

# CIVIL AND CRIMINAL RESPONSIBILITY OF THE MEMBERS OF THE BOARD OF DIRECTORS IN THE SAUDI SYSTEM

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## ABSTRACT

*This paper aims at determining the responsibility of the members of the board of directors of companies contributing to the Saudi system. To achieve the objective of this research study, the range of civil responsibility has been identified by reviewing the legal adaptation of the members of the board of directors and highlighting the most important reasons for the establishment of contractual or default responsibility and determining its scope. Descriptive approach has been applied by collecting information from the research and other studies on the responsibility of the members of the board of directors, civil lawsuits which have been instituted against them and some criminal texts and the penalties imposed upon them in the case of violations. In addition, the study also adopted the analytical approach by describing the study problems and analyzing the legal texts which regulated the responsibility of the members of the board of directors in various Saudi systems. Along with highlighting the most important issues, which have emerged in the Kingdom of Saudi Arabia (KSA) in the previous years, this study identifies how legal proceedings are instituted against members of the board of directors. It further moves to criminal responsibility and highlights the most important cases by referring to several systems. In addition, the study concluded that civil responsibility was contractual, default, or criminal if any of the regulations enacted in KSA were violated by the company in general or the individual as a member of the board of directors. Further, the member of the board of directors is borne to errors, so the Saudi system must follow the course of English law by the need to insure the members of the board of directors from civil responsibility. Furthermore, the shareholder's action against the members of the board of directors should involve greater guarantees, such as owning a certain percentage of the shares in addition to the conditions he has earlier set. The Ministry of Commerce, in cooperation with the FMA, should conduct seminars to educate the shareholders and explain all related issues to the joint-stock companies, including their most important right of the possibility of suing members of the board of directors when they mismanage or violate the corporate system or bylaws.*

**Keywords:** Criminal Responsibility, Individual Lawsuits, Joint-Stock Companies, Members of the Board of Directors, Social Lawsuits, Social Responsibility

## INTRODUCTION

Joint-stock companies are one of the most important pillars of the economies of countries. It is a perfect model for finance companies that implement projects that serve the country with large capital. The beginning of joint-stock companies in KSA dates back to 1934 when Al-Arabiya Automotive was established as the first Saudi joint-stock company. In 1954, the Arab Cement Company (Al-Rasheed, 2005) was established followed by several other companies in the subsequent years.

Recently, however, there has been a lot of controversies with issues such as Al-Moagel, Sadiq, Mobily & Al-Baha, on how to run these companies. Once the company begins to decline, the board of directors is changed and the application for the disclaimer is approved for former board members. Small shareholders are, therefore, forced to accept the new state of affairs in a hope that the situation will improve (Al-Rasheed, 2005). According to the regulations in the Kingdom, shareholders, non-shareholders and the Capital Market Authority can lawsuit cases to claim compensation for the harms. Although this law existed earlier, it has become more organized and clearer than before.

The board of directors is the managing authority that oversees the company's management and policies. Consequently, its good management leads to the success of the company and achieves its profitable objectives. In contrast, if the board of directors misuses the authorities, the losses will have a harmful effect on the company, shareholders and the economies of the countries as well (Al-Rasheed, 2005). The members of the board of directors in various countries, including KSA, have authorities and restrictions placed by the authorities. The Saudi system organized the work of the board of directors in Articles (68-85) referring to the Saudi Corporate System issued in 1437 AH. The system has granted authority to the board of directors, which facilitates the management to perform various tasks, and in case the board of directors violates the laws, they are held responsible for that. The system has presented Articles (221-222-213) against violations committed by people such as members of the board of directors. It states that these violations constitute a crime and therefore the penalties included in the legal texts are to be imposed. Civil penalties are insufficient for the member of the board of directors as the shareholder or non-shareholder may find it difficult to prove a lawsuit. This claim has been proved by several judgements issued by the Grievances Board to dismiss the case because the claim has not been proved. Therefore, criminal responsibility, which serves as an adequate deterrence for members, must be instituted in addition to civil responsibility.

### **RESEARCH PROBLEM**

The problem of the study is to determine the framework of both the civil and criminal responsibility of the members of the boards of directors in joint-stock companies. The study attempts to achieve this by highlighting the regulations that deal with this issue and act as a deterrent for the member of the board of directors discouraging them to commit violations and mishandlings. This study also talks about the role of the Saudi system and the way this problem is dealt with by the judiciary by referring to some of its judgments.

### **RESEARCH METHODOLOGY**

The researcher applied the descriptive approach by collecting information from the research and other studies on the responsibility of the members of the board of directors, civil lawsuits which have been instituted against them and some criminal texts and the penalties imposed upon them in the case of violations. In addition, the study also adopted the analytical approach by describing the study problems and analyzing the legal texts which regulated the responsibility of the members of the board of directors in various Saudi systems.

## RESEARCH OBJECTIVES

The objectives of the study are to:

1. Determine legal adaptation and the reasons for the institution of civil responsibility of the member of the board of directors.
2. Identify the range of the civil responsibility of the member of the board of directors.
3. Explore the civil lawsuits brought against the member of the board of directors.
4. Define the pillars of criminal responsibility.
5. Identify the crimes involved in the Saudi system to punish the member of the board of directors.

## LEGAL ADAPTATION FOR THE INSTITUTION OF CIVIL RESPONSIBILITY OF THE MEMBERS OF THE BOARD OF DIRECTORS

Civil responsibility is regarded as the balance which judges the actions of the members of the board of directors when they violate their duties or when their negligence in performing their work harms the third party or shareholders. Civil responsibility is meant to pay for harms and/or compensate them, and its source is the contract either becomes contractual or default responsibility. It is instituted in accordance with certain cases and conditions regulated by the Saudi Corporate System or the company's bylaws and regulations.

### Contractual Responsibility

Contractual responsibility consists of the existence of a legitimate contract, and if the contract does not exist or is invalid, the contractual responsibility is not considered (Al-Sanhouri, 1918). The institution of contractual responsibility requires the existence of default, harm and causal relationship. Law interpreters have differed in defining the relationship between the member of the board of directors and the company. Some of them state that the company is not a real entity and therefore the member's role is meant to take care of its interests. In addition, the board of directors is considered as the agent of the company acting on its behalf and working for its best interests (Hamdan, 2016). Accordingly, the member is obliged to take care of the company's interests, just as the person who is keen to conduct the performance of this agency, and if he does so, he is not responsible whether the company suffers losses or not (Khalil, 2001). Others consider that the company has a body and entity and therefore the member of the board of directors is considered as a part of this body (Al-Marri, 2019).

The Saudi system does not determine the nature of this relationship, however, it establishes that the company acquires the status of a moral being and determines the obligations of the members of the board of directors. The Saudi system makes the company responsible for all the actions of the members. Therefore, it seems as if it supports the theory that considers the member of the board of directors a member and a part of the company.

### Default Responsibility

It is default due to the inexistence of a contractual relationship between shareholders and members. It is based exclusively on harmful acts when public duties affect shareholders or a third party. The existence of responsibility in accordance with general rules requires defaults, harm and causal relationship. There must be the previous third pillar. Therefore, whenever one of these pillars does not exist, responsibility is not instituted and therefore no compensation can occur.

A judgement by the Board of Grievances Office (No. 92/T/1, 1411 AH) rejected the plea due to the inexistence of the causal relationship between the work of the management and the harm. As it was proved that the harm to be compensated was due to the person who suffers the harm or others' default and not the member of the board of directors (Al-Marabid, 2015). There is also a judgement issued in (1431 AH) for case No. 1414 AH dismissing the lawsuit due to the inexistence of the causal relationship. The lawsuit was filed against the member of the board of directors. The lawsuit was regarding the claim for compensation because the claimants did not attend the meeting of the general assembly, which was legally conducted, and he was not informed about its results. Neither the corporates' system nor the company's system included this notification. Consequently, the basis for the proceedings was considered incorrect.

The default made by the President and members of the board of directors goes beyond the defaults stated in the bylaws and regulations system which constitute a breach of the usual duty of care in the management of the company's business called management defaults. Among the judgements that have decided and explicitly supported this, is the decision of the Commercial Dispute Conciliation Authority in Jeddah (No. 11/98, dated on (1398 H) on case No. 64/97 in which the defendant company violated Article 12 of the corporate system as its publications did not include the company's legal name. The company stated that the member who issued the letter had forgotten to place the seal, which prevented the completion of the information required by the system. But the Dispute Conciliation Authority was not satisfied with this justification and issued its decision to convict the company.

This is considered as a management default as the employee works in the company, and the company is responsible for the work of its employee. Ministerial Decision (No. 5714) was issued in 1429 AH that the members of the board of directors, who made a default that harmed the entire interests of shareholders and profited themselves, must return all the profits they made from this default to the company (Al-Marabid, 2015). The civil penalty is, therefore, the compensation in addition to returning the profits from this illegal act.

## **The Range of Civil Responsibility**

### **Co-Responsibility**

Solidarity shall be combined between the members of the boards of directors in joint-stock companies. In case of issuing a joint decision about the involvement of all members, the system in Article 78 states that the responsibility is solidarity among the members of the boards of directors and considers the absent member to be involved at the time of issuing the decision in the institution of responsibility unless the member is proved to be unaware of the decision made or unable to object to it. The Saudi system is praised for not ignoring the text of the absent member. There are disputes in some legal systems, for example, no such judgements are found in the Jordanian system.

### **Personal Responsibility**

Civil responsibility considers solidarity to be the base. However, it is not fair for some of the members of the boards of directors to be held responsible in solidarity as they did not make the mistake (Muled, 2015). The Saudi system has included personal responsibility as an

exception. As the member of the board of directors is asked about his mistake, considering that decisions issued by the majority of opinions are the responsibility only of the members who supported the decision and if his objection is clearly proved in the transcript of the meeting, or the acts are carried out by him personally. In addition, it proved that the rest of the members have no impact on performing these acts (Al-Hajj, 2018).

Therefore, we see that the Saudi system considers both types of responsibilities and stipulated that the member of the board of directors cannot be exempted from responsibility, and any other requirement is considered as if it does not exist (Article 78).

## **Civil Proceedings against the Members of the Board of Directors**

### **The Company's Lawsuit against the Members of the Board of Directors**

The board of directors is a representative of the company and therefore sets the bylaws and regulations of the company within its authority and restrictions. Therefore, any violation of what has been entrusted to it is its responsibility (Hijazin, 2013).

For responsibility to be instituted, its pillars must exist, whether it is default or contractual (Hijazin, 2013). Article 79 of the Saudi system states that the company, as a legal entity, has the right to file a lawsuit against the members of the board of directors for defaults made by them causing harm to the shareholders. A person selected by the General Assembly initiates this case and if the company declares bankruptcy, it is initiated by the bankruptcy secretary. In case it expires, the liquidator is the authorized person who initiates it. In this regard, the Board of Grievances Office issued a judgement (No. 195/T/4 for 1416 H). The liquidator was the authorized person who ordered the filing of the case on behalf of the company during liquidation.

The shareholder also initiates to file a lawsuit in this case immediately, if the company procrastinates in filing a lawsuit against the board of the members in accordance with the Saudi system. The compensation achieved is for the interest of the company as the shareholder has filed it in favour of the company (Al-Shinoun, 2015).

The Saudi system stated in Article 78 that the members of the board of directors compensate the company once the lawsuit has been judged against them. The board of directors can prove that they are not responsible by showing that the harm done is not the consequence of any act contrary to the company's bylaws and regulations or they performed their responsibilities following the regularities.

A preliminary judgement on responsibility was issued against the Chairman of the board of directors and the former members of the board of Al-Baha Company. The company sued them and demanded that they are obliged in solidarity to pay the company an amount of (100,000,000 SR) in solidarity due to the defaults they made against the company and the consequential harm that the company and the shareholders suffered. The company filed a suit by selecting a representative after the approval of the General Regular Assembly, as a company must select a competent representative to initiate such cases.

### **Shareholders' Claim against the Members of the Board of Directors – Individual Lawsuit**

The default of the member of the board of directors may cause harm to a shareholder. Therefore, the person who suffers the harm has the right to refer to the board, and the default responsibility shall be instituted considering the absence of a contractual relationship between the board of directors and the shareholders (Al-Marabid, 2015).

The shareholder is required to prove the harm suffered by him in accordance with the general rules and the board member can deny the causal relationship or prove that the harm was caused due to another reason (Al-Shinoun, 2015).

The Board of Grievances Office issued a judgement on case No. 592/1/1427 H when a shareholder filed a lawsuit. The company submitted an invitation to conduct a meeting of the assembly to approve the budget for the fiscal year 2005. When the assembly attended the meeting, the company rejected to attend it as it could not bring any evidence that it was a shareholder. Some important decisions were made in the meeting and the claimant was not informed about them. This caused issuing a decision against the board of directors, so a lawsuit for compensation was filed. The default was due to the company's default not from the defendant, and since the compensation claim is dedicated to confirming the default. As the complainant has not been found to have made such a default, the lawsuit was dismissed.

In Article 80, the Saudi system grants the right to the shareholders to file a lawsuit of responsibility to claim compensation due to the harm done to them. However, the system restricts this right in two conditions including the company's right to sue the member of the board of directors and inform the company about the dismissal of the case due to the harm the member of the board of directors suffered from. Further, if compensation is given to the shareholder, he has the right to retain this compensation only for himself excluding other shareholders, as it is his own right.

### **The Board of Directors' Responsibility towards Others-Third Party's Claim**

The actions of the members of the board of directors may result in harm to other customers of the company, who therefore have the right to claim compensation. There is no direct relationship between the third party and the board of directors, except to the extent that the contract of the company gives them the authority to conclude actions on behalf of the company's administration (Tarawneh, 1992).

The claim of the third party is based on default responsibility, considering that there is no relationship between the third party and the board of directors. As a result, the third party does not receive compensation unless it is instituted that this act has harmed it (Hijazin, 2013).

In this case, the third party can claim the compensation using two methods: the first method is to file a claim based on the contractual responsibility considering the company as a person and the second method is that the member is an agent and his default confirms the company's default responsibility and harm. Here the causal relationship must be proved. Another method is to directly raise a default responsibility against the members of the board of directors who caused the harm, based on the act of harm (Al-Shinoun, 2015).

In case of default occurrence to the third party caused by the management's default which is contrary to the system or the company's bylaws and regulations, the third party has the right to file a contractual lawsuit against the company. The third party can deal with it by asking for compensation and filing a default lawsuit based on the advantage act to be filed against the member who made the default. In addition, the company has the right to refer to the board of

directors (Al-Shinoun, 2015) or the member who caused this harm to the third party (Al-Shinoun, 2015).

Article 78 in the Saudi system states that the members of the board of directors shall compensate the company, shareholders or third parties. It is understood from this article that the third parties have the right to file a lawsuit against the company or the member of the board of directors. Furthermore, this provides a better assurance for the one who has been harmed that someone cannot be defended for whatever the reason is.

Third-party lawsuits are not subjected to the conditions to which the rest of the lawsuits are subjected (Tarawneh, 1992).

### **Duration of the Lawsuit**

Obsolescence is the expiry of the legal deadline given by the system to the third party who suffers harm to have the right to object. Most systems have subjected the obsolescence to board members to protect them and achieve stabilization in legal positions. In most systems, the obsolescence is almost the same: triple obsolescence (Muled, 2015). The same is the case with the Saudi system, as reported in 78/3, all responsibility claims drop three years after the date of the discovery of the harm. Except for fraud and default cases, which are 5 years after the end of the fiscal year in which the harmful act occurred or three years from the expiry date of the board member, whichever is further? The Saudi system has not provided a maximum period in case of not realizing the harmful act. It would have been better for the Saudi system to provide it for the protection of the legal positions. The lack of knowledge of the harmed people means that they fail to monitor the members of the board of directors and therefore they are denied the right to file a lawsuit.

## **CRIMINAL RESPONSIBILITY OF THE MEMBER OF THE BOARD OF DIRECTORS IN THE SAUDI SYSTEM**

The law presumes that a member of the board of directors is trustworthy and honest. Therefore, if the member breaks the trust, he should be punished with a criminal penalty. That is, the civil penalty is insufficient to protect the economic institutions. The legal jurisprudence has differed in the definition of criminal responsibility. Some state that it is the physical and moral attribution of the crime to the perpetrator as he committed it by his own will, action, and default (Bahnsi, 1988). Others are of the opinion that it is "an obligation to bear the legal consequences of the availability of the elements of a crime" (Al-Aiaji, 2007).

### **Pillars of Criminal Responsibility**

#### **Physical Pillar**

The physical pillar is performing a prohibited action or leaving it behind (Bahnsi, 1988). It is violating a permissible legal rule or a prohibiting criminal rule, accompanied by a penalty for making a default as a result of a positive or negative act criminalized by a legal text and punished with a penalty (Al-Awaji, 1992). The physical pillar entails three elements: default, harm and causal relationship.

## **Moral Pillar**

The moral pillar is represented by the right will or the ability to recognize that the act is a crime and yet decide to perform it.

## **The Nature of Criminal Responsibility**

### **Direct Responsibility**

Direct responsibility is attributing the crime directly to the moral person. The case is originally filed and judged, and the moral person alone bears the entire criminal responsibility resulted from the actions issued under his name. Article 52 of the Saudi corporate system states that ‘the company alone is responsible for the debts and obligations arising from the exercise of its activities’.

### **Indirect Responsibility**

Indirect responsibility is instituted when the law stipulates that a moral person is asked in solidarity with the regular person concerning the implementation of the penalties it judges. Indirect responsibility is, unquestionably, the best way for achieving both kinds of deterrence. This was implemented by most systems when they decided not to question the moral person alone, but also to question the regular person such as asking in solidarity. The Saudi system independently conducted neither way of them due to the belief that they may cause a major imbalance and confusion when determining the criminal responsibility of persons of legal personalities. This is explicitly guaranteed by the anti-commercial fraud and information related crime system. The Saudi system as well as the Saudi corporate system did not follow this path in the anti money laundering system, which drew a line between the penalties of the person of legal personality and the regular person.

## **The Board of Directors Member's Responsibility According to the Corporate System**

Corporate crimes can be defined as any illegal act committed by the system or a legal representative of the commercial company. M 215 was stated in the corporate system with the speciality of the Public Prosecutor's Office—the Investigative and General Prosecution Authority—the task of investigating and prosecuting the criminal acts in Articles 211 and 212, while violating Article 213 has been left to the Ministry of Commerce. It is clear to us that the Saudi system has made any act contrary to the corporate system a criminal penalty when rational reasons are not available to explain it. We will report some of the acts which were criminalized by the system and were the responsibility of the member of the board of directors in this section.

### **Submitting Incorrect Statements or Ignoring to Submit Certain Statements**

Corporates are driven by the data, which is considered as their primary nerve. Therefore, the systems have striven to provide this data accurately, periodically, and systematically, and to arrange penalties if it is contrary. The Saudi system does not ignore this matter as stipulated in the corporate system in Articles 112 and 211. The articles state penalties for those who violate certain



acts. Some acts are associated with the members of the board of directors when they submit any statements contrary to the truth. This includes incorrect records or misleading statements in financial statements or general assembly reports. It also includes ignoring substantial facts to conceal the company's financial position from partners or others (Article 211/a), advertising, publishing or declaring by any means intended to inspire the registration of the company whose registration procedures have not been completed for any reason (Article 212/d), or proving incorrect statements intentionally included in the contract of the establishment of the company or its bylaws and regulation or the occurrence or distribution of such documents within the member's knowledge (Article 112/f), or submitting incorrect statements regarding the evaluation of in-kind shares, the distribution of shares between partners or paying their full value knowingly (Article 112/g).

### **Authority Misuse**

The board member is considered to have misused his authority whenever he exceeds the authorities granted to him. For example, he may use the company's purposes to his own personal or his relatives' advantage and therefore his personal interest prevails over the interest of the company. The Saudi system has not overlooked this type of crime as it has counted some of the acts including using the company's funds or authorities for personal interests despite knowing that it is against the company's interests, favouring a company or a person, benefiting from a project or a business deal as a result of having a direct or indirect interest in it (Article 111b & 111/c), using the company for other purposes than the purposes it is licensed for (Article 111/i), receiving or being promised to receive benefits or guarantees in exchange for voting in a particular direction or not participating in the voting (Article 113/g).

### **Ignoring the Duties or Violating the Restrictions in the Corporate System**

The Saudi system has provided duties to the members of the board of directors which they should not violate. It has also restricted some of the work that may be issued by them and must be followed. Although the system has identified the duties and restrictions and demonstrated civil responsibility on them, it has criminalized certain acts in particular and demonstrated criminal responsibility for neglecting what has been assigned or exceeding their authority. The system has stipulated that a member of the board of directors should not invite the General Assembly of the company or partners when they are aware that the losses have reached the estimated limits (Article 111/d). Such acts further include intentionally causing the members of the board of directors to disrupt or deactivate the meeting of the General Assembly (Article 113/b), accepting an appointment as a member of the board of directors of a joint-stock company while being a seconded member to manage it or remaining a member contrary to the corporate system, receiving a guarantee or a loan from the company contrary to the corporate system while being a member or Chairman of a joint-stock company (Article 113/d), and intentionally preventing a shareholder or a partner from participating in a shareholder or partner association or preventing him from enjoying the voting rights related to shares or portions (Article 113/f). The system expands to include the member's knowledge of the incident of violation and not informing about it (Article 113/c). The list also includes neglecting the performance of the duty to invite the General Assembly of shareholders or partners to conduct a meeting during the scheduled period

(Article 113/h), breaching the duty to publish financial statements (Article 113/i), not providing a shareholder or a partner the access to the necessary documents (Article 113/k), and neglecting in providing the ministry with the required documents systematically (Article 111, 112, & 113). In any of the mentioned crimes, the physical pillar is required, while the moral pillar is represented by knowledge and will.

### **Penalty**

The penalties in the Saudi regime range from a prison term of not more than five years besides a fine of five million SR to a prison term for one year besides fines that should not exceed one million SR. For some other penalties, the Saudi system stipulated only a fine that should not exceed (500,000 SR) (Article 111, 112, & 113). The Saudi system indicated that the penalties if repeated, will be doubled and the return will be within three years of the date of the last judgement (Article, 214).

In this regard, on case No. 1239/2/S, 1410, the Board of Grievance issued a judgement against a manager for failing to publish the company's quarterly financial position and therefore violating Article 229. Therefore, the manager was fined a penalty of 5,000 SR. The Board of Grievance Office issued a judgement in case No. 831/3/s/1420 H which proved that the board member had been convicted for violating Article 175 of the old system as he failed to submit the required data from the submission of budgets (for 1406, 1407 & 1407 AH) to the Ministry of Commerce and was therefore fined a penalty of 1,000 SR. The same judgement was issued on case No. 1297/2/s, 1420 with the fine of 1,000 SR for not submitting the company's budget. However, the penalty was stricter on case No. 782/2/S, 1410 H because the budget was not submitted over a period of 12 years. The fine was 3.000 SR.

### **The Responsibility of the Board Member in Accordance with the Financial Market System**

The financial market system was issued in 1424 H to regulate the companies listed in the Saudi market. In addition, it issued related regulations to the financial market. The system also stipulated penalties in the event of violating the previous bylaws and regulations. These might be violated by the board member as they may be issued by the regular person. We shall address some of the criminalized acts by the system instituting the criminal responsibility of the members of the board of directors with some details, as the Saudi system has elaborated on them through regulations issued by the FSMA.

#### **Submitting Incorrect, Misleading Statements, or Ignoring to Submit Certain Statements**

The system ensures transparency and disclosure by collecting information such as financial statements. These advertisements are subjected to the FMA's monitoring, which requires some information from the authorities and may or may not be published by the Authority (Al-Skhabana, 2018).

The Saudi system did not determine approved means of publishing the data but stipulated that the respective authority should be responsible. Furthermore, the system addressed some of the issues discussed below, in which responsibility was instituted.

1. **Bulletins (Article 42 & 43):** Article 55 of the system institutes a state of responsibility, in which the board members submit incorrect statements on fundamental issues or ignore the submission of certain fundamental statements in the bulletins<sup>2</sup>. The bulletin may not be published or shared with the public before obtaining the FMA's approval. The Authority reviews the bulletin within 45 days of receiving all the required information and documents. If the Authority is satisfied, the bulletin is published, however, the Authority may reject the bulletin whenever it considers the data incorrect (Al-Nefia'j, 2006). If the authority confirms the bulletin despite submitting incorrect statements concerning the fundamental issues or ignoring to mention fundamental facts, Article 55 indicates the people, including members of the board of directors, who are held responsible to issue the bulletin. Responsibility can only be exempted if it is proved that the member has not ratified the bulletin, or it has been proved that he had no reasonable justification at the time to believe that this part of the bulletin has violated the submission of incorrect statements.
2. **Financial statements<sup>3</sup>:** Article 45 states that every company must publish annual and semi-annual financial statements, quarterly reports about its activities and business and reports that disclose the company's financial position to the authority. In the event of any violation, the system institutes responsibility on the person who gives any misleading statement either verbally or in writing. This includes misleading financial statements presented by the boards of directors, who are punishable in accordance with Article 59 of the financial market system.
3. **Announcement of important developments<sup>4</sup>:** The financial market system has obliged companies (in Article 25) to report to the authority and the public without any delay in case of any significant development within the framework of its activity. If their knowledge is not available to the public, it will affect their assets, responsibilities, financial position or the overall course of their realization. In addition, the development would significantly change the price of the stock or debt tools listed or significantly affect the source's ability to meet its obligations. We believe that the board of directors are responsible for issuing such statements and therefore if the company fails to reveal such information, the responsibility will be instituted on the board members or the company as a whole (Al-Nefia'j, 2006). The submission of incorrect and misleading data is a crime. The system was keen to list these various crimes, but we have listed some of the most common cases. In accordance with this, a judgement was also issued after deliberation on the case of Al-Moa'agel on 9/2/2017 by convicting several board members and some senior executives and auditors. This was done as they violated the text of Article 49 and Article 7 of the List of Market Behaviors during the subscription phase which created an incorrect and misleading impression of the securities.

### **Disclosure of the Company's Internal Information**

Internal information is considered to be of great economic value. Publishing this information before it is made public may lead to exploitation and economic crises. Therefore, the systems seek to protect the internal information, by criminalizing its disclosure (Al-Nefia'j, 2006).

Internal information is defined as the information obtained by the informed person, which is not available to the public and significantly affects the price of the securities (Article 50). Various systems determine punitive protection of undisclosed information to achieve justice and equality when trading the financial securities of different audiences. The crime of disclosing internal information may be committed by board members (Article B/4) who would therefore be held criminally responsible.

The Committee for the Adjudication of Financial Securities Disputes issued a judgement on June 2, 2009, which became final and enforceable on August 17, 2009. A lawsuit was filed by the Market Authority for the violation of trading on the shares of Bisha Agricultural Development Company by a member of the Board of Directors–Chairman of the Board. Accordingly, he was punished and given three months imprisonment and a mandatory fine of 52,690 SR which was the size of the interests he earned by violating Article 50 of the financial market system, a fine of 100,000 SR and a ban on working in the companies whose shares were traded on the market was also placed for 5 years (Al-Tuwajiri, 2010).

### **Penalties**

The financial market system imposes penalties when market regulations are violated. If the authority discovers that any person is participating or has participated or proceeded to violate any of the judgements of the system or regulations issued by the authority or market regulations, it has the right to file a lawsuit against him before the committee. The punishment includes any of the following:

- Warning the concerned person, obliging the concerned person to stop or refrain from doing the work that is the subject of the case. Obliging the concerned person to take the necessary steps to correct the position, obliging the violator to pay profits, seizure and execution of property, travel ban, prohibition from working in trading companies in the market in addition to a fine of at least 10,000 SR and no more than 100,000 SR for each violation.

### **The Responsibility of the Board Member in Accordance with the Relevant Systems**

Several legal systems assess the criminal responsibility of the board members. Although it is difficult to include them all, some examples of the systems that have criminalized certain acts carried out by the board members are briefly provided as follows.

#### **Bank Monitoring System**

Article 24 states that the responsibility for any violation of the system is instituted on the chairman, managing director and members of the board of directors based on the extent of the violation. The system states several acts which are counted as violations. These include sharing information during or on the occasion of any work related to the application of the system as stated in Article 19 according to which the person involved is punished by serving a sentence of not more than two years in prison and by paying a fine of not more than 20,000 SR. Therefore, the members' responsibility is instituted on the criminalization of members when they commit any violations by the system.

### **Anti-Information Based Crimes System**

The system defines information crime as any act committed which includes the use of a computer or information network in violation of the rules of the system. The members of the board of directors are involved in information crimes as subject to the definition at the beginning of the system of any regular person or moral person. Therefore, when any crime is committed by the members in accordance with Articles 2, 3, 4, 5 and 6 while exercising their work tasks, they should be punished with the penalties stipulated in the system issued in 1428 AH. We believe that information-based crimes may be carried out mainly by the board members. Either obliterating emails, financial statements or otherwise, companies operate their operations through computers, which undoubtedly entails their criminal responsibility.

### **Anti-Bribery System**

The bribery crime is generally defined as bribing the employee in his/her job tasks by offering them a benefit or a gift in exchange for performing or refraining from performing job tasks within the scope of his/her authority (Al-Fawzan, 2011). Therefore, bribery crime must be instituted against the public employee. This crime has been discussed into the public employee's provision of Article 8, discussing the penalty of bribery taken by the chairmen, board members of joint stock companies and members of the board of directors. When an act contrary to the system is issued, it is up to the board member to demand himself or for others or to take advantage or a gift to use real or alleged power to obtain or attempt to obtain authority, he shall be punished to a maximum penalty of 10 years imprisonment and a fine of not more than 1 million SR or either of these penalties. Conducting the crime does not affect the employee's tendency of not performing the work he has promised. It should be noted that the corporate system has punished those who do so in accordance with Article 213/g.

### **Anti-Forgery System**

Forgery is meant to change the truth as mentioned in the anti-forgery system issued in 1382 AH. Article 23 stipulates that every private enterprise operating in the Kingdom has to prove that its director or one of its employees committed a crime stipulated in the system for his own benefit and with the knowledge of it, shall be punished with a fine of not more than ten million SR and deprived of contracting two to five years with any public office. This does not prejudice any punishment stipulated in this system against the person of legal personality who is the perpetrator of the crime. The system punishes members of the board of directors as well as the company in general if they commit any violation included in the system such as forging commercials, financial or bank securities, or insurance documents. That shall be punished with 1-5 years imprisonment and a fine of not more than 400,000 SR.

### **Money Laundering System**

Money launderers resort to exploiting the corporate system in several ways and methods such as establishing companies specifically for this purpose or exploiting existing companies that are engaged in the legal business. Article 3 states that the perpetrator of money laundering is any of the acts included in the system. Among them are the Chairmen and members of the board of

directors. The criminal responsibility of those companies is instituted if the crime is committed for their own interest or in their names.

### **Anti-Human Trafficking**

Article 13 of the 1431 system without prejudice to the responsibility of the regular person. If the crime of human trafficking is committed through a legal personality's interest or name with his knowledge, he shall be punished with a fine of not more than 10 million SR, as the person who commits the crime on the behalf of the company if he is a member of the board of directors or the board as a whole.

## **CONCLUSION AND RECOMMENDATIONS**

In conclusion, it was found that the civil responsibility of the board members is instituted either individually or implicitly among members. Either the responsibility is civil, contractual or default, the harm must be instituted as tracked by Saudi judiciary system. A thorough review shows that many cases have been dismissed because the causal relationship between the board's act and the harm has not been instituted. Further, the Saudi legal system did not state the legal position of the member of the board of directors, but it stated three reasons for the institution of civil responsibility. Civil responsibility is different from criminal responsibility as civil responsibility is exercised by the person who suffered the harm before the judiciary, while criminal responsibility is assessed by the general prosecutor's office.

The Saudi system expanded to punish the board members by stating the penalties with other systems besides the corporate system keeping in view the importance of their role. However, a review of the principles of the penalties has revealed that there is a lack of judgements in the Saudi system. It, further, states that loans can be granted to board members only with the approval of the General Assembly considering the conflict of interests between the board members and the company. It also indicates that the civil penalty includes compensation, in addition to the refund of the profits earned. The penalties in the Saudi corporate system range from imprisonment to a fine or both. It has also given the corporates the right to file a lawsuit against their board members in accordance with certain systems. In addition, it grants the right to file a lawsuit to the shareholders against the board members and with a difference in the suing systems.

The study recommends that the Saudi system should follow the course of the English system by the need to insure the members of the boards of directors from civil responsibility. The Ministry of Commerce, in cooperation with the FMA, should conduct seminars to educate the shareholders and explain all related issues to the joint-stock companies, including their most important right of the possibility of suing members of the board of directors when they mismanage or violate the corporate system or bylaws.

## **ENDNOTES**

1. Shirkah "Al-Bahat" Tarfah Dawa Kazaliyah Zad Rais Majlis Al-Idara Wa'alah Izza Alsabkin Wa Tatalabham 100 Million Riyal. (2014, June 22). Argaam.
2. The bulletin is defined as the document required publishing the financial statement in accordance with publishing regulations.

3. Article 45 of the financial market system and Article 26 & 27 of the registration and inclusion rules.
4. Core perceptions 46a of the financial market system and Articles 25, 32 & 35 of the registration and listing rules.

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