

Personal liability under the uae law law company business partnership essay

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Name: Institution: Director's Potential Personal Liability under the UAE

Law Good cooperate governance is necessary for growth of the companies in the United Arab Emirates (UAE). Shareholders and other stakeholders of a company are bound to look at the role of the management in respect to transactions and other commercial dealings of a company. According to Schwab & Porter (2009) Awareness of the laws governing corporate is high in the agenda in many countries with UAE being no exception. Once managers and directors realized the severity of punishment for breaching the laws, they began to pay attention to the laws governing management of corporations in UAE. It is the general perception in the UAE that managers and directors have few impractical responsibilities as opposed to countries like Australia where their duties are plainly spelt out for them. This paper will discuss the director's potential personal liabilities for acts of fraud and mismanagement under the UAE law. The paper will cover duties, responsibilities and potential obligations of managers in the corporations, in case of breach, possible punishments as well as remedies as stipulated in the UAE law. keywords: Director, company, responsibilities, fraud, mismanagement One of the most common questions asked in the UAE is exactly where these duties are spelt out and whether they are accessible to the public. The duties and responsibilities of managers are included in several legislations and documents including but not restricted to; UAE Commercial Companies Law (CCL) The company's memorandum and articles of Association Ministerial Resolution No. 518 of 2009 of the Minister of Economy Penal Code Commercial Transactions Law The draft commercial companies law (the "Draft Law") ("Fancier Worldwide", 2011). It is

important; however, to note that the 'draft law' as is popularly referred to is the document that generally comprises all the laws found in all the other documents for ease of access. Article 21 of the popular draft law tries to compress all the laws into a single statement by stating " A person authorized to manage the company shall preserve its rights and work for the benefit of the company honestly and faithfully. Such person shall do all such acts in agreement with the objective of the company and the powers granted to such a person under authorization issued by the company in this respect" (Yann , Longeaux & Vecchiatto, 2011). This statement has implied several duties of the directors including preservation of company's rights. It is the ultimate duty of the company's director to protect all legal rights of the company for which he is head of. Schwab & Porter (2009) state that under usual circumstances this means that it is their duty to act in the company's best interests but the company and the law may have a conflict of interest. In these cases, the director is to align the company's interests with the law and this may sometimes require negotiations.

Duties of the Director under the UAE Law

Duty to Honest and Faithful Work. The director is supposed to carry themselves with dignity and work to the best of their ability. Also, at no one point is their own interests ever supposed to clash with the interests of the company. In such a case scenario, the director is expected to forward the issue to the board in order for deliberation. He is also expected to be faithful to the company and not leak any confidential company secrets to the outside world. The director is also expected not to conduct his own private businesses in a manner that competes with the company's business without

approval from the board. Duty to act in accordance with stipulated laws. The director's powers and responsibilities are already stipulated in the articles and memorandums of association of the respective companies. These duties are customized to that company's and since the director is acting on behalf of the company he is supposed to adhere to them. According to Association of Corporate Counsel (2006) the director is then not expected to breach the laws as stipulated in the AOA and MOA. Articles 111 of CCL makes the director liable for any violation of the company's MOA while article 21 of the Draft Law makes the director responsible for violation of the company's MOA and breaches of Powers of the Attorney. The latter has frequently been breached time and again in the UAE. In conclusion, the director has a duty not to act ultra vires. Duty not to abuse his powers. A director is expected not to abuse his powers by making secrets gains from the company under his rule. The position of director of the company is also not expected to bring forth any gains for him. These are the three most important duties for which he is personally liable for (Schwab & Porter, 2009). It is important to note that the director owes his duties to the shareholders of the company, the company itself and in some cases third parties. The company's rights to take an action against the directors can be found in article 113, which states that the action can be taken by the company on the behalf of its shareholders. According to Yann , Longeaux, & Vecchiatto (2011), The Ministerial Resolution 518 of 2009 has made no requirement that that a director should take into account interests of third parties when performing his duties and responsibilities.

Director's Personal Liability under UAE Law

Mismanagement. The director is liable for acts of ' mismanagement' as well as any deterioration on the performance of the company owing to the ' mismanagement'. Since liability for mismanagement is not included in Article 21 of the Draft Law, it has resulted in very few directors being sued for this charge. Nevertheless, article 186 articulates that the directors should compensate the company for any losses made because of errors in their judgment. Article 111 of CCL has not specified the degree to which a company or its shareholders can individually pursue a director for mismanagement (" Fancier Worldwide", 2011). Nonetheless, from past experience of the courts, if a particular shareholder suffers loss due to a director's neglect then this shareholder can sue individually. For instance if a particular shareholder does not receive his rightful share of profit then he can sue. Civil Code. In addition to article 21 and 168 on which most of this paper is based on, the civil code has been the reference point for directors duties for long. Under article 665(3) of the civil code, a director is liable for any losses to the company resulting from his acting outside his jurisdiction. In case a director resign at a point in time when this will cause any sort of damage to the company, then he is liable for the same. This is particularly important when the company is going through a crisis, financial or otherwise, because it deprives the company of much needed skills (" Fancier Worldwide", 2011). Indemnification. Article 23 of the draft law clearly stipulates that the memorandum of Association should not include any provision that exempts the director from personal liability in the case of a breach and any such provision in the MOA shall be rendered void. In the UK

and many other countries, it is common for companies to advance costs of defense to the director although in practice these costs are paid back and are more of loans. It is not yet clear whether local courts will make sense of an indemnification in the same way as an exception of liability (Association of Corporate Counsel, 2006). Insolvency. In the case of bankruptcy the director is expected to file the company for bankruptcy in thirty days and failure to do so shall be considered an offence. If a company loses half or more of its initial capital, the directors are under a duty to refer to the question of dissolution to the stakeholders under article 289. It is; therefore, of prime importance that the director closely monitors the financial status of the company of which he is head (Association of Corporate Counsel, 2006). Criminal law. Criminal law also plays a major role in the running of corporate affairs. Sometimes, the civil code and all other laws named above may overlap with the criminal law hence causing friction. In fact, All breaches of the company's Law are considered both criminal and law. Breaching these laws may mean directors personally paying a certain fine or sometimes even imprisonment (Association of Corporate Counsel 2006). Directors need to be aware of this in order to abide by the stipulated law. In conclusion, although this paper does not comprehensively exhaust the company's laws, civil code and all other laws relating to the directors roles, duties and responsibilities it has given a considerable insight into the director's potential personal liabilities for acts of fraud and mismanagement under the UAE law.