

Directors' Duties, Civil Liability, and the Business Judgment Rule under the Portuguese Legal Framework

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Abstract : The commercial companies' management has suffered an important material and legal transformation in the last years, mainly related to the changes in the Portuguese legal framework and because of the fact they were recently object of great expansion. In fact, next to the smaller family businesses, whose management is regularly assumed by partners, companies with social investment highly scattered, whose owners are completely out from administration, are now arising. In those particular cases, the business transactions are much more complex and require from the companies' managers a highly technical knowledge and some specific professionals' skills and abilities. This kind of administration carries a high-level risk that can both result in great success or in great losses. Knowing that the administration performance can result in important losses to the companies, the Portuguese legislator has created a legal structure to impute them some responsibilities and sanctions. The main goal of this study is to analyze the Portuguese law and some jurisprudence about companies' management rules and about the conflicts between the directors and the company. In order to achieve these purposes we have to consider, on the one hand, the legal duties directly connected to the directors' functions and on the other hand the disrespect for those same rules. The Portuguese law in this matter, influenced by the common law, determines that the directors' attitude should be guided by loyalty and honesty. Consequently, we must reflect in which cases the administrators should respond to losses that they might cause to companies as a result of their duties' disrespect. In this way is necessary to study the business judgment rule which is a rule that refers to a liability exclusion rule. We intend, in the same way, to evaluate if the civil liability that results from the directors' duties disrespect can extend itself to those who have elected them ignoring or even knowing that they don't have the necessary skills or appropriate knowledge to the position they hold. To charge directors', without ruining entrepreneurship, charging, in the same way, those who select them reinforces the need for more responsible and cautious attitudes which will lead consequently to more confidence in the markets.

Keywords : business judgment rule, civil liability of directors, duty of care, duty of care, Portuguese legal framework

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