False Information in Company Documents May Lead to Jail

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The crime of providing false information

Article 361 of the Companies Law criminalises the provision of false information and states:

"A penalty of imprisonment ranging from 6 months to 3 years & or a fine between AED200,000 and AED1,000,000 shall apply for deliberately inserting in the memorandum or articles of association of a Company or in a share or bond prospectus or in any other Company documents, any information that is false or contrary to this Law. The penalty shall also apply for knowingly signing or circulating such documents despite those facts."

Article 361 is an intentional crime. This means that the offence requires the presence of premeditation. If the act was done by mistake, or in ignorance, the perpetrator will not then be criminally liable. Given the seriousness of the offence, and that it is considered to be against public order, reconciliation between the offender and an adversely-affected party is not possible for this offence.

By reference to two judgments issued by Dubai Court of Cassation, there are two essential rules to note in relation to Article 361:

- It is only possible to prove that a contract relating to the conditions in a company's articles of association is a sham, by the submission of written (not oral) evidence (Dubai Court of Cassation Dated 27-01-2009: Civil Cassation No. 2008/212 and No. 2008/226).
- The 'conclusive oath' cannot be taken to prove the contrary of information contained in the company's articles of association (Dubai Court of Cassation Dated 31-10-1999: Cassation No. 1999/149 and No. 1999/153).

For a company with limited liability, at foundation, all shares – whether in cash or in kind – must be paid in full and cash shares must be deposited in a bank in the UAE. As a result of a false statement relating to the actual shareholding of the partners to an LLC, the company itself would be void (Dubai Court of Cassation Dated 13-04-2010: Commercial Cassation No. 2010/46 and No. 2010/48). If false information is given that does not go so far as resulting in the company becoming void, the company itself may bear criminal liability for statements made on its behalf or for its account, in accordance with the corporate criminal liability provision of the Federal Penal Code (Article 65).

The scope of Article 361 is not limited to what is stated in the articles or records of a limited liability company, but extends to include joint-stock companies and partnerships limited by shares. As the capital formation of these two types of companies are by way of an invitation to subscribe and the issuing of stock, the aim of imposing such obligations and punishments regarding the accuracy of the information in the prospectus, is to protect the audience of subscribers. If the prospectus contains false information, the individuals who inserted the false information will be criminally liable and, again, the company may also bear corporate criminal liability under Article 65 of the UAE Federal Penal Code. As the legal form of the establishment of joint stock companies is based on the prospectus, the will of the subscriber should be free of any defect or disadvantages, such as an error or fraud.

The main goals of Article 361, beyond criminalising the act of providing false information, are to ensure the accurate evaluation of these companies and their shares, and to make sure that the company's capital is real to protect the shareholders (in cash). It also aims to prevent the shareholders (in kind) from getting more than is owed to them or from taking false profits, as well as to prevent shareholders from getting a number of shares in the company that is not greater than their shares in kind in the capital. This protects the interests of creditors, because maintaining the capital of the company means protecting creditors' security.

Where the members of the board of directors or some of them sign a prospectus regarding increasing the share capital, the prospectus will be accompanied by a report issued by an auditor, in order to check the validity of the information contained therein and its conformity with the provisions of the law. If the information contained in the prospectus was incorrect, the managing director or the chairman of the board directors will be criminally responsible. The auditor may also bear criminal responsibility, in case the information contained in the report was incorrect, because confirming the accuracy of such information is at the core of his duties.

It is not necessary that all the information contained in the prospectus is incorrect. It will suffice if the false information is considered sufficient to diminish the reliability of the prospectus, so that if all the information is correct except for one statement against the law, it may be enough to complete the commission of the crime.

Conclusion

The act of providing false information in company documents creates an unsafe environment for creditors and investors, and undermines public confidence in the economy. It is, therefore, a serious criminal offence that could lead to imprisonment for anyone who deliberately undertakes such an act, and financial penalties against companies for whose account such acts are undertaken. By criminalising the provision of false information in company documents, the law aims to provide a stable environment for commercial transactions – where creditors and investors are comfortable to act upon the information presented to them – and to foster an economy in which the public can have real confidence.