Abstract

In modern economy, officers and directors of corporations or other kinds of organizations are the main economic agents; the rationality of the system is nowadays concentrated in what has been called the Technostructure. These new agents intervene in the market with high power of decision and with a vast scope of influence. Their decisions, as a matter of fact, affect not only their own interests, but also those from the corporations where they work, the shareholders, the workers and, in general, direct or indirectly the whole society. These circumstances, together with the latest gigantic corporate crisis, justify the establishment of special and strict rules of liability applied to them. For that purpose, the Law 222 of 1995 has established a complete liability regime for officers and directors in charge of establishing who are to be considered as such, which are their duties of care and the elements of the liability that binds them. Likewise, as an innovative mechanism, the Law has previewed the Social Action of Liability, which allows the recuperation of social patrimony whenever it is affected by negligent conduct of an officer or director. This liability regime for officers and directors, nevertheless, can not become an obstacle for the proper development of business, which by essence implies a high dose of risk. For that reason, other countries have developed what has been known as the business judgment rule, according to which judges are only called to establish if officers and directors have met their fiduciary duties, with out being able to make a scrutiny of the result of the decision whenever those duties are satisfied. The regime of responsibility of officers and directors, discounting some tolerable limitations and misfortunes, offers the proper tools to overcome the relative irresponsibility that has been generalized in our country in regard of their negligent or guilty conducts. If one takes into consideration that the conduct of organizations can only be comprehended and structured from the conduct of the individuals, the regime of responsibility of officers and directors becomes a necessary element of corporate governance.

Keywords

officers; directors; technostructure; fiduciary duties; liability; social action of liability; business judgment rule; extended liability