

The provisions of the commercial company | law company business partnership essay...

[Law](#)



Name: Institution: The directors of a company have an implied contractual relation with the company in which they act as the agents of the company and have a duty to act in the best interest of the organization. This paper will discuss the implied duties of directors, various provisions of UAE law and the consequences of their breach. The paper will also examine the various liabilities that directors are exposed to arising from the provisions that are set out in the Commercial Company laws. Company's constitution document, the penal code and the criminal code generally govern the UAE companies. The liabilities of the directors basically arise out of their breach of their duties, which are either, explicitly defined or implied by law. This paper will begin by first briefly defining the expected duties of directors according to UAE laws. In the UAE, there is a general perception that few duties are placed on the directors of companies. In most countries which are governed by Australian and English company law, emerging trends in the legal system have resulted to explicitly and clearly defined duties to enhance better understanding by the directors of what various stakeholders expect of them. UAE law, in essence, does not outline a set of duties expected of directors, but rather it has provisions that may expose the managers and directors of companies operating under UAE jurisdiction to personal legal liabilities. The documents containing the duties and liabilities of managers and directors in regard to UAE companies, including the limited liability companies and joint stock companies, include the company laws governing the UAE, CCL (Commercial company laws) in relation to UAE companies, the specific company's constitutional documents, which include the articles of association and memorandum of association, UAE penal code and UAE civil

code. One of the duties of the directors according to the provisions of the CCL is to act sincerely and truthfully in all transactions. Furthermore, directors are also expected to carry out their duties in accordance to the guidelines and provisions of the law and within the scope of the powers and authority bestowed to them by the constitutional documents of the company. Moreover, the managers and directors should exercise high degree of judgement and care in carrying out their directors' role. The UAE Companies Law sets out provisions to avoid conflicts of interest by directors. The article of this law stipulates that it is mandatory for a director to inform the board of directors of any personal interest relating to a transaction presented to the board for approval if that personal interest conflicts with the interests of the company. In such situations, a director is not eligible to vote on that particular resolutions relating to that specific transaction. The article of this law also depicts that a director of a company should not engage in a business that is competing with the business of the company, which he holds a director position, nor should he engage in activities that are the similar to those carried on by the company. Otherwise, he ought to have prior approval from the owners of the company in a general meeting. These policies ensure that the interest of the company and the shareholders are protected and their breach would lead to personal liability to the directors. One of the provisions of CCL, specifically articles 111, pertain to the managers of limited liabilities and the directors of joint stock companies. This provision states that the directors and chairman are legally responsible to the shareholders, the company and third parties for abuse and misuse of power and any act involving fraud and any violation of law and breach of regulations in the

company's constitutional documents. Third parties may be interpreted to include customers, creditors, financiers of the company, employees and generally any other person who incurs a loss arising from the actions of the directors and the managers. Any individual acting as a manager in a Limited liability company must be aware that in the case of any breach of the duties as explicitly defined in articles 111 of the Commercial Company Liabilities laws shall be jointly liable together with all the other managers as set out under article 112. This applies in the event that such a breach occurs arising from a resolution that is adopted by general consensus. Therefore, it is important that for any manager who does not concur with a proposed action votes against that particular resolution. In addition, he should ensure that his objection is clearly noted in those resolutions minutes. Failure to attend that particular meeting to pass the resolution in question is no defence in the provisions of the CCL. Therefore, if a manager is not present, he must prove his ignorance in relation to the proposed resolution or, if in case he was aware, he was not in a position to object. The provisions of the Commercial Company laws also set out circumstances that may make a manager legally liable to criminal sanctions. Articles 332 define the following actions as amounting to criminal offences. The first action defined is publishing false or misleading information on the companies documents being conscious of the untruthfulness in the statements and distributing the documents to the public to invite members of the public to subscribe for shares in the company. Another action defined in this article is distributing dividends of the company in a manner that is in breach with the guidelines of the CCL laws or inconsistent with the provisions stipulated in the company's

constitutional documents. Another action stipulated in this act relates to preparation of false financial statements of the company. This may be attributed to entering wrong information in the financial statements or deliberately omitting significant information in the financial statements resulting to misleading financial information in regard to the company, the public and other stakeholders. Another act defined in this article is disclosing sensitive insider information of the company to third and affiliated party with a wrong intention of benefiting personally. The civil code also sets out provisions relating to the expected conduct of managers in Limited Liability companies. The articles in the civil code stipulate that a manager of a LLC (Limited Liability Company) shall be deemed personally liable due to any loss suffered by the company due to his actions that are not in his defined jurisdictions of the powers granted to him by the company. A manager is also held legally responsible in the event that he resigns at a time when the company is facing a lot of difficulties or at a point when his resignation may significantly injure the operations of the company. The Commercial Code sets out provisions relating to the manner in which courts should handle cases involving companies that are insolvent and their managers.

Specifically article 882 in this code stipulates instances in which managers could be found legally liable. The first instance defined is in the cases where the directors object to providing the information required by the judge pertaining to the bankrupt company or the trustee in a bankruptcy situation or if they do provide false and misleading information in these circumstances. Second, is where they disclose inadequate or inappropriate financial information reflecting an untrue financial position of the company.

Another instance defined is in situations where repayments of debts has been suspended due to financial difficulties of the company and the managers acts in contrary to that sanction and pays some creditors in preference to others out of his personal judgment. Finally, the act defines a situation in which the repayment of debts has been suspended and the directors utilize the property of the company with an intention of keeping it beyond the reach of the creditors involved. The penal code also sets out provisions for managers to be held liable when they engage in illegal activities relating to bankruptcy. In addition to the above, certain provisions of the Penal Code have outlined provisions for managers to be punished when complacency in fraudulent activities relating to a bankruptcy is noted. This Code also stipulates circumstance and remedies for cases where the managers are involved in embezzlement, fraud, disclosing insider and confidential information with the motive of personal gains. In conclusion, all the above liabilities arise out of the breach of the laws and regulations that are stipulated by the law and constitutional documents of the organization. The directors can thus avoid personal liabilities by performing their duties in accordance with the laws and regulations stipulated by the company's governance and the regulatory bodies.