

The Complementary Penalties Enforced to Combat Corporate Crimes in UAE Law

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Introduction

The study delves into corporate crimes, a distinct category from typical crimes, as they intersect with various economic and financial realms. This divergence from conventional criminal law norms has reshaped perspectives on privacy, criminalization, and punishment. A corporation represents a collaborative endeavour for profit among individuals, pooling resources and sharing gains or losses across diverse economic sectors like commerce, finance, industry, agriculture, and real estate. Legislation governing corporate crimes emphasizes actions over omissions, often categorized as negative crimes. Many don't necessitate specific criminal outcomes, classified as crimes of danger. Moral culpability in corporate crimes is diminishing, focusing more on offender conduct for evidence, challenging traditional burden of proof principles. The UAE's legal approach adopts a deterrent strategy, favouring fines over imprisonment for corporate wrongdoing. Complementary penalties like confiscation, business closure, or license revocation augment primary penalties, raising questions about their effectiveness against complex corporate offenses.

Keywords: Commercial Companies, Complementary Penalties, Confiscation, Licensing.

Introduction

The UAE legislature has given significant attention to the field of commercial companies, implementing legislation specifically designed to regulate them and enforce penalties for those who violate existing economic and commercial norms. The legislator's intervention in enacting these rules aims to provide criminal protection for specific interests that are important for social and economic development. Additionally, it aims to address a particular group by creating specialized texts that are relevant to their field. The purpose of this is to regulate the behavior of this group and establish a strong foundation for financial and economic transactions (Awad, 2001)

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These regulations governing corporate crimes differ from the standard norms outlined in the Criminal Code, resulting in some peculiarities that occasionally deviate from the typical requirements of criminal law in corporate crimes.

While the UAE legislator has incorporated criminal provisions into the existing Companies Law, it has not intentionally deviated from the principles and regulations of the general criminal law. Instead, the legislator has relied on these principles and regulations, occasionally modifying, or eliminating them as required by the provisions specific to companies (Aldabousi, 2023).

The criminalization policy of the provisions of crimes in the Companies Law is distinguished by its precise focus on the unique nature of these types of crimes. This specificity is most evident in both the material and moral elements of these crimes.

The specificity of the material element in corporate crimes lies in the fact that the majority of these crimes involve refraining from performing a required action. These crimes are based on the violation of legal obligations, such as not calling for a general assembly meeting (Aldabousi, 2023).

Corporate crimes are also characterized by not necessarily requiring a specific outcome to be achieved, placing them in the category of "crimes of danger." These crimes are committed as soon as the perpetrator commits the act, without the need for a specific result or causing harm, as seen in cases of failure to list.

The moral element of corporate crimes is distinct and evident, as it deviates from its fundamental principles and instead becomes characterized by a diminishing presence. However, this does not imply a complete disregard for the moral element, as no crime can exist without it. Rather, the moral element has been redefined to align with the unique nature of corporate crimes, where its aspects are derived from the material actions carried out by the perpetrator (Wahab, 2018).

Considering that commercial companies are recognized as legal entities, it was logical to establish penalties that align with this concept. The UAE legislator has therefore implemented specific penalties to combat crimes committed by commercial companies. We have examined the key aspects of this punitive policy, focusing on the penalties imposed on corporate crimes. The law has established primary penalties to address such crimes, primarily in the form of fines (Al-Barqami, 1406).

In more severe cases, imprisonment may also be imposed. Additionally, the legislator has introduced a range of complementary penalties. Some of these penalties directly impact the existence of the company, such as dissolution and

closure of the company's premises, while others affect the company's operations, such as confiscation and the prohibition of working (Huzeit, 2011).

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Current legislations increasingly favour the decriminalization of corporate crimes by implementing policies that aim to reduce penalty and divert cases away from criminal processes.

The study problem focuses on the following:

1. Insufficient accuracy and clarity of regulations about complementary penalties in UAE legislation. The issue at hand presents two fundamental inquiries: firstly, what is the efficacy of complementary penalties in deterring economic crimes, and secondly, do complementary punishments effectively deter firms from engaging in economic crimes and legal violations? Are there any instances where these punishments have been successful in establishing deterrence and prevention?

Study Questions

1. What are the complementary penalties implemented in UAE legislation to tackle corporate crimes?
2. Do complementary penalties contribute to improving adherence to UAE rules and regulations?
3. How are the complementary penalties being enforced under UAE legislation, and what measures are utilized?

The Complementary Penalties Enforced to Combat Corporate Crimes

Complementary penalties are additional punishments that cannot be imposed apart from an original penalty unless specifically allowed by law and can be either mandatory or optional.

In the UAE, the legislature has granted permission for the use of complementary penalties. These penalties are given in addition to the original punishment to achieve more deterrence and reform. They are only used when the accused has been found guilty and sentenced to one of the original penalties stipulated by law. The UAE legislature has established complementary penalties to address corporate crimes for which these penalties are applicable (The Federal Supreme Court in its judgment No. (436) of 2019 issued on 18-11-2019)

These penalties are categorized into two types: those that have a permanent impact on the company's existence, resulting in its complete dissolution, and those that have a temporary impact, such as the closure of its premises. Additionally, there are penalties that directly affect the company's operations, with the most significant being the confiscation of assets and funds involved in criminal activities, as well as the penalty of suspending the company's activities, which will be further discussed below.

Financial penalties imposed on corporations may not be enough to effectively discourage and prevent corporate crimes. Therefore, comparative legislation has introduced additional penalties that are equally as significant as the previous ones. These penalties specifically target the presence and operations of the corporation, intending to completely eradicate its legal existence and prohibit it from engaging in any activities when it unlawfully deviates from its intended course. The penalties must be equally effective for both natural persons and legal entities (Aldabousi, *Legal Problems of Electronic Pollution According to UAE and Egyptian Law*, 2022).

In the following, we state the penalties for dissolving a commercial company and closing its site as complementary measures that have a significant impact on the company's existence and continuity.

A. Commercial Companies Dissolution

The dissolution of a company is determined by specific circumstances. These circumstances can be enumerated in terms of legal reasons that prompt the company to dissolve, including substantial capital destruction and the expiration of a specified period. Additionally, the partners may agree to reasons of agreement, which may include the complete dissolution of the company or its merger with another entity. Lastly, a court ruling may also dissolve the company (Wahab, 2018).

The meaning of the company's dissolution is to completely terminate its legal and real existence in society. To achieve this, the company must suspend all activities, including those conducted under a different name or with different representatives. The legal and subsequent agreement-based expiration of the company is outlined in the following section (Al-Naqbi, 2011).

i. Legal Expiration of the Company

The company stops functioning when its limited term expires, as there is no perpetual existence for the company (Awad, 2001, p. 457). This is due to the principle of *pacta sunt Servando*, which means that contracts must be honoured. Once the specified deadline for the company's existence in the contract has expired, the company is legally terminated, even if the partners wish to continue. If they want to continue the project, they must agree to establish a new company (Wahab, 2018, p. 115).

A commercial company is dissolved upon the fulfilment of its intended purpose. Companies are established with the specific objective of achieving a particular goal or completing a project. Once this purpose is successfully accomplished, the reason for the company's existence ends. Consequently, the company is legally dissolved, even if this occurs before the specified deadline. If a company is founded with the specific purpose of carrying out a certain task, such as excavating specific tunnels, constructing specific roads, or importing specific items, the company is terminated after the work is completed (Al-Barqami, 1406).

The dissolution of a company occurs when its funds are depleted, as the company's capital is the primary resource through which it fulfils its objectives. The company stops functioning when its financial resources are completely exhausted, regardless of whether this depletion is material or moral. (Saada, 2017) Accordingly, the Court of Cassation in Dubai has ruled that if an expert conducts research and finds:

- The company has fixed financial receivables with others, totalling 62,837,965 million dirhams.
- The company is financially capable of continuing its business, meeting its obligations, and paying off its debts based on its liquidity ratios.
- The expert advises the company to put into action a plan to boost turnover, use its assets, increase activity rates, and collect unpaid debts.
- The company's losses did not exceed 50% of its capital.

Based on these findings, the expert would conclude that there is no valid reason to liquidate the company. The expert's reasoning should be in line with the relevant documents and supports the conclusions reached in their report.

If all of the company's funds were to get lost, for example, due to a fire at the plant or the loss of goods at sea, there would be significant material damage. It is not necessary for all of the company's funds to be entirely destroyed, but it is enough if the remaining portion is inadequate to fulfil the company's objectives. Or what is commonly referred to as an "unproductive investment (The Court of Cassation rejects the appeal. Judgment of the Dubai Court of Cassation in Appeal No. (307) of 2019 issued on 29-12-2019). The loss may also be of a moral nature, which can occur in several scenarios, such as the withdrawal of the license that permits the company to conduct its business or the revocation of the right to the innovation it exploits, also known as "legal loss."

ii. Agreement-based Expiration of the Company

A commercial company, like a natural person, comes into existence, develops, and ends or dies. When commercial companies dissolve, the legal bond between the partners is terminated. This involves ending their contract and resolving any remaining obligations between the partners or with third parties. To accomplish this, the company must be liquidated, and its assets divided among the partners (Huzeit, 2011).

In certain cases, economic and commercial factors may compel companies to consider merging with one another as a strategic move to enhance competitiveness, improve business operations, and utilize expertise. This decision ultimately leads to the dissolution of the merged entity while preserving the legal identity of the merging company.

In the UAE, the legislature has implemented the penalty of dissolving a company for certain crimes, particularly those that involve the commission of extremely serious offenses. This includes cases where a commercial company is found to have committed a terrorist crime. The dissolution of the company is mandatory in such instances due to its direct involvement in these acts of terrorism (Al-Naqbi, 2011).

iii. Closure of the Company's Premises

The closure of the company's premises is implemented as a measure, either because the company facilitates the consolidation of criminals by providing them with a hideout, or as a punishment for violating the rules of certain preventive regulations. Closure is a punitive measure that prohibits a corporation from conducting its operations in the location where it committed a crime or engaged in criminal activity. This measure aims to prevent the company from using its activities to commit more crimes.

The legislation grants the court the authority to mandate the revocation of a company's license if it engages in any of the crimes of issuing a cheque without sufficient funds, counterfeiting, or utilizing counterfeit cheques, and so forth. Furthermore, this action is applied under the Anti-Terrorist Crimes Act, which mandates the closure of the company's premises if its representatives, managers, or agents are involved in or aid in the commission of a terrorist crime on behalf of the company.

Complementary Penalties Affecting the Commercial Company's Activities

Companies depend on their financial resources and business growth to fulfil their objectives. Additionally, they require autonomy for setting policies, managing operations, and maintaining a good reputation in the market. These factors are crucial for sustaining their economic and social standing and ensuring the accomplishment of future goals.

Thus, the legislator took measures beyond just imposing fines or restricting the activities of violators to discourage them. Instead, they opted for the option of imposing penalties that directly impact the freedom and reputation of the commercial company as a legal entity. This includes placing the company under receivership or publicly publishing the judgment that convicts it.

A. Confiscation

Confiscation is a highly effective financial penalty for dealing with corporate crimes. It involves taking away the money that is involved in the crime, whether it belongs to an individual or a legal entity. This not only acts as a deterrent but also helps eliminate the root causes of the crime (Aldabousi, *THE LEGAL PROBLEMS FACING THE CONCLUSION OF CLOUD COMPUTING CONTRACTS*, 2023). The UAE legislator has specified the punishment of confiscation in the Penal Code, stating:

“Without prejudice to the rights of bona fide third parties, the court may, upon rendering a judgment of guilt in a felony or misdemeanour, order the confiscation of the seized objects obtained from, used, or to be used in the crime. should the mentioned objects be of those which manufacture, use, possession, sell or offer to be sold is a crime per se, a judgment of confiscation must be given even if these objects are not the proper of the convict. If it is not possible to rule for the confiscation of funds, proceeds or instrumentalities due to their failure to seize them or because they are related to the rights of bona fide third parties, the court shall pass a fine equivalent to its value at the time of the crime.”

i. Definition of Confiscation and its Types

Confiscation refers to the act of taking money from its owner and transferring it to the state's property without any compensation. The Federal Supreme Court has defined it as the expropriation of money that has been obtained illegally, either by disposing of it, destroying it, or depositing it into the state treasury (Federal Supreme Court No. (684) of 2019 issued on 09-11-2019). Confiscation can be categorized into two types: general confiscation, which involves the complete seizure of all the assets belonging to the guilty person or his shares in it, or special confiscation, which involves the seizure of a specific portion of their assets (Al-Naqbi, 2011).

Special confiscation can be either permissive, serving as a complementary penalty, or mandatory, functioning as a criminal measure. Additionally, there exists a third form of confiscation, which involves compensation.

ii. Items that may be Confiscated in the Crimes of Commercial Companies

The following items and assets may be confiscated in the event of the perpetration of any corporate crime:

- a. Crime proceeds: These are the assets acquired by the corporation as a result of the crime, including funds used to purchase shares, bonds, or other securities that are received without getting the necessary approval from the Authority.
- b. Evidence related to the tools or items used in the perpetration of the crime: These phrases encompass all items employed in the commission of a crime, including records containing fraudulent or illegal information, as well as counterfeit documents presented by the company to auditors or inspectors.
- c. Crime-related materials: These are items that have been specifically prepared for use in criminal activities, such as daily newspapers and advertising that are created to attract the public's offerings without receiving approval from the Securities and Commodities Authority.

There is still uncertainty regarding the confiscation of items that were mixed with funds earned by the corporation through legitimate activity.

In response to the confiscation decision, the Public Prosecution is responsible for appointing an expert committee from the relevant authorities. This committee will be tasked with examining documents, properties, and funds that have been confiscated. Their objective is to distinguish between suspicious funds acquired from illegal sources and those obtained from legitimate sources.

If the court does not confiscate the proceeds obtained from illegal sources and distinguish them from those obtained from legitimate sources in its judicial judgment, the judgment will be considered anonymous. This opens the possibility for a dispute between the parties regarding the accuracy about the proceeds subject to confiscation. It implies that the court made a conviction without verifying the truth of the proceeds subject to confiscation. Consequently, the judgment should be overturned (Federal Supreme Court Judgment No. (29) of 2014 issued on 20-05-2014).

iii. Protection of the Rights of Bona Fide Third Parties in Commercial Corporate Crimes

Bona fide parties are those who did not participate in the crime and were unaware that their belongings were used to perpetrate it. In Article (82) of the Penal Code, the UAE legislator has embraced this practice, stating in its second paragraph: "Without prejudice to the rights of bona fide third parties."

If it is established that the item subject to confiscation meets the criteria but belongs to a person other than the accused and that person is innocent, not involved in the crime, and unaware that their property is being used for criminal purposes, they have the right to reclaim the seized items. If any of the items cannot be taken or if their confiscation is not possible due to their connection to the rights of innocent third parties, the court would impose a fine equal to their value at the time of the crime.

If the possessions owned by the victim cannot be confiscated, the perpetrator is not fined. However, the victim has the right to claim civil compensation or restitution for the same items. Therefore, in such cases, a punishment equal to the value of the stolen property is not imposed (Federal Supreme Court Judgment No. (436) of 2019 issued on 18-11-2019).

iv. The Effects of Confiscation

The confiscation judgment will lead to the transfer of ownership of the properties to the state. This transfer will take place immediately upon the issuance of the judgment, without requiring any additional executive procedures. As a result, the following consequences will occur (Al-Naqbi, 2011).

- The confiscation judgment is automatically enforced, meaning that the penalty does not become invalid due to the statute of limitations.
- The state has the authority to handle the confiscated property in the way it considers suitable and transfer the resulting funds to the public treasury, or to eliminate and destroy it if it is corrupt or counterfeit documents.

v. Confiscation as Compensation

Confiscation can be considered compensation if the law specifies that the confiscated items will be given to the victim of the crime (Judgment of the Egyptian Court of Cassation, (Cassation 14-5-1998, Appeal No. 10498 of 66, Collection of Cassation Judgments, 1998, p. 702 and its followings) or to the State Treasury as a form of compensation for the harm caused by the crime. In this scenario, confiscation allows the victim to assert their right to claim it as compensation and to pursue this claim before the appropriate legal authorities, even if the accused is acquitted.

B. Prohibition to Exercise Certain Professions

The prohibition to exercise certain professions is a legal restriction outlined in the Penal Code, which can be enforced for corporate crimes. It refers to the denial of the right to engage in a profession, trade, or business activity that requires a license from a public authority.

The prohibition on conducting business is a complementary penalty aimed at preventing a commercial company, as a legal entity, from engaging in its commercial or industrial activities when its criminal behaviour deviates from business principles or violates its obligations. This measure is taken to prevent the possibility of further crimes being committed through the company's activities or because of its existence (Aldabousi, 2023).

The prohibition to exercise certain professions is a severe punishment that can be imposed on commercial companies. This penalty is particularly important in cases of corporate crimes. The International Conference on Penal Law, which took place in Rome in 1953, recommended this measure as part of the penalties for economic crimes. Article IV of the conference's proceedings stated that. "Regarding the adequate reaction to crime, besides and instead of imprisonment and financial penalties to avoid criminal proceedings out of court settlements should be preferred in the framework of which judicial prohibition to exercise certain professions, the publication of the judgement and special confiscation may be applied. Such special confiscation should extend to all goods to which the offence aimed at regardless of whether they belong to the perpetrator but with due respect to the rights of third parties." (Article (84),(1) of the UAE Commercial Companies Law No. (32) of 2021)

In our opinion, this measure is deemed criminal, whereas the French judiciary, in a significant ruling, deemed the prohibition to exercise a commercial or industrial profession because of being convicted for misappropriation of company funds as an optional complementary penalty, rather than an ancillary penalty.

We propose that this penalty be implemented for severe corporate crimes, as the prohibition to exercise a profession is equally as impactful as dissolution. This penalty directly affects the interests of numerous innocent employees and creditors of the company. It is important to note that prohibiting the company from operating does not affect the company's members, who keep the right to establish a new company with an entirely new legal identity.

In this research, we explained the key penalties established by the UAE legislature to address corporate crimes. We examined the original penalties outlined in corporate law and highlighted that imprisonment is reserved for severe crimes, with the judge having the authority to substitute a fine as a less severe punishment. We also explained the fundamental punitive measures that the UAE legislator deemed effective, namely the imposition of a fine, whether daily or within specified boundaries, so granting the judge the authority to personalize the punishment to the specific facts.

After that, we examined the key complementary penalties stipulated by the Penal Code that are relevant to corporate crimes. These penalties correspond to the particular characteristics of such crimes. We presented penalties that result in the dissolution of the company (dissolution) or its suspension for a specified duration (premises closure). Additionally, we discussed penalties that impact the company's operations, such as confiscation and prohibition to exercise a certain profession (Aldabousi, *The Joint Responsibility of the Air Carrier Established in accordance with International Conventions on the Status of Air Terrorism*, 2024).

Conclusion

The UAE legislature has implemented a policy aimed at reducing penalties in the area of commercial companies. This has been achieved by eliminating the criminal aspect of certain actions and replacing them with administrative and civil penalties. However, the legislature has refrained from adopting a policy of reducing criminalization, as it believes in the effectiveness of severe punishment as a deterrent in this field. This is evident from the fact that imprisonment remains a permissible penalty in all criminal statutes.

Recommendations

The research conducted on the topic of commercial corporate crimes under the legislation of the UAE has resulted in a series of recommendations, with the most significant ones being:

- We suggest for the UAE legislator to reevaluate the proportionality of prison sentences and financial penalties for certain crimes. Currently, there seems to be a significant disparity between the length of imprisonment, ranging from 6 months to 3 years, and the corresponding permissible financial penalties, which can be as low as 50 thousand dirhams or as high as 500 thousand dirhams.
- It is suggested that the UAE legislator consider eliminating criminal penalties for certain corporate crimes and instead opt for administrative penalties imposed by the relevant administrative authorities, or civil penalties that lead to the invalidation due to corporate laws being violated.
- We propose that the UAE legislature broaden the policy of reducing criminalization by pursuing two approaches. The first approach involves decriminalizing certain behaviours, such as providing loans, guarantees, or collateral in violation of the law. The second approach focuses on eliminating certain aspects of criminalization through...
- It is recommended for judges to utilize alternatives to penalties for corporate crimes whenever possible. These alternatives may include imposing fines instead of imprisonment, employing traditional punishment alternatives like suspended sentences, or utilizing modern alternatives such as electronic monitoring or community service instead of imprisonment, whenever possible.

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