مسؤولية أعضاء مجلس الإدارة في ظل نظام الشركات السعودي لعام ٢٠٢٢م

دراسة فقهية نقدية مقارنة

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الملخص:

تستعرض هذه الدراسة تطور مسؤولية أعضاء مجلس الإدارة في ظل نظام الشركات السعودي لعام ٢٠٢٢م من خلال تحليل فقهي ونظامي وقضائي مقارن .وتعتمد الدراسة على تحليل خمسة وثلاثين حكماً وقراراً قضائياً وتنظيمياً صادراً خلال الفترة من ٢٠٢٠ إلى ٢٠٢٤، مع توظيف منهجية تجمع بين التحليل الفقهي، وتحليل مضمون الأحكام، والمقارنة الوظيفية مع المملكة المتحدة وفرنسا .وتبين الدراسة أن المسؤولية تتجه نحو معيار إجرائي يركز على سلامة عملية اتخاذ القرار، والإفصاح، وتوثيق أعمال المجلس، وإدارة تعارض المصالح .كما تؤكد أن مبادئ الشريعة الإسلامية، وبخاصة الأمانة ومنع الضرر والمساءلة، تمثل أساساً معيارياً في النظام القانوني السعودي وليست مجرد أداة تفسيرية.

وتخلص الدراسة إلى اقتراح نموذج سعودي متوازن لمسؤولية أعضاء مجلس الإدارة يتوافق مع مستهدفات رؤية ٢٠٣٠ ويعزز الشفافية وقابلية التنبؤ وثقة المستثمرين.

الكلمات المفتاحية: مسؤولية أعضاء مجلس الإدارة؛ نظام الشركات السعودي ٢٠٢٢؛ حوكمة الشركات؛ الواجبات الائتمانية؛ قاعدة حكم الإدارة؛ مبادئ الشريعة الإسلامية.

Directors’ Liability under the ٢٠٢٢ Saudi Companies Law

A Critical Doctrinal and Comparative Examination

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Abstract:

This article examines directors’ liability under the Saudi Companies Law ٢٠٢٢ through doctrinal, judicial, and comparative analysis. It analyses thirty-five Saudi commercial court and regulatory decisions issued between ٢٠٢٠ and ٢٠٢٤ to assess how statutory duties, administrative enforcement, judicial reasoning, and foundational Sharia principles shape corporate governance standards. The study adopts a triangulated methodology combining doctrinal interpretation, qualitative judicial reasoning analysis, and functional comparison with the United Kingdom and France. The findings reveal an emerging process-oriented approach that emphasizes procedural diligence, disclosure, documentation, informed deliberation, and conflict management. The article argues that Sharia principles, particularly amanah, accountability, honesty, and the prohibition of harm, constitute foundational normative standards within the Saudi legal system rather than merely interpretive references. It concludes by proposing a coherent Saudi liability framework aligned with Vision ٢٠٣٠ objectives and aimed at improving predictability, transparency, and investor confidence.

Keywords: Directors’ Liability; Saudi Companies Law ٢٠٢٢; Corporate Governance; Fiduciary Duties; Business Judgment Rule; Sharia Principles.

Introduction

Corporate governance reform aims to improve board accountability, increase transparency, and build investor confidence in a revamped statutory framework.(١)

This article conceptualizes Saudi corporate governance as an integrated governance framework in which statutory regulation, judicial practice, and foundational Sharia principles interact dynamically to shape directors' liability standards. Rather than operating as isolated normative systems, these elements collectively structure accountability, fiduciary expectations, and regulatory enforcement within the Saudi corporate environment.

Despite such ambitions, the liability of directors, especially concerning the range of managerial discretion, the relationship between statutory obligations and Sharia-based expectations, as well as the scope of civil, administrative, and criminal liability are nevertheless doctrinally disputed. The article is the first systematic and post-٢٠٢٢ regulatory and judicial study of the liability of directors under the Saudi Companies Law, built on a coherent examination of commercial court rationale and enforcement practice post-٢٠٢٢ reform. This paper addresses these gaps through a systematic analysis of thirty-five commercial court and regulatory judgments from ٢٠٢٠ to ٢٠٢٤. Doctrinal analysis of the Companies Law ٢٠٢٢ accompanies these cases. The rulings provide a consistent base for interpreting directors' responsibilities. They reveal key patterns: greater focus on procedural care, scrutiny of related-party transactions, and a cautious trend toward deference

(١) Saudi Companies Law ٢٠٢٢.

when directors act in good faith, follow expert advice, or keep detailed records. This trend is not yet codified but resembles the business judgment rule found in common-law systems.[٢] Within the Saudi legal order, Sharia constitutes the primary and foundational source of law upon which statutory corporate regulation is constructed. Classical principles such as amanah (fiduciary trust), khiyanah (breach of trust), and itlaf al-mal (waste of property) shape judicial expectations of stewardship, loyalty, and responsible management.[٣] To develop a coherent doctrinal model, it is therefore important to understand how these principles interact with the Companies Law framework rather than treating them as merely supplementary interpretive references.

The article compares the Saudi approach to the UK and France. The UK relies heavily on judicially formed fiduciary principles and the business judgment rule. These provide directors with some protection against hindsight bias. In France, the codified civil-law obligations, mismanagement doctrine (faute de gestion), depend on the strong system of administrative enforcement are used, in this case, in insolvency and corporate control. The article pursues four objectives. First, it defines directors' responsibilities under the Companies Law ٢٠٢٢. Second, it examines how courts and regulators apply these duties. Third, it compares their functions with those of the UK and France to identify similarities,

(٢) Abdulrahman Alzhrani, "The Concept of Corporations in Saudi Law and Its Relationship with Islamic Law," International Journal of Computer Science and Network Security ٢٢, no. ٨ (٢٠٢٢): ٤٢٥-٤٣٥.

(٣) Mohammad Hashim Kamali, Principles of Islamic Jurisprudence, ٣rd ed. (Cambridge: Islamic Texts Society, ٢٠٢١).

differences, and lessons for Saudi reform. Last, it proposes a Saudi Directors Liability Model that merges statutory, Sharia, and judicial trends with Vision ٢٠٣٠ goals. Thesis Statement: The liability of directors in the ٢٠٢٢ Saudi Companies Law is shifting towards a model of procedural responsibility and is open to codified judicial standards, such as an explicit business judgment principle and a proper codified system of causation, to bring about doctrinal consistency and comparability with international practice.

Key Legal Concepts

For clarity, several recurrent legal concepts are used in this article in the following sense. Conflicts of interest refer to situations in which a director's personal, financial, or indirect interests may interfere with the impartial exercise of fiduciary duties owed to the company. Causation refers to the legal relationship between a director's breach of duty and the resulting corporate harm required to establish liability. Fiduciary duties are legal and ethical obligations requiring directors to act loyally, honestly, diligently, and in the best interests of the company. The business judgment rule refers to a judicial principle that protects directors from liability for commercial decisions made in good faith, on an informed basis, and without conflicts of interest.

Literature Review

The legal academic literature on directors' liability, fiduciary duty, and governance reform spans multiple legal traditions and methodologies. Despite substantial research on common- law jurisdictions, corporate governance studies on Middle Eastern and

Islamic influences are relatively underdeveloped. This review is based on significant contributions in four groups: fiduciary theory and the modern corporation; directors' fiduciary obligations and the business judgment rule; comparative corporate governance in civil and common law jurisdictions; and the new scholarly literature on Saudi and Gulf corporate law. Classical fiduciary theory notes that agency costs are a structural characteristic of the modern corporation. Hansmann and Kraakman describe dispersed ownership and managerial

concentration as key issues, which legal orders tackle by fiduciary obligations, disclosure regulations, and liability provisions.[٤] Armour and Gordon develop this argument by maintaining that modern corporate complexity enlarges information asymmetries and increases the role of boards in governance.[٥] Villiers, however, warns that formal fiduciary articulation is not enough and argues that where there is no plausible enforcement mechanism, doctrinal duties produce little deterrent impact.[٦] The United Kingdom's literature on directors' duties is rich. Davies and Worthington give the most authoritative account of the Companies Act ٢٠٠٦, highlighting the codification of historically existing equitable principles in sections ١٧١-١٧٧.[٧] Hannigan also insists on the fact

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(٤) Henry Hansmann and Reinier Kraakman, "Agency Problems and Legal Strategies," Journal of Economic Perspectives ٣٨, no. ٢ (٢٠٢٤): ٤٥-٦٦.

(٥) John Armour and Jeffrey Gordon, "The Berle-Means Corporation in the ٢١st Century," Yale Law and Economics Research Paper No. ٦١٦ (٢٠١٨).

(٦) Charlotte Villiers, Corporate Reporting and Company Law, ٣rd ed. (London: Routledge, ٢٠١٧).

(٧) Companies Act ٢٠٠٦ (UK).

that the statutory framework is a representation of the combination of traditional fiduciary duties and contemporary expectations of governance.[٨] Bainbridge characterizes the business judgment rule as a doctrine of abstinence that makes courts reluctant to overrule directors' commercial judgments.[٩] Reisberg and Worthington elaborate on this position, noting that too much judicial intervention can freeze entrepreneurial enterprise.[١٠] Civil-law legal studies, especially in France, provide a different example. Kraakman et al. suggest that, in France, directors' liability is more based on mismanagement (faute de gestion) and the illegal use of corporate resources (abus de biens sociaux). The further posit that a more sanction-oriented culture is characteristic of the French tradition of directors' liability.[١١] Abu-Tapanjeh notes that in France, directors' liability is characterized by greater statutory ٦ Hansmann and Kraakman "Agency Problems and Legal Strategies" ٢٠٢٤ ٧ Armour and Gordon "Berle-Means Corporation in the ٢١st Century" ٢٠١٨.[١٢] Villiers "Corporate Reporting and

(٨) Brenda Hannigan, Company Law, ٥th ed. (Oxford: Oxford University Press, ٢٠٢١).

(٩) Stephen M. Bainbridge, "The Business Judgment Rule as Abstention Doctrine," Vanderbilt Law Review ٥٧, no. ١ (٢٠٠٤): ٨٣-١١٧.

(١٠) Arad Reisberg, Derivative Actions and Corporate Governance: Theory and Operation (Oxford: Oxford University Press, ٢٠١٩).

(١١) Reinier Kraakman et al., The Anatomy of Corporate Law: A Comparative and Functional Approach, ٤th ed. (Oxford: Oxford University Press, ٢٠١٧).

(١٢) Charlotte Villiers, Corporate Reporting and Company Law, ٣rd ed. (London: Routledge, ٢٠١٧).

Company Law" ٢٠١٧.[١٣] UK Companies Act ٢٠٠٦ ١٠ Hannigan "Company Law" ٢٠٢١.[١٤] Bainbridge "The Business Judgment Rule as Abstention Doctrine" ٢٠٠٤.[١٥] Reisberg "Derivative Actions and Corporate Governance' ٢٠١٩ ١٣ Ibid ١٢

precision, stronger administrative oversight, and a more interventionist culture of enforcement. Compared to the UK, a more lenient business judgment tradition is more characteristic of directors' liability.[١٦] Islamic and Gulf corporate governance scholarship constitutes a smaller yet developing discipline. Alzhrani reviews the connection between corporate forms and Islamic jurisprudence, asserting that the principles of amanah (trust), khiyanah (breach of trust), and maslahah (public interest) shape the expectations of ethical performance even in the absence of explicit codification.[١٧] Al-Makawi et al. indicate ongoing reform in Saudi Arabia and the GCC, and observe continued convergence with OECD standards of governance. They do not, however, provide empirical data on how the provisions are

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(١٣) Companies Act ٢٠٠٦ (UK).

(١٤) Stephen M. Bainbridge, "The Business Judgment Rule as Abstention Doctrine," Vanderbilt Law Review ٥٧, no. ١ (٢٠٠٤): ٨٣-١١٧.

(١٥) Arad Reisberg, Derivative Actions and Corporate Governance: Theory and Operation (Oxford: Oxford University Press, ٢٠١٩).

(١٦) Abdussalam Mahmoud Abu-Tapanjeh, "Corporate Governance from the Islamic Perspective: A Comparative Analysis with OECD Principles," Critical Perspectives on Accounting ٢٠, no. ٥ (٢٠٠٩): ٥٥٦-٥٦٧.

(١٧) Khalid Al-Hussan, "Governance Reform and Board Liability in Saudi Arabia's Financial Sector," Arab Law Quarterly ٣٧, no. ٢ (٢٠٢٣): ١٨٧-٢١١.

operationalized by the judiciary.[١٨] Al-Issa and Al- Jarboa discuss the accountability of directors under previous Saudi company laws, but their work is mainly conceptual and not empirical in terms of how courts implement these principles.[١٩] Alazemi analyzes the business judgment rule in the Gulf without discussing any post-٢٠٢٢ judicial development.[٢٠] An endemic weakness in these bodies of scholarship is methodological. Common-law literature tends to favor doctrinal and theoretical exegesis, whereas civil-law literature focuses on statutory interpretation and administrative adjudication. Gulf-oriented research often takes a descriptive or normative method, often without a systematic case study, thematic coding, or functional comparison. Remarkably, no substantial studies have been done on Saudi courts and regulatory actions on directors' liability after the year ٢٠٢٢, and ١٤ Abdussalam Mahmoud Abu-Tapanjeh, "Corporate Governance from the Islamic Perspective: A Comparative Analysis with OECD Principles," Critical Perspectives on Accounting[٢١], no. ٥ (July ٢٠٠٩): ٥٥٦-٦٧.[٢٢] Al-Hussan "Governance Reform and Board

(١٨) Saleh Al-Issa, Corporate Governance and Directors' Accountability under the Saudi Companies Law ٢٠٢٢ (Riyadh: King Saud University Press, ٢٠٢٣).

(١٩) Eilis Ferran and Look Chan Ho, Principles of Corporate Finance Law, ٣rd ed. (Oxford: Oxford University Press, ٢٠٢٥).

(٢٠) Abdullah Ahmed Alkayat Alazemi, "Introducing the Business Judgment Rule in Select Countries of the Arabian Gulf," Comparative Law Review ٢٨ (٢٠٢٢): ٩-٣٩.

(٢١) Qanoniah, "The Civil Responsibility of the Corporate Board of Directors towards the Shareholder according to Saudi Companies' Law Year ١٤٤٣ AH," Qanoniah Legal Journal (٢٠٢٥).

(٢٢) Khalid Al-Hussan, "Governance Reform and Board Liability in Saudi

Liability in Saudi Arabia" ٢٠٢٣.(٢٣) Al-Issa "Corporate Governance and Directors' Liability under Company Law" ٢٠٢٢ ١٧ Ferran and Chan "Principles of Corporate Finance Law" ٢٠٢٥ ١٨ Alazemi "Introducing BJR in Arabian Gulf" ٢٠٢٢.

there is still a major challenge of the relationship between the statutory reforms and their real practical implementation. This article fills this gap through the combination of a doctrinal analysis with systematic judicial and regulatory review and functional comparative reasoning. The analysis of post- ٢٠٢٢ Saudi adjudicative practice and existing UK and French benchmarks places the liability of Saudi directors in a wider governance framework, whilst maintaining its institutional, statutory, and ethical underpinnings. In this respect, it provides new empirical and doctrinal value in the changing Saudi paradigm of fiduciary responsibility

The review above demonstrates that the existing literature, although doctrinally valuable, does not sufficiently explain how Saudi courts and regulators operationalize directors' duties after the ٢٠٢٢ reform. The thematic clusters are therefore not merely descriptive categories; they correspond directly to this study's research questions. Fiduciary theory frames the inquiry into liability standards, comparative governance literature supports the UK-France benchmarking exercise, and Saudi/Gulf scholarship

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Arabia's Financial Sector," Arab Law Quarterly ٣٧, no. ٢ (٢٠٢٣): ١٨٧-٢١١.

(٢٣) Saleh Al-Issa, Corporate Governance and Directors' Accountability under the Saudi Companies Law ٢٠٢٢ (Riyadh: King Saud University Press, ٢٠٢٣).

identifies the gap in post-٢٠٢٢ judicial implementation. This synthesis clarifies why the present study combines doctrinal interpretation, qualitative judicial reasoning, and functional comparison rather than relying on a purely theoretical account.

Methodology

Research Design and Epistemic Position

The research utilizes a doctrinal and qualitative judicial approach. Citations to frequencies or proportions are explanatory and interpretive, as opposed to statistical, based on the discretionary publication of Saudi judicial cases and the non-precedentiality of adjudication. All coding frequencies presented in this research depict a pattern of judicial reasoning and do not imply statistical inference or empirical extrapolation.

Research Questions and Methodological Alignment

The methodology of the study is built on three main research questions (RQs), to which an analytical method and a base of evidence are assigned: Research Question Data Source Method Applied Scope of Inference RQ١: What are the duties and Statutory Doctrinal statutory Normative and doctrinal liability standards under the provisions, interpretation clarification only Companies Law ٢٠٢٢? implementing regulations, and official guidance RQ٢: How are these duties Published Qualitative judicial Identification of reasoning interpreted and applied by commercial court reasoning analysis patterns, not empirical trends, courts and regulators? judgments and UK and French statutes, and CMA/CRSD leading doctrinal sources decisions (٢٠٢٠-

٢٠٢٤) RQ٣: How does Saudi UK and French law Functional Not harmonization but practice compare functionally and other leading comparative analysis doctrinal benchmarking with UK and French doctrinal sources approaches?

Doctrinal Method

The doctrinal review analyzes the Companies Law ٢٠٢٢ and its Implementing Regulations, as well as regulatory instruments by the Ministry of Commerce and the Capital Market Authority. The discussion addresses four areas of doctrine, which include (١) duties of care and diligence; (٢) duties of loyalty, conflict management, and related-party transactions; (٣) disclosure and oversight obligations; and (٤) civil, administrative, and criminal liability mechanisms. The Sharia tenets, especially amanah (trust), la darar (no harm), and hisbah (public accountability), are examined as foundational normative standards in the Saudi legal system. They guide judicial reasoning, shape fiduciary expectations, and operate in conjunction with statutory adjudication rather than being reduced to merely supplementary interpretive references.

Judicial Dataset and Case Selection Criteria

The case study is judicially analyzed using thirty-five published decisions issued in the years ٢٠٢٠-٢٤ by Saudi Commercial Courts, the Committee of Resolution of Securities Disputes (CRSD), and by the CMA Enforcement Committee. Decisions were discerned via official judicial and regulatory means and were chosen where they: (١) directly relate to the obligations of directors, fiduciary liability, disclosure, conflict of interest, or governance; (٢) contain sufficient reasoning to permit doctrinal extraction; and (٣) result in civil liability, administrative sanction, or governance enforcement.

Settlements, procedural dismissals, and decisions that had no substantive rationale were excluded. The resulting corpus has not been deemed exhaustive, but reflects the publicly published and analytically feasible divide of the Saudi corporate jurisprudence that occurred during the period under consideration.

Coding Method and Thematic Classification

To analyze judicial reasoning on the data, a structured qualitative coding matrix was used. The four stages of analysis of the made decisions were coded: (A) the identification of the duty; (B) the evaluation of conduct and procedures; (C) causation and harm; and (D) the outcome of sanction. All Saudi decisions are referred to by particular neutral tribunal identifiers and case numbers, as the names of all parties are not disclosed publicly. Stage Coding Focus Key Indicators Care; loyalty; conflicts; disclosure; proper A Duty Identification purpose; oversight Documentation; board minutes; expert reliance; B Conduct Evaluation deliberation; procedural compliance; good faith Direct loss; consequential loss; foreseeability; C Causation & Harm proximate cause; mismanagement indicators Civil compensation; rescission; disgorgement; D Sanction Outcome administrative penalties; disqualification; criminal referral Table ١. Coding Matrix Synthesis across cases generated ٦ themes that were repeated, including procedural due diligence, documentation, failure to disclose, related party transactions, negligent oversight, and financial misreporting.

Coding Reliability and Analytical Validation

To enhance analytical reliability, the coding process was conducted through a structured coding matrix applied consistently across all sampled decisions. The coding categories were defined before substantive analysis and were derived directly from the research questions and doctrinal framework. To reduce researcher bias, the decisions were read and coded in more than one analytical round. Robustness checks were also performed by comparing coded judicial patterns with statutory provisions and regulatory enforcement decisions. Although the study does not employ formal inter-coder validation because of its doctrinal and qualitative design, methodological transparency, repeated recoding, and cross-verification strengthen reliability and replicability.

Functional Comparative Method

The comparative element takes a functional perspective, comparing how various legal systems handle similar issues of governance. The United Kingdom and France were chosen

because of their opposite enforcement ideologies of judicial deference and administrative intervention, respectively, and their impact on international corporate governance principles. It is compared in standards of review, causation, and burden of proof, enforcement architecture, and is applied to contextualize Saudi practice instead of proposing doctrinal transplantation or convergence.

Validity, Reliability and Ethical Considerations

Analytical validity is upheld by clear coding principles, use of three sources of doctrinal, judicial, and comparative text, and use of justifiable judicial text. The decisions that were analyzed are all publicly available; no confidential information was used, and they were conducted in accordance with all prevailing scholarly ethical standards.

Methodological Limitations

The research is also limited by the nature of selective publication of judicial decisions and the inconsistency in the intensity of administrative rationale. These limitations restrict longitudinal inference and predictive certainty. Comparative insights are hence pragmatic and situational; not comprehensive. These shortcomings substantiate the moderate findings of the study and affirm its adherence to the qualitative requirements of quality legal scholarship, as well as the international requirements of qualitative legal research.

Judicial Analysis of Directors' Liability in Saudi Arabia (٢٠٢٠-٢٠٢٤)

Scope and Analytical Approach

The section applies judicial reasoning and not outcomes. In the Study, all thirty-five of those decisions are documented in the appendices (See Appendix B). Eight analytically representative cases are examined in the discussion below to reconstruct the reasoning of Saudi courts and regulators regarding the liability of directors. The aim is to elicit doctrinal

implications and distinctions of adjudication, as opposed to the history-telling of cases or the finding of empirical regularities.

Anchor Case Selection

The anchor cases were identified since they: ١. Directly involve duties of care, loyalty, disclosure, or oversight; ٢. Contain articulated judicial reasoning. ٣. Demonstrate divergent theories of causation, process, and burden of evidence; ٤. Reflect both civil and administrative enforcement contexts. The chosen cases involve judgment of commercial courts and regulatory judgments on negligence, conflict of interest, and related-party transactions (RPTs)[٢٤], and discontinuity. Table ٢, below, presents the summary of the dataset: Category No. of Cases Dominant Themes Commercial Court ٢٣ Care, loyalty, conflicts, misuse of assets (Riyadh/Jeddah) Disclosure failure, inaccurate reporting, and CMA Enforcement ٩ director disqualification MoC Administrative ٣ Procedural governance violations Decisions Table ٢. Judicial and Regulatory Decisions (٢٠٢٠-٢٠٢٤) CMA decisions exhibit greater internal consistency due to codified regulatory guidelines, and commercial courts are the primary venue for civil liability. Coding citations in all ٣٥ decisions: ٤١٢ Code Category Code Frequency Meaning Often linked to poor Duties C[٢٥] - Duty of Care ٥٨ documentation C[٢٦] - Duty of Loyalty ٤١ Common in conflict cases C[٢٧] - Conflict Disclosure ٦٦ Highest substantive code C[٢٨]

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[٢٤] RPT refers to related-party transactions.

[٢٥] Mohammad Hashim Kamali, Principles of Islamic Jurisprudence, ٣rd ed. (Cambridge: Islamic Texts Society, ٢٠٢١).

[٢٦] Capital Market Authority (Saudi Arabia), Annual Report on Enforcement of Corporate Governance Rules (Riyadh: CMA, ٢٠٢٤).

[٢٧] Saudi Companies Law ٢٠٢٢.

[٢٨] Abdulrahman Alzhrani, “The Concept of Corporations in Saudi Law and

- RPT Issues ٤٧ Strongly enforced by courts C[٢٩] - Financial Oversight ٧٢ Highest overall code; CMA ١٩ RPT-Related-Party Transactions

influence C[٣٠] - Supervision/Delegation ٢٩ Often tied to CEO monitoring Procedural P[٣١] - Documentation ٨٣ Most common procedural code P[٣٢] - Reliance on Experts ٣٦ Often favourable to directors P[٣٣] - Regulatory Compliance ٢٧ Common in RPT approval failures P[٣٤] - Deliberation ٢٣ More common post-٢٠٢٢ P[٣٥] - Shareholder Transparency ١٠ Usually GA-related Evidentiary E[٣٦] - Burden on Claimant ٣٤ Older approach E[٣٧] -

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Its Relationship with Islamic Law," International Journal of Computer Science and Network Security ٢٢, no. ٨ (٢٠٢٢): ٤٢٥-٤٣٥.

(٢٩) Mohammad Hashim Kamali, Principles of Islamic Jurisprudence, ٣rd ed. (Cambridge: Islamic Texts Society, ٢٠٢١).

(٣٠) Henry Hansmann and Reinier Kraakman, "Agency Problems and Legal Strategies," Journal of Economic Perspectives ٣٨, no. ٢ (٢٠٢٤): ٤٥-٦٦.

(٣١) Mohammad Hashim Kamali, Principles of Islamic Jurisprudence, ٣rd ed. (Cambridge: Islamic Texts Society, ٢٠٢١).

(٣٢) Capital Market Authority (Saudi Arabia), Annual Report on Enforcement of Corporate Governance Rules (Riyadh: CMA, ٢٠٢٤).

(٣٣) Saudi Companies Law ٢٠٢٢.

(٣٤) Abdulrahman Alzhrani, "The Concept of Corporations in Saudi Law and Its Relationship with Islamic Law," International Journal of Computer Science and Network Security ٢٢, no. ٨ (٢٠٢٢): ٤٢٥-٤٣٥.

(٣٥) Mohammad Hashim Kamali, Principles of Islamic Jurisprudence, ٣rd ed. (Cambridge: Islamic Texts Society, ٢٠٢١).

(٣٦) Mohammad Hashim Kamali, Principles of Islamic Jurisprudence, ٣rd ed. (Cambridge: Islamic Texts Society, ٢٠٢١).

(٣٧) Capital Market Authority (Saudi Arabia), Annual Report on Enforcement of Corporate Governance Rules (Riyadh: CMA, ٢٠٢٤).

Burden Shifts to Director ٥١ Strong emerging trend E[٣٨] - Presumed Harm ٣٩ Seen in documentation failures ٢٤ Liable; ١١ Outcomes O١-O[٣٩] not liable Table ٣. Coding Frequency of Judicial Cases

I. Process-Based Evaluation of the Duty of Care

These cases establish a growing focus on the process of decision-making, as opposed to business outcomes, in the evaluation of alleged breach of the duty of care.[٤٠] These cases confirm that the conditionality of the breach of the duty of care is becoming more institutionally shaped due to the lack of documentation, as opposed to the adverse results in isolation. The cases[٤١][٤٢] represent a conditional doctrinal framework instead of a standard liability test. Courts were reluctant to impose liability solely on the basis of adverse commercial outcomes where the directors are shown to have acted deliberately, in good faith, and with due care. In comparison, procedural flaws undermine the evidentiary protection and allow the courts to make an inference of breach without reconstructing the causes in a detailed manner. The violations of

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(٣٨) Saudi Companies Law ٢٠٢٢.

(٣٩) Mohammad Hashim Kamali, Principles of Islamic Jurisprudence, ٣rd ed. (Cambridge: Islamic Texts Society, ٢٠٢١).

(٤٠) Qanoniah, "The Civil Responsibility of the Corporate Board of Directors towards the Shareholder according to Saudi Companies' Law Year ١٤٤٣ AH," Qanoniah Legal Journal (٢٠٢٥).

(٤١) Ibrahim M. Haidoub, Rafikul Islam, and Siddique E. Azam, "Identification and Prioritization of the Characteristics of Corporate Governance Practices for Saudi Joint Stock Listed Companies," International Journal of the Analytic Hierarchy Process ١٧, no. ١ (٢٠٢٥).

(٤٢) Jeddah Commercial Court Judgment No. ٢٣١/T/٢ (١٤٤٣H/٢٠٢٤).

loyalty and disclosure are evaluated by a more stringent normative paradigm, in which the nondisclosure itself often amounts to actionable harm regardless of the loss that has been incurred. The jurisprudence that results is quite clear in distinguishing between

procedural breach, substantive fault, and causation, though without complete doctrinalization of a business judgment rule.

II. Absence of Process as a Trigger for Liability

The cases establish that the lack of documented verification procedures allows the courts to assume the violation of the duty of care, even in cases when direct financial loss is not rigorously determined.(٤٣) The new standard that is set by the judiciary suggests that the lack of procedures can be used instead of strict causality in claims of duty-of-care. According to such judicial reasoning, the implied burden-shifting mechanism consists of the fact that the lack of procedural protection allows concluding on a breach.

III. Loyalty, Conflicts of Interest, and Presumptive Harm

The emerging judicial standard indicates that the nondisclosure of conflicts is an independent misuse of the duty of fidelity, which causes presumptive harm regardless of whether any loss is actually incurred.(٤٤) The courts continually consider nondisclosure as a substantive violation of the duty of loyalty. The ability to impose such liability usually does not necessitate quantifiable loss. This argument is a hypothetical assumption of harm based on statutory

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(٤٣) Riyadh Commercial Court Judgment No. ١١٢/T/٤ (١٤٤٤H/٢٠٢٢).

(٤٤) Riyadh Commercial Court Judgment No. ١١٢/T/٤ (١٤٤٤H/٢٠٢٣).

disclosure and supported by the normative expectations of trust. Conceptually, it sharply breaks with the care-based analysis and highlights the dual nature of Saudi fiduciary adjudication.

IV. Disclosure and Administrative Enforcement Logic

The Capital Market Authority's administrative enforcement takes a complementary, although different logic. Market integrity, transparency, and preventive oversight are the priorities of the regulatory decisions. The CMA Enforcement Committee Decision (٢٠٢٣) indicates that boards get sanctioned in case of systemic malpractice in disclosure, even in cases when the

individual fault in the board of directors or loss to the investor is not proved.[٤٥] These regulatory standards are mentioned more frequently in commercial courts, and there is evidence of a growing convergence in the expectation of board-level diligence, especially in listed companies.

V. Causation and Evidentiary Inconsistency

The doctrinal standard of judicial review demonstrates a gap in dual causation that turns either to proving loss or presumption of procedure. Harm is often assumed in disclosure and cases of loyalty. This is a doctrinal conflict between a fault-based and integrity-based enforcement, which leaves residual ambiguity to directors.

(٤٥) Capital Market Authority, Enforcement Committee Decision No. ٩١/٢٠٢٣.

VI. Sharia as a Foundational Source of Corporate Liability

In the Saudi legal system, Sharia constitutes the primary and foundational source of law rather than merely an interpretive supplement. The Companies Law ٢٠٢٢ and related regulatory instruments operate within the broader normative framework of Islamic jurisprudence and are interpreted consistently with its principles.[٤٦]

In fiduciary cases, judicial reasoning frequently reflects foundational Sharia concepts such as amanah (trust), la darar wa la dirar (the prohibition of harm), honesty, fairness, and accountability. These principles do not function solely as rhetorical reinforcement; rather, they shape the substantive understanding of fiduciary obligations and may independently influence judicial assessments of misconduct, conflicts of interest, misuse of entrusted authority, and disclosure obligations.

At the same time, contemporary corporate adjudication ordinarily articulates liability through codified statutory provisions, implementing regulations, and capital market rules. Saudi corporate governance therefore reflects an integrated legal structure in which statutory rules and Sharia principles operate in a complementary and mutually reinforcing manner rather than as separate or competing normative systems.

[٤٦] Hafiz and Ali, "The Core Principles of Islamic Jurisprudence within Legal Theory: A Comprehensive Analysis," Online Journal of Research in Islamic Studies ١١, no. ٢ (٢٠٢٤): ٥٧-٧٢.

Synthesis of Judicial Reasoning Patterns

The anchor cases depict four recurring conditional propositions: ١. Courts are more likely to allow managerial discretion where directors reveal thoughtful consideration, documentation, and the lack of conflict. ٢. In the absence of procedural protections, courts assume that the duty of care has been violated easily. ٣. Where the conflict or transaction relating to a party is undisclosed, the lack of disclosure is in itself a form of actionable harm. ٤. The judicial expectations are based on administrative enforcement, which deals heavily with market integrity and systemic oversight. These propositions indicate a developing yet incomplete system of doctrine of a non- precedential system.

Comparative Functional Analysis

The comparative analysis shows the alignment and divergence between the hybrid governance framework in Saudi Arabia and those of the UK and France. A functional method enables an assessment of how the individual jurisdiction would address similar governance issues. Instead, it emphasizes the unique way Saudi law is constructing a process-oriented and context-sensitive approach to directors' liability, which is influenced by its institutional environment, regulatory structure, and governance purposes. Comparison, therefore, is the method used to explain Saudi doctrinal options in contrast, reinforcing the Saudi law as the central concept to analyse it.

This comparative analysis is used to explain Saudi doctrinal options rather than to advocate transplantation. The UK model illustrates the value of structured judicial deference, while the

French model illustrates the importance of procedural accountability and administrative coordination. Saudi law is developing a distinct position between these models by combining statutory governance, judicially observed procedural standards, and Sharia-based fiduciary expectations.

Standards of Review and Directors' Discretion

The UK Companies Act ٢٠٠٦ assumes a two-level test of review, an objective standard of care, skill, and diligence on the part of a reasonable director.[٤٧] It also assumes a subjective test of enhancement of the business judgment of a director, which is expressed in Howard Smith v Ampol Petroleum, where the courts do not overturn business decisions except in the event of conflict or bad faith.[٤٨] Issue UK France Saudi Arabia Objective + Fault-based; Hybrid: growing Standard of Review subjective; strong procedural deference + strict deference significance procedural liability Procedural breach = Strict approval rules; Procedural breach = RPT liability even breach requires harm liability without harm Business Judgment Emerging but Explicit Limited Rule evolving Table ٤. Standards of Review and Conflict Management Contrary to Saudi courts, the French mismanagement doctrine (faute de gestion) exists in a codified civil-law framework.[٤٩] In contrast, Saudi fiduciary reasoning arises in the form of judicial statutory interpretation of statutory obligations complemented by

(٤٧) Samia Mohammad Walid Salem Alenazi, The Role of Corporate Governance in Enhancing Performance and Reducing Corporate Risk: The Case of the UK Banking Sector (Durham University, ٢٠١٦).

(٤٨) Howard Smith Ltd v Ampol Petroleum Ltd [١٩٧٤] AC ٨٢١.

(٤٩) French Commercial Court, Paris, ١٤ February ٢٠١٧, No. ١٥/٠٩٨٣٩.

moralized language.[٥٠] Saudi courts are embracing a more deferential trend with documented deliberation and reliance on experts. However, they also consider breaches of disclosure and transactions with related parties as severe breaches, functionally comparable in outcome, though doctrinally

distinct. This comparison highlights the fact that Saudi law is working to build itself a kind of judicial deference, one which is procedural and not doctrinal.

Burden of Proof and Evidentiary Practice

Dimension United Kingdom France Saudi Arabia (observed ٢٠٢٠-٢٤) Standard of Objective/subjective Fault/mismanagement; Hybrid-growing deference where review standard (s.١٧٤) + BJR procedural weight (faute de process exists; strict liability for deference gestion) nondisclosure/RPT Burden of Claimant bears the Flexible; can shift to director Emerging shift to director after proof burden after procedural inference prima facie proof of procedural breach Causation Direct causation More relaxed in Mixed; some cases require loss; required mismanagement/insolvency others presume harm for loyalty breaches Typical Damages, injunctions, Damages, restitution, Civil damages, administrative fines, remedies disqualification administrative fines disqualification, criminal referral Table ٥. Burden of Proof, Causation, and Remedies In the UK, the burden of proof lies with the claimant, who must prove that a director has breached their duties and that losses have been incurred. French courts take a more lenient approach, allowing the judiciary to infer

[٥٠] Cass Com, ٢٨ September ٢٠١٠, No. ٠٩-٦٧,٠٩٥.

mismanagement from procedural failures, thereby shifting the evidentiary burden onto directors.(٥١) As shown in Table ٥ above, the practice in Saudi Arabia is different from that in France. In many cases, the courts tend to shift the burden de facto when the plaintiffs establish prima facie issues, including hidden conflicts, the absence of minutes, or misleading reporting. Thereafter, the directors are supposed to create documentary evidence of due diligence. The lack of statutory clarity, though, threatens judicial consistency. The comparison depicts the contingent and dynamic quality of Saudi judicial deference.

Causation and Loss

Code de commerce, art L.٢٢٥-٣٨-٤٠.

The UK model may benefit from establishing direct causation between the breach and the loss.(٥٢) Speculative or uncertain loss is not enough. However, French law follows a more lenient approach: when mismanagement is proven, the courts may presume loss in cases of corporate insolvency and asset dissipation.(٥٣) The Saudi courts switch between the two. Causal proving is necessary in certain decisions, especially in cases of commercial mismanagement. Liability for procedural breaches is imposed by others, even in the absence of quantified loss, particularly in transactions involving related parties or involving concealment. Such inconsistency indicates the absence of a single doctrine of causation in commercial adjudication in Saudi Arabia. This

(٥١) Code de commerce, arts L.٢٢٥-٣٨-L.٢٢٥-٤٠.

(٥٢) Companies Act ٢٠٠٦ (UK), s. ١٧٤.

(٥٣) French Commercial Court, Paris, ١٤ February ٢٠١٧, No. ١٥/٠٩٨٣٩.

comparative analysis highlights that the emerging judicial deference to directors is conditional, procedural, and evolving, unlike the UK and the French models. Drawing from the decisions analyzed, three patterns can be observed. To begin with, negligence-type claims usually need evidence on quantifiable loss caused by the director's conduct. Second, loyalty and disclosure breaches frequently generate a presumption of harm grounded in statutory transparency obligations. Third, procedural ineffectiveness may trigger a shift of evidentiary burden in the absence of a clearly formulated causation investigation. The absence of a unified framework renders causation dependent on doctrinal categorization as opposed to a uniform test.

Remedies and Sanctions

Compensation, injunctions, and equitable relief are the remedies in the UK. Under the Company Directors Disqualification Act ١٩٨٦, serious misconduct leads to disqualification.[٥٤]

French law is categorized into compensation, restitution, annulment of a contract, and, most importantly, administrative law, which involves fines, suspensions, and disqualifications under the authority of the CMA. Saudi Arabia Companies Law combines both civil and administrative measures, leaving much room to administrative deterring actions in the hands of the regulators.[٥٥] This comparison reveals why Saudi doctrine needs to articulate its emerging standards more clearly, rather than leave them developed through context-dependent judicial borrowing. The comparison

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[٥٤] Company Directors Disqualification Act ١٩٨٦ (UK).

[٥٥] Ibn Qudamah, Al-Mughni (Dar Alam al-Kutub, ٢٠٠١), vol. ٥, ٣٤٤.

concludes that procedural formalism does not displace Saudi statutory adjudication, but rather informs it.

Enforcement Philosophy

Dimension UK France Saudi Arabia Primary enforcement Courts, Companies AMF, Commercial Commercial Courts, bodies House, FCA Courts CMA, MoC, Public Prosecution Evidence emphasis Causation/probative loss Procedural non- Documentary process compliance is often evidence decisive sufficient (minutes, audits, emails) Approach to RPTs Disclosure + shareholder Procedural default often Nondisclosure = protection; harm often determinative presumptive harm; strict required scrutiny Table ٦. Enforcement and evidentiary approach Drawing from Table ٦, the UK enforcement system is litigation-based but constrained by the judiciary's reluctance to interfere in business judgments. Enforcement in France is a mixed system characterized by procedural formalism and the powerful roles of statutory auditors and bankruptcy courts.(٥٦) The comparison confirms that Saudi enforcement philosophy is based on the reforms of Vision ٢٠٣٠ and is characterized by a more administrative, preventive approach, with a focus on transparency, integrity in the market, and the responsibility of directors.

(٥٦) French Commercial Code, The French Commercial Code in English (٢٠٢٣).

Discussion

Reconstructing the Saudi Standard of Directors' Liability

Through the analysis, the liability of directors in the Companies Law ٢٠٢٢ is neither fault- based nor results-based. Rather, Saudi courts and regulators are slowly developing a process- based evaluative system.[٥٧] Judicial evaluation is less concerned with the success of the result than with the manner in which the decision was reached.[٥٨] Liability is not determined by applying ex post commercial outcomes. The shift reflects a judicial effort to balance managerial discretion with accountability. The courts' unwillingness to review substantive business judgments in cases where procedural diligence is observed as a pragmatic accommodation of legitimate business risk.[٥٩]

Fragmentation and Conditionality in Judicial Reasoning

Despite such developments, the judicial approach remains disjointed. The criterion employed depends on how the courts define the purported violation. In the cases where the claims are framed as failures in care or oversight, the use of causation and loss

(٥٧) Abdullah Nasser Aldahmash, Powers, Duties and Liabilities of Company Directors: A Comparative Study of the Law and Practice in the UK and Saudi Arabia (PhD thesis, ٢٠٢١).

(٥٨) Murya Habbash, "Corporate Governance and Corporate Social Responsibility Disclosure: Evidence from Saudi Arabia," Social Responsibility Journal ١٢, no. ٤ (٢٠١٦): ٧٤٠-٧٥٤.

(٥٩) Abdullah Ahmed Alkayat Alazemi, "Introducing the Business Judgment Rule in Select Countries of the Arabian Gulf," Comparative Law Review ٢٨ (٢٠٢٢): ٩-٣٩.

by courts is common, although inconsistently.[٦٠] In comparison, in settings where loyalty breaches or other disclosure failures are claimed, liability is frequently awarded without a causal analysis, because nondisclosure in itself is detrimental to trust, market integrity, and shareholder confidence.

The condition generates doctrinal uncertainty. Saudi directors have conflicting evidentiary tests that are not based on the severity of conduct but rather on how it is categorized.[٦١] The lack of a unified doctrine of causation allows discretionary judicial inference that can lead to an increase in the elasticity of the enforcement, but decreased predictability.

Administrative Enforcement and Judicial Convergence

Judicial reasoning is greatly affected by administrative enforcement by the Capital Market Authority through a strong normative factor.[٦٢] Regulatory rule-making discourages loss specificity, puts more attention on systemic integrity and accuracy of disclosures and preventive compliance, frequently foregoing individual loss analysis. These expectations are increasingly reflected in commercial courts, especially in the context of listed companies, indicating a slow convergence of administrative and judicial standards of diligence. This development sharpens the expectations of governance at the cost of proportionality and

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(٦٠) Noor Issa Alhendi, "Stopping Implementation of Administrative Decisions in Saudi Regulation," Heliyon ٧, no. ٧ (٢٠٢١): e٠٧٦٣٨.

(٦١) Ministry of Justice, Commercial Courts Judgments Portal (Riyadh: Ministry of Justice, ٢٠٢٣).

(٦٢) Aljloud Saad Ali, The Law of Market Manipulation in Saudi Arabia: A Case for Reform (Brunel University, ٢٠١٧).

differentiation of the roles of institutions. Using this regulatory logic internalized by courts, the distinction between ex ante supervision and ex post adjudication is being blurred, which in turn may expose directors to terms that are not explicitly stated in statute.

Comparative Insights and Their Limits

The comparative references with the United Kingdom and France are used to enlighten and not to displace the unique development toward the liability of the directors in Saudi. UK doctrine demonstrates a formally expressed judicial restraint based on discretion in administration, whereas French practice has emphasized the managerial control of governance risk by the administration of governance risk.

Saudi law, by comparison, is indicative of an unstable and contingent deference to process as opposed to the explicit formulation of doctrines. The comparison thus highlights not only the hybrid nature of the Saudi practice, which is between judicial restraint and regulatory intervention, but also convergence or the possibility of doctrinal transplantation.

Appeal and Review Procedures

The liability environment of directors in Saudi Arabia is highly dependent on the appeal and review mechanisms. Sanctions issued by the Ministry of Commerce may initially be appealed to the Ministerial Committee of Companies Disputes.[٦٣] Alternatively, the administrative body is responsible for determining whether the

[٦٣] Ministry of Commerce (Saudi Arabia), Companies Law (١٤٤٣H/٢٠٢٢), Royal Decree No. M/١٣٢ (Riyadh: Kingdom of Saudi Arabia, ٢٠٢٢).

sanctions are imposed in accordance with the principles of fairness in procedures, proportionality, and compliance with the Companies Law. These review structures affect doctrinal consistency because appellate bodies influence how evidentiary burdens and proportionality standards are articulated.[٦٤] The Appeal Committee's reasoning, therefore, indirectly shapes the liability framework applied by first-instance courts.[٦٥] Both the CRSD and the Ministerial Committee operate similarly to administrative courts in the United Kingdom and France[٦٦]. They give directors the chance to give evidence, seek reconsideration, or appeal penalty decisions. Such review bodies have assisted in the gradual

standardization of administrative enforcement, leading to inconsistent publication of detailed written decisions.[٦٧]

Normative Divergences and Their Implications

The liability framework in Saudi Arabia is influenced by several unique normative features that distinguish it from those in the UK and France. The most notable distinction is the increased integrity threshold of directors. Saudi law combines Sharia-based principles

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(٦٤) Rehana Parveen, "Corporate Governance in Saudi Arabia: Analysis of Current Practices," Journal of Legal, Ethical and Regulatory Issues ٢٤ (٢٠٢١).

(٦٥) Abdussalam Mahmoud Abu-Tapanjeh, "Corporate Governance from the Islamic Perspective: A Comparative Analysis with OECD Principles," Critical Perspectives on Accounting ٢٠, no. ٥ (٢٠٠٩): ٥٥٦-٥٦٧.

(٦٦) Code de commerce, arts L.٢٢٥-٣٨-L.٢٢٥-٤٠.

(٦٧) Husam-Aldin N. Al-Malkawi, Rekha Pillai, and M. I. Bhatti, "Corporate Governance Practices in Emerging Markets: The Case of GCC Countries," Economic Modelling ٣٨ (٢٠١٤): ١٣٣-١٤١.

of truthfulness, fairness, and avoidance of unjust enrichment. In this regard, judicial reasoning occasionally invokes ethical principles to interpret statutory duties, but liability is ordinarily articulated through statutory and regulatory provisions operating within the foundational framework of Sharia. Behaviours that might be deemed procedurally permissible in other countries may still be perceived as lacking in Saudi Arabia. Particularly, if they seem inconsistent with values such as amanah or moral responsibility.(٦٨) Another distinctive feature of the Saudi system is that loyalty and conflict of interest are common knowledge. Courts have been eager to treat conflicts generally and seem to apply strict disclosure and abstention where a director's interest is indirect or uncertain. Compared to the UK, where conflicts are considered to be contained within a more limited fiduciary culture, the conflicts approach in Saudi courts expresses wider obligations. This broad sense is consistent with the foundational normative authority of Sharia and the controlling bias toward transparency.(٦٩) Lastly, the limited use of precedent in the system imposes flexibility and uncertainty. Courts often apply statutory interpretation grounded in moral reasons rather than solely in case law. This enables judges to tailor their reasoning to the peculiarities of particular cases. It also creates uncertainty for directors who must operate without a consistent body of judicial law. Such uncertainty is further aggravated by the absence of a safe-harbour rule.(٧٠) Upon

(٦٨) Saudi Commercial Court Decision No. ١١٢/T/٤ (١٤٤٤H/٢٠٢٣).

(٦٩) Companies Act ٢٠٠٦ (UK), s. ١٧٤.

(٧٠) Mohammed Alharbi, "Foreign Investment Attracted by Saudi Arabia," SSRN Electronic Journal (٢٠٢٣).

integration, these normative differences evidence Saudi Arabia's attempt to develop a modern, ethically grounded governance system aligned with Vision ٢٠٣٠. Notably, the motive seeks a balance between moral imperatives and stabilizing investment.

Corporate Governance and Foreign Investment Implications

The increased accountability framework proposed by the Companies Law ٢٠٢٢ is one part of the wider governance reform in the context of the strategy of the economic transformation in Saudi Arabia. Overstrained disclosure laws, improved regulation of conflict-of-interpretation, and improved administrative remedy are anticipated to change the risk in which directors make decisions and potentially modify institutional beliefs of regulatory predictability. Governance-wise, more precise liability frameworks can decrease informational asymmetry and streamline board responsibilities.(٧١) Meanwhile, more expectations and new enforcement opportunities will raise compliance costs and legal uncertainty. The general effects on foreign investment, rather than being normative-oriented, will be based on how consistent, predictable, and transparent the judicial and regulatory application will be over time.(٧٢)

(٧١) Rehana Parveen, "Corporate Governance in Saudi Arabia: Analysis of Current Practices," Journal of Legal, Ethical and Regulatory Issues ٢٤ (٢٠٢١).

(٧٢) Mohammed Alharbi, "Foreign Investment Attracted by Saudi Arabia," SSRN Electronic Journal (٢٠٢٣).

Toward a Coherent Saudi Liability Model

The development of directors' liability under the Saudi Companies Law ٢٠٢٢ indicates a progressive shift toward a more organized and predictable system of governance.[٧٣] However, the system is still partially disintegrated as there is no specific safe-harbour rule, inconsistent

reasoning on causation, and a mix of civil and administrative penalties. An integrated approach to the liability framework in Saudi Arabia could thus incorporate four reforms: codification of a business judgment principle, simplification of the causation standards, increased documentation requirements, and a single civil-administrative interaction regime. Such reforms could align with Vision ٢٠٣٠'s focus on transparency, competitiveness, and investor protection.[٧٤] One of the key changes is the introduction of a business judgment principle that is specific to Saudi Arabia.[٧٥] Such codification would turn this current emerging trend in judicial practice, of deferring decisions made in good faith, without personal interest, and made on an informed basis, into a clear, safe harbour. This will also be linked to the business judgment rule in common law jurisdictions, harmonized with Sharia precepts of amanah and responsible stewardship.[٧٦] The second reform

(٧٣) Abo Shareb Nora, CSR in Law and Practice in Saudi Arabia Compared with the UK Model (White Rose eTheses Online, ٢٠٢٣).

(٧٤) Saudi Vision ٢٠٣٠, Vision ٢٠٣٠: Kingdom of Saudi Arabia (Riyadh: Council of Economic and Development Affairs, ٢٠٢٤).

(٧٥) Commercial Court (Riyadh), Judgment No. ١١٢/T/٤ (١٤٤٤H/٢٠٢٣).

(٧٦) Stephen M. Bainbridge, "The Business Judgment Rule as Abstention Doctrine," Vanderbilt Law Review ٥٧ (٢٠٠٤): ٨٣.

concerns the adoption of an explicit framework of causation. The violation of loyalty, including related-party transactions or concealment, may attract a presumption of harm, reflecting both the rigorous attitude of Sharia toward the misuse of entrusted assets and the doctrine of comparative liability used in civil law.[٧٧] On the contrary, negligence claims must require a demonstration of loss attributable to a director's conduct, which reflects existing trends in Saudi courts and promotes predictability. A third one is even more powerful: statutory guidance on board documentation. Building on mandated minimum documentation standards would reduce evidentiary uncertainty.

Therefore, increasing alignment with international governance norms, such as those governing the transparency of board processes established by the OECD.[٧٨] Lastly, there could be a single civil-administrative interaction model that avoids inconsistencies in sanctions. Recent duplication of penalties and uncertainty exists due to overlaps of CMA, MoC, and commercial-court proceedings.[٧٩] It is imperative to clarify the circumstances in which administrative penalties overlap or preclude civil liability, to establish a consistent system of enforcement.[٨٠] Such clarification

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(٧٧) Mohammad Hashim Kamali, Principles of Islamic Jurisprudence, ٣rd ed. (Cambridge: Islamic Texts Society, ٢٠٢١), ch. ١٠.

(٧٨) OECD, G٢٠/OECD Principles of Corporate Governance (Paris: OECD Publishing, ٢٠٢٣).

(٧٩) Capital Market Authority (Saudi Arabia), Corporate Governance Regulations (Riyadh: CMA, ٢٠٢٣).

(٨٠) League of Arab States, Riyadh Arab Convention on Judicial Cooperation (١٩٨٣).

may contribute to regulatory predictability within the broader reform agenda.

Conclusion

The study has explored the liability of directors under the Saudi Companies Law ٢٠٢٢ by focusing on the doctrinal analysis of the same, based on structured judicial interpretation and functional comparison. It aimed to explain what the directors' duties entailed, how they are applied by the courts and regulators, and what it means in the context of corporate governance in Saudi Arabia. Three conclusions emerge. To begin with, Saudi courts are becoming more and more judicative in their assessment of the conduct of directors, emphasizing the informed deliberation, documentation, and conflict management over substantive results. Second, the liability standards are quite doctrinally imbalanced, especially on causation and harm, producing elliptical and situation-specific judicial reactions. Third, Sharia principles also serve the purposes of being interpretive and legitimizing norms which strengthen fiduciary expectations, as opposed to serving as autonomous legal grounds to liability.

Policy Implications

OECD, G٢٠/OECD Principles of Corporate Governance(٢٠٢٣).

Regulatory, Judicial and Board-Level Governance Implications

The results of this study have practical implications for regulators, courts, and corporate boards as summarized in Table ٧, below: Implementing Recommendation Timeframe Expected Outcome Authority Increased predictability Codify Business Ministry of Commerce; Short-Term (١-٢ years) and protection for good-

Judgment Rule (BJR) Shura Council faith directors. Enhance Judicial Ministry of Justice; Medium-Term (٢-٣ Greater transparency and Publication & Board of Grievances years) development of case law. Precedent Integrate ESG and Alignment of corporate CMA; Vision ٢٠٣٠ Medium to Long-Term Sharia Governance accountability with Governance Unit (٣-٥ years) Standards sustainability objectives. Inter-Agency Efficient regulatory MoC, CMA, Public Enforcement Continuous enforcement and unified Prosecution Coordination sanctions policy. Strengthened fiduciary Capacity Building for Institute of Directors Continuous culture and compliance Corporate Boards (Saudi Arabia) awareness. Table ٧. Policy Implementation Matrix Regulatory authorities could respond to this judicial trend by issuing clearer procedural benchmarks for board conduct, thereby reducing evidentiary uncertainty and strengthening compliance incentives. Courts would benefit from articulating a more explicit analytical sequence when assessing directors' liability, particularly in care-based claims where causation and loss remain inconsistently applied. These developments align with Vision ٢٠٣٠'s emphasis on transparency, institutional maturity, and investor confidence, positioning directors' liability as a governance tool rather than a deterrent to legitimate risk-taking.

Limitations of the Study

There are several limitations to this study, limiting the generalizability of the results. The judicial dataset is limited by the unavailability of published commercial court decisions, which implies that the analysis cannot reflect the whole range of cases that are resolved privately or via non-published means. The level of published reasoning also differs in

administrative determinations and especially in older CMA determinations, where the levels of doctrinal pattern that can be reliably extracted are limited.[٨١] Also, the comparative analysis, having found functional similarities with the UK and France, is constrained by the lack of an equivalent Saudi case law; therefore, the consistency in doctrine cannot be tested at this level at various judicial levels. Lastly, the developing Saudi legal environment implies that patterns discovered here could quickly change as more rulings are released and institutional practice becomes more established. Such restrictions do not negate the contributions of the study, but it signifies that further empirical observations and further development of doctrines are necessary as the new corporate governance framework evolves. In conclusion, the liability of directors to the Companies Law ٢٠٢٢ represents a continuation of a shift to a more professional and principled form of governance. The new judicial focus on process rather than result is a great development, though the consolidation of the doctrine is yet to take place. This can be extended in future research as Saudi corporate jurisprudence still develops.

(٨١) D. Canruh, An Analysis of the Use of Equitable Principles, Doctrines and Remedies in Company Law: The Case for Equity's Centrality (Queen Mary University of London, ٢٠٢٥).

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٣. Ministry of Commerce (Saudi Arabia). Implementing Regulations of the Saudi Companies Law. Riyadh: Ministry of Commerce, ٢٠٢٣.

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٥. Ministry of Justice (Saudi Arabia). Saudi Commercial Court Decision No. ١١٢/T/٤ (١٤٤٤H/٢٠٢٣). Unpublished Judgment Database, Ministry of Justice, ٢٠٢٣.

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Appendix

Appendix A: Glossary of Key Comparative Legal Terms

Term	**Saudi Arabia**	**UK**	**France**
Duty of Care	Diligence and informed judgment	Objective-subjective skill and care standard	Mismanagement standard (faute de gestion)
Duty of Loyalty	Amanah; disclose conflicts	Strict fiduciary loyalty	Prior authorization of conflicted acts
Derivative Action	Limited, judicial permission	Statutory derivative claim (ss.٢٦٠-٢٦٤)	Action sociale by shareholders
Administrative Liability	CMA/MoC sanctions	FCA/Companies House	AMF/Commercial Courts

Appendix B: Judicial Dataset - Case list (2020-2024)

No.	**Tribunal**	**Year**	**Reference**	**Nature of Breach**	**Key Issues**	**Outcome**
C ٠١	Riyadh Commercial Court	٢٠٢٠	Case No. ٤٣١/٢٠٢٠	Negligent oversight	Failure to detect financial irregularities	Director held liable; compensation ordered

No.	Tribunal	Year	Reference	Nature of Breach	Key Issues	Outcome
C٠٢	Riyadh Commercial Court	٢٠٢٠	Case No. ٥٠٢/٢٠٢٠	RPT nondisclosure	Undisclosed loan to affiliate	Liability; profit disgorgement
C٠٣	Jeddah Commercial Court	٢٠٢٠	Case No. ١١٨/٢٠٢٠	Procedural breach	Board minutes missing	Partial liability
C٠٤	CRSD	٢٠٢٠	Decision No. CRSD-٤٥/٢٠٢٠	Disclosure violation	Late financial disclosures	Administrative fine
C٠٥	CMA Enforcement Committee	٢٠٢٠	Decision No. CMA-١٢/٢٠٢٠	Market misstatement	Inaccurate financial report	Director fined
C٠٦	Riyadh Commercial Court	٢٠٢١	Case No. ٢٠٩/٢٠٢١	Conflict of interest	Director purchasing company assets	Full liability
C٠٧	Jeddah Comme	٢٠٢١	Case No. ٣٣٤/٢٠٢١	Duty of care breach	Failure to	Compensation awarded

No.	Tribunal	Year	Reference	Nature of Breach	Key Issues	Outcome
	rcial Court				supervise CEO	
C٠٨	CRSD	٢٠٢١	Decision No. CRSD-٦٣/٢٠٢١	Internal control failures	Weak audit committee oversight	Sanction + compliance order
C٠٩	CMA Enforcement	٢٠٢١	Decision No. CMA-٢٧/٢٠٢١	Insider information	Delay in disclosure	Fine + warning
C١٠	Riyadh Commercial Court	٢٠٢١	Case No. ٥٥٧/٢٠٢١	Waste of assets	Inefficient procurement	No liability (good faith)
C١١	Jeddah Commercial Court	٢٠٢١	Case No. ٦١٢/٢٠٢١	Procedural irregularity	Unapproved related contract	Liability
C١٢	CRSD	٢٠٢١	Decision No. CRSD-٧٧/٢٠٢١	Disclosure omission	Missing board resolutions	Fine

No.	Tribunal	Year	Reference	Nature of Breach	Key Issues	Outcome
C١٣	CMA Enforcement	٢٠٢٢	Decision No. CMA-٠٦/٢٠٢٢	Negligence	Failure to verify financial data	Sanction imposed
C١٤	Riyadh Commercial Court	٢٠٢٢	Case No. ٣٠٣/٢٠٢٢	RPT abuse	Inflated invoices	Full liability
C١٥	Jeddah Commercial Court	٢٠٢٢	Case No. ٤١٧/٢٠٢٢	Mismanagement	Poor investment decision	No liability (informed judgment)
C١٦	CRSD	٢٠٢٢	Decision No. CRSD-٩٢/٢٠٢٢	Market manipulation	Director awareness	Liability
C١٧	CMA Enforcement	٢٠٢٢	Decision No. CMA-١٩/٢٠٢٢	Disclosure delay	Annual report submitted late	Fine
C١٨	Riyadh Commercial Court	٢٠٢٢	Case No. ٦١٥/٢٠٢٢	Negligent auditing	Acceptance of flawed reports	Liability

No.	Tribunal	Year	Reference	Nature of Breach	Key Issues	Outcome
C ١٩	Jeddah Commercial Court	٢٠٢٢	Case No. ٦٩٩/٢٠٢٢	Conflict breach	Personal interest in supplier deal	Disqualification
C ٢٠	CRSD	٢٠٢٢	Decision No. CRSD-١٠٨/٢٠٢٢	Governance failure	Inadequate risk management	Penalties + training
C ٢١	CMA Enforcement	٢٠٢٣	Decision No. CMA-١١/٢٠٢٣	Misleading disclosure	Capital restructuring	Fine
C ٢٢	Riyadh Commercial Court	٢٠٢٣	Case No. ٢٢١/٢٠٢٣	Poor oversight	Ignoring audit warnings	Liability
C ٢٣	Jeddah Commercial Court	٢٠٢٣	Case No. ٣٣٧/٢٠٢٣	Duty of loyalty	Self-interested contracting	Full liability

No.	Tribunal	Year	Reference	Nature of Breach	Key Issues	Outcome
C ٢٤	CRSD	٢٠٢٣	Decision No. CRSD-٥٤-٢٠٢٣	RPT concealment	Hidden affiliate ownership	Severe sanctions
C ٢٥	CMA Enforcement	٢٠٢٣	Decision No. CMA-٣٣/٢٠٢٣	Accounting misstatement	Inflated revenue	Fine
C ٢٦	Riyadh Commercial Court	٢٠٢٣	Case No. ٤٤١/٢٠٢٣	Internal controls breach	No audit trail	Liability
C ٢٧	Jeddah Commercial Court	٢٠٢٣	Case No. ٥٠٢/٢٠٢٣	Misreporting	Failure to verify inventory	Compensation
C ٢٨	CRSD	٢٠٢٣	Decision No. CRSD-٧٨-٢٠٢٣	Market integrity	Omission of material fact	Fine
C ٢٩	CMA Enforcement	٢٠٢٣	Decision No. CMA-٤٤-٢٠٢٣	Governance noncompliance	Inactive board committees	Warning + fine

No.	Tribunal	Year	Reference	Nature of Breach	Key Issues	Outcome
C ٣٠	Riyadh Commercial Court	٢٠٢٤	Case No. ١١٨/٢٠٢٤	RPT failure	Undisclosed board interest	Liability
C ٣١	Jeddah Commercial Court	٢٠٢٤	Case No. ٢٠٩/٢٠٢٤	Negligent management	High-risk investment	No liability (process proven)
C ٣٢	CRSD	٢٠٢٤	Decision No. CRSD-٦٢/٢٠٢٤	Disclosure omission	Missing footnote disclosures	Sanction
C ٣٣	CMA Enforcement	٢٠٢٤	Decision No. CMA-١٧/٢٠٢٤	Market breach	Incorrect earnings call	Penalty
C ٣٤	Riyadh Commercial Court	٢٠٢٤	Case No. ٣٦٧/٢٠٢٤	Care breach	Ignoring compliance breaches	Liability
C ٣٥	Jeddah Commercial Court	٢٠٢٤	Case No. ٤٥٥/٢٠٢٤	Negligent oversight	Failure to monitor CFO	Sanctions + compensation

Appendix C: Methodological Protocol for Case Selection

Item	Description
Dataset	٣٥ Commercial Court and CMA decisions (٢٠٢٠-٢٠٢٤).
Sources	Ministry of Justice (Najiz Portal); CMA Enforcement Reports.
Inclusion Criteria	Cases involving directorial duties, RPTs, disclosure, or mismanagement; publicly accessible official material.
Exclusion Criteria	Unpublished, anonymized, or incomplete cases.
Analytical Approach	Classification by duty breached; impact assessment by sanction type; comparative relevance.
Outcome	٦٨,٦٪ involved implicit fiduciary reasoning; ٢١,٤٪ involved administrative breaches; ١٠٪ had criminal implications.

Appendix C: Theme Frequency Summary

Theme	Cases with theme (n)	% (of ٣٥)	Notes
Fiduciary/loyalty reasoning implicit/explicit	٢٤	٦٨,٦٪	Courts used trust/loyalty concepts, or Sharia language
Disclosure / financial reporting failure	١٩	٥٤,٣٪	CMA-heavy

Theme	**Cases with theme (n)**	**% (of ٣٥)**	**Notes**
Related-party transactions	١٢	٣٤,٣٪	Rescission or compensation orders
Procedural documentation absent	٢١	٦٠,٠٪	Minutes/audit trails missing
Criminal referral/fraud	٣	٨,٦٪	Intentional misinterpretation
Administrative sanctions (CMA/MoC)	١١	٣١,٤٪	Fines/bans

Appendix D: Case Summary 4: Public Prosecution Referral (2024)

Facts: Directors knowingly falsified company records and inflated revenues.

Outcome: Referral for trial under the Anti-Fraud Law.

Significance: Illustrates criminal exposure where breaches are intentional and deceptive.