeding AED 1,000,000; or
- either of these two penalties.

Whoever intentionally records in the company's memorandum of association, statute, prospectuses of subscription to shares or bonds, or other documents of the company, false statements or any statements in violation of the provisions of Federal Decree-Law No. 32/2021, as well as anyone who knowingly signs or distributes these documents, will be punished as stated above.

Article 347 of Federal Decree-Law No. 32/2021 states that over-valuation of contributions in kind will be punished:

- by imprisonment for a period of no less than six months and not exceeding three years; and
- a fine of no less than AED 200,000 and not exceeding AED 1,000,000; or
- either of these two penalties.

Whoever, in bad faith, assesses the contributions in kind provided by the founders or shareholders in excess of their actual value, will be punished as stated above.

Article 348 of Federal Decree-Law No. 32/2021 states that the distribution of profits or interests in violation of Federal Decree-Law No. 32/2021 and every manager or board member who distributed to the partners or to others, profits or interests in violation of the provisions of Federal Decree-Law No. 32/2021 or the company's memorandum of association or statute, as well as every auditor who approved the distribution with their knowledge of the violation, will be punished:

- by imprisonment for a period of no less than six months and not exceeding three years; and
- a fine of no less than AED 50,000 and not exceeding AED 500,000; or
- either of these two penalties.

Article 349 of Federal Decree-Law No. 32/2021 states that concealing the true financial position of the company, or any manager, board member, auditor, or liquidator who deliberately provides false statements in the balance sheet or the profits and losses account or in a financial report or omits material incidents in such documents for the purpose of concealing the true financial position of the company will be punished:

- by imprisonment for a period of no less than six months and no more than three years; and
- a fine not less than AED 100,000 and not exceeding AED 500,000.

Article 350 of Federal Decree-Law No. 32/2021 states that false data in the inspection report will be punished:

- by imprisonment for a period of no less than three months and not exceeding two years; and
- a fine of no less than AED 10,000 and not exceeding AED 100,000; or
- either of these two penalties.

Any person appointed by the Ministry, the authority, or the competent authority to inspect the company, who deliberately states in the inspection report false incidents or deliberately omits to state material incidents that may affect the results of inspection will be punished as stated above.

Further punishment will extend to the chairman, board member, chief executive officer or general manager of the company who deliberately refrains from submitting documents or information to the inspectors after the Ministry or the authority has imposed the fine prescribed in this regard, according to the list of administrative penalties for acts made in violation of the provisions of Federal Decree-Law No. 32/2021 and issued by the Council of Ministers.

Article 351 of Federal Decree-Law No. 32/2021 states that deliberate damage to the company by the liquidator will be punished:

- by imprisonment for a period of no less than three months and not exceeding three years; and
- a fine of no less than AED 50,000 and not exceeding AED 500,000; or
- either of these two penalties,

This provision applies to every liquidator who deliberately causes harm to the company, shareholders, partners or creditors.

Article 352 of Federal Decree-Law No. 32/2021 states that issuing securities in violation of the provisions of Federal Decree-Law No. 32/2021 will be punished:

- by imprisonment for a period of no less than three months and not exceeding two years; and
- a fine of no less than AED 100,000 and not exceeding AED 500,000; or
- either of these two penalties.

This provision applies to whoever issues shares, subscription receipts, interim certificates or bonds, or offers them for trade in violation to the provisions of Federal Decree-Law No. 32/2021.

Article 353 of Federal Decree-Law No. 32/2021 states that providing a loan, guarantee, or security will be punished:

- by imprisonment for a period not exceeding three months; and
- a fine of no less than AED 100, 000 and not exceeding AED 500,000; or
- either of these two penalties.

This provision applies to:

- Any board member of a joint stock company who obtains for themselves, their spouse or relatives up to the second degree a loan, guarantee, or security from the company wherein they are a board member, in violation of the provisions of Federal Decree-Law No. 32/2021. Such individuals will be required to repay such loan, guarantee, or security.
- The chairman, board member, executive officer, or general manager of a joint stock company who accepts to provide a loan, guarantee, or security to a board member of the company or to their spouse or relatives up to the second degree a loan, in violation of the provisions of Federal Decree-Law No. 32/2021.

Article 354 of Federal Decree-Law No. 32/2021 states that disclosure of the secrets of the company will be punished:

- by imprisonment for a period not exceeding six months; and
- a fine of no less than AED 50,000 and not exceeding AED 500,000; or
- either of these two penalties.

This provision applies to:

- Whoever exploits the statements or information obtained from the constituent committee at any stage of incorporation of the company from the legal or financial consultants or the subscription administrator, the underwriter, or the parties participating in the incorporation procedures or their representatives.
- The chairman, board member, or other employee of the company, who uses or discloses a secret of the company or deliberately attempts to cause damage to the activity of the company.

Article 355 of Federal Decree-Law No. 32/2021 states that influencing the prices of securities will be punished:

- by imprisonment for a period not exceeding six months; and
- a fine of no less than AED 1,000,000 and not exceeding AED 10,000,000 with the return of the realised profit; or
- either of these two penalties.

This provision applies to every chairman or board member of a company or any of its employees who participates, directly or indirectly, with any entity that makes transactions intended to cause an effect that does not reflect the true value of the securities issued by the company.

Federal Decree-Law No. 20/2018 On Combating Money Laundering Crimes, the Financing of Terrorism and the Financing of Unlawful Organisations

Directors of financial institutions and other financial, commercial and economical institutions having knowledge of any act committed in their institutions and in connection with a crime of money laundering, financing of terrorism or financing of an unlawful organisation but fail to report these crimes to the Financial Intelligence Unit at the UAE Central Bank will be sentenced, as per article 22 of Federal Decree-Law No. 20/2018 to:

- imprisonment;
- a fine between AED 100,000 and AED 5,000 000; or
- either one of these two penalties.

Federal Decree-Law No. 36/2021 On Trademarks

Articles 49-50 of Federal Decree-Law No. 36/2021 provides for penal provisions which includes both imprisonment and fines for violation of trademarks rights. Directors in their capacity as the representatives of corporate entities and as far as this concerns crimes related to trademark infringement, are liable criminally for the criminal acts sanctioned under Federal Decree-Law No. 36/2021 and perpetrated by the companies they represent.

Federal Law No. 4/2020 On Guaranteeing Rights Related to Movables

A director is punishable by imprisonment and a fine of not less than AED 60,000 or by either penalty if they commit any of the below acts unless they were not aware of it or did not participate in the decision making that included the violation or objected on it:

- Deliberately declaring the mortgaged right contrary to the truth or in a way violating the provisions of Federal Law No. 4/2020.
- Deliberately damaging the mortgaged property or disposed thereof in a way violating the mortgage contract or decreasing the value of the mortgaged property or diminishing the rights of the mortgagees or carried out any act that led to their privation from collecting their rights of the proceeds thereof or the execution proceeds.
- Deliberately impeding the execution procedures on the mortgaged property including the procedures of seizure, sale, distribution of revenues or proceeds of execution according to the provisions of Federal Law No. 4/2020.

Federal Decree-Law No. 51/2023 Promulgating the Financial Reorganisation and Bankruptcy Law

Under Federal Decree-Law No. 51/2023 officers of the company who are responsible for the liquidation or restructuring of the company will be punished with imprisonment for a term not exceeding five years and a fine not exceeding AED 1 million, or either of these penalties, if, after a final decision to initiate proceedings against the company, they commit any of the following acts:

- Concealing, destroying, or altering all or some of the company's books.
- Embezzling or concealing a portion of the company's funds.

Further, if an individual is considered bankrupt due to negligence they will be punished with imprisonment and a fine not exceeding AED 100,000, or with one of these penalties. Each debtor will be sentenced upon a final judgment, establishing the commission of one of the following acts:

- Excessive spending on personal expenses or household expenses if either of these is among the reasons for the suspension of payment.
- Failure to keep commercial books sufficient to ascertain the true financial position or failure to conduct the inventory required by law.
- Refusal to provide the data requested by the trustee, the Bankruptcy Court, or the Appellate Court.
- Settling any debt contrary to the terms of the proposed preventive settlement or approved restructuring plan or dealing with any funds contrary to what is stated in the proposal or plan.
- Fulfilling a debt to one of the creditors after stopping payment, causing harm to others, or granting insurance or benefits to one of the creditors to the detriment of others, even if it is intended to obtain the required majority approval for a preventive settlement proposal, restructuring plan, or reconciliation.
- Dealing with their goods, funds, or rights for less than their market value with a noticeable difference, intending to delay their payment suspension, declare bankruptcy, or delay the termination of a reconciliation or a proposed preventive settlement or restructuring plan, or resorting to unlawful means for this purpose to obtain money.
- Excessive spending in speculative transactions beyond what their business requires.

In the event of a final judgment declaring the bankruptcy of a company, members of its board of directors, its managers, and its auditors will be punished with imprisonment and a fine not exceeding AED 500,000, or with one of these penalties, if they commit any of the following acts;

- Granting excessive bonuses to board members, the CEO, and managers during the three years preceding the company's cessation of payment, and if that was one of the reasons for the cessation.
- Failure to keep commercial books sufficient to ascertain the true financial position of the company or failure to conduct the inventory required by law.
- Refusal to provide the data requested by the trustee, the Bankruptcy Court, or the Appellate Court, or intentionally providing false data.
- Dealing with the company's funds after it has stopped paying, when done with the intention of excluding these funds from creditors.
- Settling any debt contrary to the terms of the proposed preventive settlement or approved restructuring plan or dealing with any funds contrary to what is stated in the proposal or plan.
- Fulfilling a debt to one of the creditors after the company has stopped paying, causing harm to others, or granting insurance or benefits to one of the creditors to the detriment of others, even if it is intended to obtain the required majority approval for a proposed preventive settlement, restructuring plan, or reconciliation.
- Dealing with the company's goods, funds, or rights for less than their market value with a noticeable difference, not subject to tolerance, with the intention of delaying the company's payment suspension, declaring its bankruptcy, or delaying the termination of a proposed preventive settlement, restructuring plan, or reconciliation, or resorting to unlawful means for this purpose to obtain money.
- Excessive spending on speculative transactions is beyond what is required for the company's business.

Comparison with common law

The major difference between the civil and common law systems with respect to criminal liability of directors can be mainly found in the interpretation of the duties of directors and how these can be linked to any liability that can be construed against them while performing their duties and the burden of proof in establishing the liability.

In civil law, the courts tend to link any breach to the powers granted to the directors by the company and its shareholders while in common law, directors are construed liable if it is proven that they have acted against the best interests of the company. The interpretation of directors' duties in common law are more exhaustive and broader when compared to civil law, where the duties are construed in a restrictive manner.

Al Sanhoury Views

Please refer to the general explanation of Al Sanhoury on the general principles of the Civil Code, Al Waseet fi Sharh al qanoun al madani book 5, chapter 2 on the company.

Al Sanhoury did not address in his interpretation the liabilities of directors and managers as his analysis mainly covered the extent of powers given to directors in a company.

Related Content

Legislation

- Federal Decree-Law No. 31/2021 On the Issuance of the Crimes and Penalties Law
- Federal Decree-Law No. 36/2022 Amending some provisions of the Crimes and Penalties Law
- Federal Decree-Law No. 32/2021 On Commercial Companies
- Federal Decree-Law No. 36/2021 On Trademarks
- Federal Law No. 4/2000 Concerning the Emirates Securities and Commodities Authority and Market.
- Federal Decree-Law No. 20/2018 On Combating Money Laundering Crimes, the Financing of Terrorism and the Financing of Unlawful Organisations
- Cabinet Decision No. 10/2019 On the Implementing Regulation of Federal Decree-Law No. 20/2018 on the Criminalisation of Money Laundering and Combating the Financing of Terrorism and the Financing of Unlawful Organisations
- Federal Law No. 4/2020 On Guaranteeing Rights Related to Movables
- Federal Decree-Law No. 49/2022 On Human Resources at the Federal Government
- Dubai Law No. 37/2009 on the Procedures for the Recovery of Illegally Obtained Public and Private Money
- Abu Dhabi Law No. 6/2016 On Human Resources in the Emirate of Abu Dhabi
- Federal Decree-Law No. 49/2022 On Human Resources at the Federal Government
- Federal Law No. 7/2014 On Combating Terrorism Offences
- Dubai Law No. 4/2016 On Dubai Economic Security Centre
- Federal Decree-Law No. 50/2022 On the Promulgation of the Commercial Transactions Law
- Federal Decree-Law No. 51/2023 Promulgating the Financial Reorganisation and Bankruptcy Law

Regulations

- Securities and Commodities Authority Decision No. 3/2000 on the Disclosure and Transparency Regulation

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Areas of expertise

Intellectual Property; Corporate.

Education

B.Sc (Hons), LL.B, Delhi University.

Memberships

- Bar Council of Delhi, India.
- Authorised Legal Consultant by Legal Affairs Department, Government of Dubai, UAE.

Biography

Rajiv is one of the leading expert lawyers with over 29 years of experience specialising in the field of Intellectual Property laws, Commercial and Transactional laws including contracts, information technology and media. He holds degree in Sciences and Law. He qualified as a lawyer in 1994 and since then has practiced as an Advocate/Legal Consultant.

His expertise lies at handling both contentious and non-contentious issues both in India and UAE. Rajiv advice clients on strategies involving a wide range of intellectual property matters and has been involved in managing corporate portfolios across various industries.

He has also dealt extensively on commercial and transactional matters involving drafting and vetting varied forms of commercial agreements/contracts, technical knowhow agreements, licensing issues including third party/vendor contracts, non-disclosure agreements, manufacturing of goods agreement, business development and service agreement, brand acquisition agreement, assignment deed/s, drafting and execution of Wills in UAE etc.

He has been an author/co-author of articles relating to intellectual property issues and corporate matters for some of the leading legal publications. He has been a speaker at webinars/round table/s on issues relating to intellectual property rights and non- muslim personal law in UAE.

His name appears in UK's whoswholegal.com (WWL) 2008 for UAE, as a ranked prosecution lawyer in Managing Intellectual Property (MIP) 2019, in the list of World's Leading Trademarks professionals by World Trademarks Review (WTR) for the years 2020, 2021, 2022 & 2023 (UAE) and in the list of IP experts compiled by AsiaIP for the years 2021 and 2022.

Rajiv is fluent in English and Hindi.