

AN ANALYTICAL STUDY OF THE CRIMINAL LIABILITY FOR FOUNDERS OF JOINT-STOCK COMPANIES

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Abstract

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Due to the importance of commercial enterprises to economic development, the UAE legislature has sought to carefully regulate them, including providing guarantees to prevent manipulation by founders during the incorporation period. This article focuses on the criminal liability of founders of joint-stock companies in Emirati law and clarifies the actions that result in criminal liability for founders of joint-stock companies. The article approaches the topic by first defining a founder and the qualifications they must possess. Then, the article discusses the crimes and the rulings related to the crimes committed during the incorporation of a joint-stock company (Kamensky, Dudorov, Movchan, Vozniuk, & Makarenko, 2020). This is done by analyzing the relevant laws, including the UAE Commercial Enterprise Law (Number 2 of 2015). The article concludes that the Emirati legislature has defined the purpose of founders and provided the conditions that a person must fulfill to sign the initial contract to incorporate a company as a founder. Moreover, this study showed that the Emirati legislature has leaned towards issuing severe punishments for those who commit these crimes.

Keywords: UAE Corporate Enterprise Law, Criminal Liability, Company Founders, Joint-Stock Companies, Incorporation Crimes, In-Kind Shares, Subscription, Shares

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1. INTRODUCTION

Incorporating a joint-stock company requires completing several legal processes and procedures required and outlined by the legislature. The proper implementation of these procedures results in “giving life” to a commercial establishment, granting

it a legal personality. It is also common knowledge that these actions are carried out by a group of individuals known as “founders”.

Due to the importance of commercial establishments to achieve economic development and raise the capital by offering its shares to the public, diverse legal systems, including that

of the UAE, have sought to carefully organize them, protecting a company's establishment from fault and manipulation that the founders could carry out during incorporation. Because this sort of business relies heavily on publicly traded shares, it was vital for the legislature to ensure the seriousness of these businesses by prohibiting them from taking specific acts in order to preserve both the national economy and the public's savings.

The most important of these protections is the presence of civil and criminal liability of the founders to protect the national economy and the interests of other actors and prevent the appearance of imaginary and invalid establishments that would impede economic activity, a primary element of the development of any state.

This article focuses on explaining the degree to which the Emirati legislature has established principles that control the activities of the founders of joint-stock companies during incorporation. It also clarifies the actions that result in criminal liability for founders of joint-stock companies. To understand this, it is necessary first to define a "founder". Did the Emirati legislature define them in the principles of the Commercial Enterprises Law (Number 2 of 2015)? What are the actions considered as crimes punished according to the rules of the Commercial Enterprises Law? To what extent are the texts that outline the criminal liability of founders effective? Are they sufficient to guarantee the protection of shareholders in a joint-stock company?

The structure of this paper is as follows. Section 2 presents the review of the relevant literature. Section 3 discusses the methodology used in this research. Section 4 presents and analyzes the UAE Commercial Enterprise Law (Number 2 of 2015). Section 5 highlights the key points from the analysis and provides recommendations.

2. LITERATURE REVIEW

Many previous studies showed the importance of criminal liability for founders of joint-stock companies worldwide. Legal cultures have a positive impact on the long-term direction of economic growth, the area of criminal liabilities deserves further research (Deakin, 2009). One study from Greece (Tsene, 2021) discussed the corporate governance framework which has initially been established in accordance with EU regulation and soft law recommendations. The study found that reform of Law 4706/2020 in order to empower the strategic role of the board of trustees by a clear description of the obligations of non-executive and independent non-executive directors and by the establishment of an "adequacy policy" for the appointment of board members (Tsene, 2021).

A previous Slovakian study (Patakyová, 2020) aimed to describe a relatively new legal form of the simple joint-stock company that was introduced to their company law in 2017 and to evaluate whether it is indeed a suitable corporate vehicle for new companies with high innovative potential, and assessed whether the legal form is suitable for other legal and business use cases; and explore and identify potential issues. Also, it compared other legal business forms, then it provided an overview and legal analysis of the legal regulation of the simple joint-stock company form (Patakyová, 2020).

A previous legal study from Romania (Stuparu, 2015) discussed the new modifications made to the Articles of Law No. 31/1990 through the requirements of Article 33 of Law No. 187/2012 implementing Law No.286/2009. The adjustments are based on the introduction of new offences, rewording or repealing of existing offences. The offenses formerly stated in Article 6(1) of Romanian Law No. 31/1990, which determined that a person may not have the title of founder or member within a company's management, administration, or control bodies, have been updated to include the new sorts of offenses from the current Criminal Code (Stuparu, 2015).

Another study from Italy (Gigante & Venezia, 2021) examined the regulations related to corporate ownership and shareholders' protection. A study from China examined the impact of legislation-related board diversity of publicly listed companies in China (Qian, Waheduzzaman, & Khandaker, 2021). A study from Tunisia discussed the corporate governance practices of listed Tunisian companies and explored the evolution of corporate governance legislation between 2013 and 2017 (Ben Rejeb, 2021). This proposed study discusses the topic from the Emirati legislature's perspective.

3. RESEARCH METHODOLOGY

To answer the research questions, this article has followed the descriptive and analytical method to cover to the greatest extent possible the foundations upon which the crimes committed during the process of incorporation of joint-stock companies are based. The article then discusses the rulings associated with these crimes by analyzing the Emirati Commercial Enterprises Law (Number 2 of 2015).

From a general observation of the legal texts that outline the criminal liability of a company's founders, it is possible to begin the treatment of this study by outlining the concept of "founders" and the conditions that they must fulfill. Then, the study will discuss the crimes that may be committed during the process of incorporation of a joint-stock company and the actions that they are prohibited from committing, which include: the crimes of presenting false or illegal information, the inaccurate evaluation of in-kind share value, and the issuing and trading of shares before the completion of the processes outlined by the law.

4. RESULTS AND DISCUSSION

4.1. Defining a founder and the conditions they must fulfill

The legal presence of a joint-stock company and its enjoyment of a legal personality independent of the investors depends on completing a set of legal and material acts required by the legislature. These acts are carried out by a group of individuals described as "founders". Who are "founders"? Did the Emirati legislature specify requirements that can be relied upon to consider an individual as a founder of a joint-stock company? What are the conditions that a founder must fulfill? These questions will be discussed by defining a founder subject to criminal liability if he performs an act punished by law during incorporation.

4.1.1. Defining a founder

The first paragraph of Article 109 of the Commercial Establishments Law (Number 2 of 2015) of the United Arab Emirates (the UAE) defines a founder as “all those who sign a contract to establish a company, possess a portion of its capital, or have presented in-kind shares upon its incorporation following the provisions of this law”. It should be noted here that, through this definition, the Emirati legislature considered a founder all those who signed¹ the initial contract of the company and its articles of association (Ahmad, 2005; al-'Arini, 2006). Through his signature, a founder has expressed his actual will and desire to incorporate a joint-stock company. The law also required that the individual own a set amount of the company's capital to be incorporated.

Therefore, the definition provided by the UAE legislature provides an indisputable legal definition of a founder or all those who have signed the initial contract and presented a part of the company's capital. This excludes individuals who have helped promote the company's idea, advertised it, convinced others to participate in the company, or provided legal or financial advice to the founders (Nasif, 2008; Sami, 2013; al-'Akili, 2012; Radwan, 2013). Put another way, the UAE legislature has not accepted the broader concept of a founder. Doing so would lead to difficulties in applying criminal punishments, as this clashes with the principle of limited interpretation in this field of law (Nasif, 2008).

A founder may be a natural or legal person, and the UAE legislature has required in the Commercial Enterprises Law that there be no fewer than five founders of a joint-stock company. However, it has provided an exception in that the federal or local government or any company or entity owned entirely by them may independently establish a joint-stock company².

4.1.2. Necessary conditions of founders

To guarantee the integrity and transparency of the incorporation of companies, confirm the sincerity of the participation of the founder in the company to be incorporated, and protect the assets that will be used to underwrite the company as capital, a founder must fulfill specific conditions:

A founder must not have been convicted of a felony or misdemeanor that affects his honor

A founder must not have been convicted of a crime that affects his honor, such as theft, fraud, breach of trust, or forgery, or any punishment defined in Articles 340–370 of the Emirati Commercial Enterprise Law (Number 2 of 2015). The wisdom behind this condition is that a founder participates in incorporating a company, including the issuing of shares to the public. This requires a founder to possess integrity and honesty to protect investors from the appropriation or manipulation of their assets during incorporation (Nasif, 2008; Radwan, 2013).

¹ It should be noted here that a founder does not have to personally sign the contract of the company to be considered a founder, and it is permissible that he signs by proxy. In this case, the proxy must note his capacity and the person whom he represents. Otherwise, he will be considered personally responsible as a founder.

² Article 107 of the Emirati Commercial Enterprise Law states that “there must be five or more founders of a joint-stock company”.

A founder must have the necessary capacity to engage in commercial transactions

The UAE legislature considers the incorporation of a company as a commercial transaction³. As a result, the natural person must have the necessary capacity to conduct commercial transactions: at least 21 years of age and free of any limitation to their capacity. A legal person must have as its purposes the ability to incorporate a joint-stock company, i.e., there must be a connection between the purposes of the legal person that participates with others in the incorporation of a joint-stock company and the objectives and activities of the company to be incorporated (Sami, 2013).

A founder must possess a specific amount of the capital of the company to be incorporated

The Emirati legislature stipulates that the founders must underwrite no more than 30% and no more than 70% of the company's capital⁴ before issuing the rest of the shares to the public.

When these conditions are fulfilled, it is permissible for a person to be a founder of a joint-stock company. The incorporation procedures may take a long time, from the moment the process is begun to when a company is granted a legal personality. During this process, it is likely that the founders will conduct several other legal actions⁵. This causes us to question the legal status of the founders and the company itself during the period of incorporation.

Returning to Paragraph 2 of Article 21 of the Emirati Commercial Enterprise Law⁶, we notice that the legislature recognized the legal personality of companies in the incorporation process following the procedures of incorporation. Put another way, the company is connected to the founders in the actions that they have taken necessary for the establishment of the company if this is done following the law. Therefore, if the company's project fails for any reason, it is assumed that the company's legal personality never existed and that the founders are personally responsible for the contracts and activities conducted during the incorporation process. It should be noted here that the Emirati legislature's acknowledgment of the company's legal personality during the incorporation process is an exception to the general rule that a legal personality is only granted to a company when it has completed commercial registration. This exception must be adhered to and interpreted narrowly, without any expansion or analogy based upon it.

³ Article 5 of the Emirati Commercial Transaction Code (Number 18 of 1993) considered the procedures to incorporate a company as a commercial act, stating “the following actions are commercial *in se*: 7 – the incorporation of companies”.

⁴ Article 117 of the Emirati Commercial Enterprise Law states “the founders must underwrite no less than 30% and no more than 70% of the shares that constitute a company's capital, before the call for subscription in the remaining shares of the company”.

⁵ Such as the founders contracting to purchase machinery, tools, raw materials, the hiring of employees and laborers, and other actions necessary to establish a company.

⁶ Paragraph 2 of Article 21 of the Emirati Commercial Enterprise Law states “During the period of incorporation, the company has the legal personality necessary for its incorporation, and the company is connected to the actions of the founders with regards to the procedures and requirements to establish it during this period, with the condition that the incorporation is performed in compliance with the law”.

4.2. Crimes committed by founders during the incorporation of a joint-stock company

The Emirati legislature has organized the process and procedures of incorporating a company and placed restrictions, controls, and penalties that confirm the legality of the incorporation of these companies and the extent they achieve the purposes for which they are established. According to the Penal Code, the founders of a company may be subject to legal liability for any crime committed by them during the incorporation of the company. The most important of these crimes are fraud (Article 399), requesting, accepting, or offering a bribe (Articles 234-9), and forgery or the use of a forged document (Articles 216-23). Likewise, the company's assets during incorporation are protected by the Emirati Commercial Enterprise Law, seen in Articles 358-9, 360-2 of the law, which will be the focus of the discussion in the following section.

4.2.1. The crime of presenting false or illegal information

The most significant importance for founders of financial companies is the collection of the necessary assets for it. The Emirati legislature has placed controls that require the confirmation of information on underwriting or deposits and honesty and trust in all matters provided in the company's contract, its articles of association, or the stock prospectus (Sami, 2013; Nasif, 2008; al-'Akili, 2012)⁷. These controls lead to the avoidance of potential risks to the company's underwriters. Therefore, if the information provided in the prospectus is false, the company and those responsible are criminally liable and punished according to the law.

Emirati law requires the provision of two items: the first is related to the necessary conditions for the issuance of stocks in a way that protects those dealing with the company or the buyers of these stocks without verifying their issuance according to the provisions established in the law, or without ensuring that they do not violate the law. This is achieved through the oversight of every company in the incorporation process, particularly those who will utilize a public offering. The law has placed rules and controls necessary to protect all underwriters during the issuance of the company's stock for the public. The second item specifies the method through which a company may utilize to form its capital. This is followed in the case of joint-stock companies, as it makes this point contingent on offering shares and bonds for trading through the stock prospectus. The basis for this is that the prospectus is a method for establishing the company's capital. Underwriters rely upon the accuracy of the information provided in the prospectus to ensure that the company was established correctly and legally. Suppose the data of this company is false or illegal. In that case, this is a crime punished by Article 361 of the Emirati

Commercial Establishment Law, which states that "A prison sentence of no less than six months and no more than three years and a fine of no less than 200,000 dirhams and no more than 1,000,000 dirhams, or either of the two punishments, is applied to all those against whom it is proven that they intentionally, in the contract of the company, its articles of association, its stock or bond prospectus, or other documents of the company, provided false or illegal information. This also applies to all those who sign or distribute these documents with the knowledge [of the intentionally provided false or illegal information]" (Jindi, 1989; 'Aliya, 2008).

The reason for fault is embodied in the necessity of stability in commercial transactions and the reliance placed upon honesty and trustworthiness. If the business is marred with lying, fraud, or breach of trust, it disrupts the public's trust in it. It impacts the security provided in transactions, affecting all aspects of legal life in a society⁸. This crime consists of a material and mental element.

4.2.2. The material element (*Actus reus*)

Reading Article 361 of the Emirati Commercial Enterprise Law, we find that the legislature defined the material element of this crime in two ways. *The first is that the stock prospectus includes false information.* This requires the combination of two things: Proof of the false information. This means that the legislature has limited the method through which this crime is committed to providing false information in the prospectus for issuing stocks and bonds. This crime can only be committed through writing, excluding verbal statements or any other type of human communication, even if those statements are false or more expressive than written proof (Rabah, 2004; 'Aliya & 'Aliya, 2012). The second is that the information must be false. This means that the information provided does not reflect reality, i.e., reality has changed from what is presented in the prospectus. Therefore, if the information in the stock prospectus is proven to be accurate, no crime has been committed, as there is no crime without a criminal action.

However, it is not necessary that all the information provided in the syllabus be false. Instead, it is sufficient that only some information was false, considering that this amount is not enough to disrupt the confidence represented by the prospectus fully. A small amount of false information raises doubts about the accuracy of all the information provided. As a result, the crime has been committed even if only one element is false or inaccurate, even if all the other information provided is correct. This is also the case if it is proven that the defendant has provided false information regarding deposits or that individuals are falsely connected to the company, regardless of what that connection might be. The crime has also been committed if it is proven that the company was not officially registered in the commercial registry, was registered on false pretenses, or the incorporation process was not completed.

⁷ The founders of the company must provide sufficient information to those who wish to subscribe to the shares of the company to be established. To fulfill this, different legal systems have created the document known as the "prospectus", organized by the founders when issuing shares for subscription. This prospectus contains all the necessary information about the company and is distributed freely to the public so that they may make an informed decision to subscribe to a number of issued shares.

⁸ In addition to this, if the stock issuance prospectus is the legal form for the formation of the company, there must be consent to the subscription, expressed by the "intent to incorporate." The consent to subscribe must be clear of any fault, otherwise it is invalid.

Indeed, the crime has been committed if some of the information in the prospectus cannot be proven because the perpetrator's action is considered in the provision of false information. An omission is also considered a false representation of the information provided in the prospectus, as the failure to act is a change of the reality offered in the prospectus and is regarded as a criminal act because the prospectus is connected to the rights, and the potential harm of the rights, of others (Jindi, 1989).

It should be noticed that proving the presence of false information is treated as a type of fraud and a part of the material element of that crime according to Article 399 of the UAE Penal Code. Providing false information can also be included in the realm of forgery, covered by Articles 216-23 of the Penal Code, as a "forged" reality has been created in place of the facts, or the proof that the situation presented in the prospectus is not consistent with the truth (Rabah, 2004; 'Aliya, 2008). This is following Article 371 of the Emirati Commercial Enterprise Law, which states that the issuance of punishments outlined in that law does not exclude more severe penalties provided in any other law. As a result, these crimes can be considered as consisting of mental elements of multiple crimes, as the perpetrator's actions apply to more than one crime. It is the responsibility of the judge to issue the strongest punishment in this case.

The second type of material element: Signing the prospectus. This occurs when the perpetrator signs the prospectus that has been proven to contain false or illegal information and if the prospectus was issued according to the forms provided by the Securities and Commodities Authority, meaning that the perpetrator desired to sign it (Taha, 1997; al-'Arini, 2001).

4.2.3. The mental element (*Mens rea*)

The mental element of this crime takes the form of criminal intent, which requires the presence of the two subsidiary elements of knowledge and will. Knowledge is fulfilled through the court ruling that the perpetrator has knowingly presented false or illegal information. His action is connected to the prospectus for the issuance of stocks and bonds through his signature on the form created by the Securities and Commodities Authority.

The presence of will is proven when a ruling against him proves the false or illegal information was provided and that he signed or distributed with his knowledge. Will is not established if he was merely unaware of the false information, negligently failed to investigate the accuracy of the information, or mistakenly signed or distributed the prospectus, which negates criminal intent (Jindi, 1989).

4.2.4. Punishment

Article 361 of the Emirati Commercial Enterprise Law sets the punishment for all those who present false or illegal information as a prison sentence of no less than six months and no more than three years, and/or with a fine no less than 200,000 dirhams and no more than 100,000 dirhams. Therefore, founders who have committed these

actions are subject to a fine and/or a prison sentence. Additionally, the Emirati legislature has excluded the option of mitigating the punishment through reconciliation, according to Paragraph 2 of Section 11 of the Emirati Commercial Enterprise Law⁹.

From an analysis of the above, it should be noted that the Emirati legislature strives for the provision of correct and accurate information in the stock prospectus to protect underwriters. If the information provided in the prospectus is incorrect or not an accurate reflection of the company's reality, and by extension, those responsible for it are criminally liable for the punishments set out in the law. During the incorporation process, the founders bear this liability as they are the individuals who signed the prospectus for the issuance of shares.

4.3. The crime of exaggerating the value of in-kind shares

The capital of a new company is divided into equal shares, which the partners may provide in cash or in-kind. Shares provided as physical work or actions are not permissible for joint-stock companies (Qaliyubi, n.d.; Nasif, 2008)¹⁰.

There is no question as to the valuation of shares provided in cash, as opposed to shares provided in-kind, through which the value and participation of a partner (as well as his share of the profits and losses of the company) are determined. Therefore, the legislature has criminalized exaggeration in the valuation of in-kind shares presented fraudulently by any founders.

Article 362 of the Emirati Commercial Enterprise Law states, "Any founder or partner who intentionally values the in-kind shares with more than their actual value is punished with a prison sentence no less than six months and no more than three years, a fine of no less than 500,000 dirhams and no more than 1,000,000 dirhams, or one or both of the above punishments".

The purpose of criminalization here is to protect the interests of the holders of cash shares in a joint-stock company, as an exaggeration in the value of in-kind shares results in these shareholders receiving a greater amount of shares in the company's capital than their actual value. This devalues the interests of the other partners, particularly as those who hold the exaggerated shares will receive a more significant portion of the company's profits than they deserve.

The law also protects any person who transacts a debt with the company, as their only form of protection is its capital. Suppose the in-kind shares are valued as more than their actual value. In that case, it impacts the general protection provided by the company's capital. It means that a creditor or debtor who relies on the company's capital has nothing to rely upon (Nasif, 2008). This crime is composed of a material and mental element, which will be discussed below.

⁹ See Article 361 of the Emirati Commercial Enterprise Law.

¹⁰ The capital of financial companies must contain assets that have a monetary value, as they are the sole assurance for the company's creditors. If a share of that capital cannot be valued in cash, it cannot be held and does not constitute an assurance for the company's creditors. As a result, it is not permissible for services rendered during the incorporation of a company or the personal status of a partner to act as a share of the company. There is nothing to prevent the formation of foundational or profit shares to reward these services. Foundational shares cannot be issued as negotiable instruments.

4.3.1. The material element (*Actus reus*)

This crime is based on the act of fraudulently evaluating in-kind shares with more than their actual value. Therefore, the material element of this crime requires the provision of two crucial elements:

1. *The action* — exaggerating the value of in-kind shares or evaluating them with more than their actual value. The overvaluation must be clear and proven beyond a reasonable doubt. The Emirati Commercial Enterprise Law does not clarify a specific point when a value is considered exaggerated. Therefore, the issue returns to the general principles of the law, which are:

The first principle: The valuation of in-kind shares at the time they are presented as a share of the company's capital, as this is the moment the partner enters the company or the market value of the in-kind shares, and this is done by determining what price the in-kind shares would gain if they were subject to normal circumstances of supply and demand plus a consideration of the importance of these shares to the activities and needs of the company. A partner is not criminally liable if the value of these shares depreciates due to their becoming the company's property (Yunis, 1990; Nasif, 2008; Sami, 2013).

The second principle: The objective and accurate valuation of the in-kind shares clarifies the company's actual financial position. It should be noted here that it is difficult in practice to determine the actual value of the shares, as personal considerations often accompany the valuation. Therefore, the use of general principles is sufficient. In practice, the courts have significant discretion in determining whether the valuation is exaggerated and often need to rely upon experts and specialists (Aliya, 2008; Rabah, 2004; Jindi, 1989).

If the evaluation is exaggerated and not a reflection of reality, this constitutes a crime and subjects the perpetrator to punishment. This crime can be committed through the perpetrator giving false information that impacts the value of the in-kind shares. This is also the case if the perpetrator falsely suggests that the in-kind shares are of higher quality or the valuation is based on a non-existent or unused trademark.

The perpetrator may use his social position, name, or attributes to exaggerate the value of the in-kind shares, as well as through concealing faults that may burden the assets considered as in-kind shares or their distinction (Yunis, 1990; Nasif, 2008).

The commission of this crime is not limited to the acts performed by a partner. It could be committed by a founder in a financial or personal company, as well as from the owner of the shares or by other partners, according to Article 362 of the Emirati Commercial Enterprise Law. Paragraph 4 of Article 118 of the UAE Commercial Code states, "The valuator, the committee of founders, or the board of directors (if present) are fully responsible for the accuracy, adequacy, and completeness of the information and data provided in the valuation". This crime can also be committed through merely the fraudulent provision of false information of the in-kind shares.

From the above, it can be seen that the ways this crime can be committed are similar to the elements of fraud.

2. *The material state of the crime (in-kind shares)* — The Emirati legislature has provided specific protections for in-kind shares, which are usually not cash, whether they are property, movable, or incorporeal assets. These shares are presented with the intent of direct or usufruct ownership. In the former case, the ownership is completely transferred from the partner's possession to that of the company's asset sheet. In the latter case, the shares remain under the partner's control, and he retains the right to repossess them when the company is dissolved.

The purpose of this protection is to provide companies with tangible assets and give assurance to creditors. The overvaluation of in-kind shares harms the partners' interests and owners of shares in cash and other forms.

If tangible or incorporeal shares form the company's initial capital or are later added or merged to the company's capital, the founders or responsible parties must evaluate these shares. They may base their valuations upon the opinions of experts such as accountants, technicians, or others, following their complete evaluation of the documents related to these shares.

Following the signing of the initial contract and in a reasonable time before the end of the share subscription period or according to the will of the responsible parties, the founders must present an application to the Securities and Commodities Authority to investigate the accuracy of the valuation of these shares¹¹. The application must contain all of the information and facts related to the in-kind shares to be explored, along with the name of the partner or partners who have presented them, a full disclosure of the company, and copies of the founding documents of the company and the initial valuation of the shares conducted with the knowledge of the founders.

4.3.2. The mental element (*Mens rea*)

This crime requires full criminal intent and consists of two elements: knowledge and will. Knowledge here refers to the perpetrator's awareness of the criminal activity, i.e., the overvaluation of the in-kind shares, that the overvaluation occurred deceitfully, and that the perpetrator was aware of the deceitful methods through which the crime occurred was committed. The crime is not committed if there is no knowledge that the value of the shares was exaggerated.

Additionally, the crime requires that the perpetrator fully intended, of his own free will, to commit the crime using deceit in the overvaluation of the in-kind shares. The offense is not committed if the valuation occurred mistakenly, if the perpetrator acted in good faith or was overly confident in the valuations provided by the experts or in the advantages of the shares, or if the partner assumed that the value of the shares would naturally increase in the future (Jindi, 1989).

¹¹ See Article 118 of the Emirati Commercial Enterprise Law (Number 2 of 2015).

Therefore, if the overvaluation of in-kind shares was done in good faith or without intent, the founder is innocent of this crime as he has not fulfilled the *mens rea* requirements. It is essential to distinguish between an intention to exaggerate the value of in-kind shares in good faith and without deceit and fraud and an intent to deceive. If goodwill is proven, then the crime has not been committed.

4.3.3. Punishment

This crime is punished with a prison sentence of no less than six months and no more than three years, a fine of no less than 500,000 dirhams and no more than 1,000,000 dirhams — borne personally by the perpetrator — or with either of these two punishments. In cases where this crime was committed repeatedly, or the perpetrator has failed to remedy the violation, the fines are increased according to the general principles of the Criminal Code.

Likewise, if the crime took more than one form, such as if the perpetrator presented falsified documents to obtain the valuation of the in-kind shares, two crimes have been committed, and the rules of multiple crimes are applied (‘Aliya, 2008). Article 371 of the Emirati Commercial Enterprise Law may be used here, which states that the punishments mentioned in this law do not preclude the issuance of stronger penalties found in any other law. Therefore, the provision of false information is part of the material element of the crime of fraud, in violation of Article 399 of the UAE Criminal Code. This act can also fall in the realm of forgery, violating Articles 216–23 of the UAE Criminal Code.

4.4. The crime of issuing or trading shares before completing the proper procedures

Article 278/1/A of the Emirati Commercial Code states that “the issuance of shares or share certificates, their delivery to their owners, or offering them for exchange, before the ratification of the company’s articles of association, the approval of its incorporation, or the approval of its capital increase before the announcement of such in the official gazette”. Likewise, Article 358 of the Emirati Commercial Enterprise Law states that “A fine of no less than 100,000 dirhams and no more than 10,000,000 dirhams is applied to a company, entity, legal or natural person, whether inside or outside the country or in a free zone, that has not received the approval of the Authority before issuing announcements that contain a public call to subscribe to any stock or bond, or any other financial instrument, whether that announcement is carried out through an announcement in daily newspapers, magazines, or any general method of an announcement in the country.”

Therefore, the crime is committed through the material element of calling the public to subscribe to financial instruments of any kind for the company’s benefit¹² or offering these instruments for subscription for the company’s benefit¹³. The crime also requires a mental element of general criminal intent with its constituent elements of knowledge and will.

4.4.1. The material element (*Actus reus*)

The material element of this crime can be fulfilled in the following ways:

1. Presenting a call to the public to subscribe to financial instruments before the completion of the procedures described by the law.

2. Presenting these instruments for subscription before completing the procedures outlined by the Commercial Code, which include the founders committing one of the acts that constitute the material element. This includes presenting a call to the public to subscribe to financial instruments issued by the company during incorporation, no matter what form these instruments take. This call can be done in any way, such as through periodicals and newspapers, any audio or visual communication method, or opening a public relations office in the company.

In practice, this call to subscription must be serious and clear, as it represents the positive actions that constitute the material element of the crime. This is a crime of strict liability and, therefore, is complete by simply carrying out the material element of the crime, whether the subscription has occurred or not, or whether the announcement has been made. Along with the fact that this crime is connected to the founders of a joint-stock company, the law also speaks of the issuance of these shares before the ratification of the company’s articles of association, which is the period of incorporation. The other part of the material element that constitutes the crime is the founders offering financial instruments for the subscription. This is a positive action from them, and, as a result, the crime takes place by simply providing the offer. This act occurs if they perform any act that attracts the public’s attention to the existence of financial instruments that may be subscribed to.

This requires that the offer be made in a public forum or a place where it is easy to access and purchase. The offer may be provided in writing or through an announcement by mail or in newspapers. The offer may also be implicit, such as the shares being placed in the hands of all those who wish to subscribe. Finally, the crime requires an actual offer of a subscription.

4.4.2. The mental element (*Mens rea*)

This crime is considered one of intent, and the mental element requires criminal intent that contains two elements: knowledge and will. Knowledge here is fulfilled when the perpetrator is aware of the true nature of the criminal act or that the founder knows that it is prohibited to subscribe to the company’s shares and that it is not allowed to offer these shares to others. The perpetrator must also have the intent, beyond a reasonable doubt, to transfer these shares to others or that the shares are offered with the purpose of subscription, sale, or exchange. This means that the founders of a joint-stock company who issue the shares must know that there are procedures that have not been appropriately followed according to the Commercial Enterprise Law, and, despite this shortcoming, they still intend to deliver or trade the shares.

¹² See Article 358 of the Emirati Commercial Enterprise Law.

¹³ See Article 359 of the Emirati Commercial Enterprise Law.

The above takes place when shares are issued before the company's registration in the Commercial Register, if it has been registered deceitfully, or if it has been registered without consideration of the legal requirements for incorporation. The legislature punishes this criminal activity with a prison sentence from one to three years or a fine of no less than 1,000 dirhams and no more than 10,000 dirhams, following Article 358 of the Emirati Commercial Enterprise Law.

5. CONCLUSION

This article has shown that the Emirati legislature has defined the purpose of founders and provided the conditions that a person must fulfill to sign the initial contract to incorporate a company as a founder. The legislature has also defined the acts that founders can commit during the incorporation period that are considered crimes punishable by law. This was done because these acts lead to the deception of individuals who seek to underwrite the company, purchase shares, and the general public through the provision of false data and information on the company's reality to be incorporated. Likewise, such acts also negatively impact the capital of the joint-stock company, which constitutes a general assurance, through the overvaluation of the in-kind shares presented by the founders during the incorporation of the company as well as the issuance and exchange of shares before the completion of the procedures defined by the law.

This article has also shown that the Emirati legislature has leaned towards issuing severe punishments for those who commit these crimes,

including paying hefty fines, prison sentences, or both upon the founder or founders who commit them. This is also proven as the legislature places additional criminal liability on founders if their acts take more than one criminal form, following Article 371 of the Emirati Commercial Enterprise Law. The law has also excepted these crimes from mitigation through reconciliation, as provided in Paragraph 2 of Section 11.

Through this law, the purpose of the Emirati legislature is to purify the country's investment climate, making it more transparent and honest both regionally and internationally. The law also attempts to save joint-stock companies from the invalidity created by these crimes and, as a result, protects the national economy. Finally, the law acts as a deterrence to force founders to adhere to the requirements of incorporating a joint-stock company according to the law. It appears that these forms of protection comfort investors and encourage them to place their valued savings in these companies as investments within a framework of strong economic sectors that allow the challenges of competition and the constraints imposed by globalization to be faced.

The main limitation of this study was the scarcity of legal studies that discuss the criminal liabilities of joint-stock companies in the UAE which increase the time and efforts of researchers to form a theoretical framework about the topic examined. A future comparative study is recommended to be conducted to compare Emirati legislation with international legislation such as the US, the UK, and French laws.

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