Business Judgment Rule and Directors' Criminal Liability: Distinguishing Business Risk From Corporate Crime

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Abstract.
Determining when a director's business decision warrants criminal liability requires a clear distinction between commercial failure and unlawful conduct. This study examines the role of the business judgment rule in distinguishing legitimate business risk from corporate crime and develops an analytical framework for assessing directors' criminal liability. It adopts a normative legal approach through conceptual analysis of directors' duties, managerial discretion, and the requirements of criminal responsibility. The analysis proposes that an adverse financial outcome should initiate an examination of the decision-making process rather than constitute sufficient proof of criminal wrongdoing. Relevant considerations include the information reasonably available when the decision was made, good faith, conflicts of interest, the corporate purpose pursued, and the director's involvement in the alleged offence. These considerations must be assessed alongside the specific elements of the offence and the applicable requirements of fault and attribution. The business judgment rule therefore provides a framework for evaluating managerial conduct, while its protective rationale does not extend to decisions involving intentional deception, unlawful personal benefit, or other independently established criminal conduct. The study concludes that a defensible boundary between business risk and corporate crime requires an assessment grounded in contemporaneous evidence, individual conduct, and the applicable criminal standard of proof. This approach supports managerial accountability while preserving reasonable discretion to undertake uncertain business activities.
Keywords: *Business judgment rule; Director liability; Business risk; Corporate crime and Managerial discretion.*

I. INTRODUCTION

Business decision-making requires directors to manage a company responsibly while confronting uncertainty about outcomes. Even a reasonably considered investment may fail because of market changes, technological developments, or external conditions. The legal issue arises when financial losses are used to determine whether directors have breached their managerial duties or committed a criminal offence. This study examines that issue through the relationship between *das sollen*, understood as the legal standards that should guide the assessment of directors' conduct, and *das sein*, understood as their application in judicial practice. Distinguishing these dimensions is necessary to reconcile the protection of business discretion with accountability for conduct that satisfies the elements of a criminal offence. At the level of *das sollen*, the business judgment rule provides a basis for limiting judicial scrutiny of the substantive merits of business decisions under certain conditions. Bainbridge (2004) explains the tension between directors' authority and the need for accountability, conceptualising the doctrine as a restraint on judicial intervention. This perspective helps explain why courts should exercise caution before substituting their own assessments for directors' business judgments. Nevertheless, a theory developed within corporate law does not, by itself, establish a defence to criminal liability under Indonesian law. Its relevance to criminal proceedings requires an examination of the applicable legal basis, the elements of the offence, and evidence of the accused person's involvement. The domestic legal basis for protecting managerial decisions can be traced to Articles 92 and 97 of Law Number 40 of 2007 concerning Limited Liability Companies, read together with its amendments. Article 97(5) specifies the conditions under which a director may be relieved of liability for losses suffered by the company. These conditions concern the absence of fault or negligence; management undertaken in good faith and with due care for the company's interests and purposes; the absence of conflicts of interest; and measures taken to prevent the occurrence or continuation of losses. These provisions establish managerial conduct and preventive action as important assessment criteria, extending the inquiry beyond the company's financial results (Republic of Indonesia, 2007, Articles 92 and 97).

The scope of Article 97(5), however, concerns liability for corporate losses as referred to in Article 97(3). Accordingly, this study does not treat the provision as a general immunity from criminal liability. Analytically, failure to satisfy the conditions for protection against civil liability does not establish that a

criminal offence has occurred. Conversely, compliance with internal procedures does not preclude an investigation into alleged bribery, fraud, or other misconduct where evidence supports the elements of an offence. The relationship between these legal domains must therefore be established through the relevant legal tests rather than an automatic equation of corporate loss, managerial negligence, and criminal culpability. International standards provide guidance on the need to preserve scope for responsible risk-taking. The *G20/OECD Principles of Corporate Governance 2023*, particularly Principle V.A.1, support protecting board members against litigation where decisions are made in good faith and with due diligence. The accompanying explanation connects this protection to an adequately informed basis, procedural due care, and the absence of conflicts of interest, including where a decision ultimately proves unsuccessful. This instrument constitutes corporate governance guidance, or *soft law*, rather than an international treaty granting criminal immunity. Its relevance to this study lies in the standards it provides for evaluating managerial decision-making through comparative analysis (OECD, 2023, Principal V.A.1).

At the same time, the *United Nations Convention against Corruption* 2003 provides an international framework for preventing the misuse of corporate structures. Article 12 addresses measures to prevent corruption in the private sector, while Article 26 requires States Parties to establish the liability of legal persons in accordance with their domestic legal principles. Such liability may be criminal, civil, or administrative and must be accompanied by effective, proportionate, and dissuasive sanctions. Indonesia ratified the Convention through Law Number 7 of 2006. The protection of business discretion must therefore be considered alongside obligations to promote corporate integrity and accountability; the Convention does not provide a basis for treating every business loss as a criminal offence (United Nations, 2003, Articles 12 and 26; Republic of Indonesia, 2006). Protection against the arbitrary imposition of liability has a constitutional foundation in Article 28D(1) of the 1945 Constitution of the Republic of Indonesia. At the international level, Article 14 of the *International Covenant on Civil and Political Rights* establishes fair trial guarantees, including the presumption of innocence, while Article 15 protects the principle of legality and provides for the benefit of a lighter penalty following a relevant change in the law. Indonesia ratified the Covenant through Law Number 12 of 2005. In the context of this study, these guarantees require the assessment of directors' conduct to rest on applicable law and legally established evidence rather than a presumption of culpability derived from business outcomes (United Nations, 1966, Articles 14–15; Republic of Indonesia, 2005).

The domestic legal analysis must also consider Law Number 1 of 2023 concerning the Criminal Code, together with the amendments introduced by Law Number 1 of 2026 concerning Penal Adjustments. The corporate liability framework in Articles 45–50 must be read in its amended form rather than solely by reference to the original 2023 text. Analysis of earlier cases also requires a distinction between the law applicable when the conduct occurred, the law applicable when the proceedings took place, and relevant provisions governing changes in criminal law. Consequently, an examination of the business judgment rule requires clarity concerning the timing of the conduct, the persons or entities potentially liable, and the offence alleged, so that the application of corporate and criminal law remains sensitive to their temporal scope (Republic of Indonesia, 2023; Republic of Indonesia, 2026). At the level of *das sein*, the boundary between business risk and criminal conduct is illustrated by Supreme Court Decision Number 121 K/Pid.Sus/2020, dated 9 March 2020, concerning Karen Agustiawan and the investment in the Basker Manta Gummy Block. The Supreme Court's publication of landmark decisions records a discharge from all legal charges and identifies a principle concerning losses arising from business decisions in the absence of fraud, conflicts of interest, unlawful conduct, and intentional wrongdoing.

The decision demonstrates the importance of legally characterising the conduct alleged. However, a single decision cannot establish a general pattern of criminalisation of business decisions. Its reasoning also cannot automatically be extended to other cases involving different facts and charges (Supreme Court of the Republic of Indonesia, 2020). The distance between normative standards and practical assessment can also be examined through *hindsight bias*. Rachlinski (1998) discusses the tendency to perceive events that have already occurred as more foreseeable than they actually were beforehand. In assessing directors' decisions, knowledge that an investment ultimately failed may influence judgments about the reasonableness of the

original decision. The analytical implication for this study is the need to reconstruct the information available when the decision was made. Assessment reports, records of risk deliberations, and explanations for selecting particular alternatives may assist this inquiry. Their evidential value, however, depends on their substance and reliability; the formal existence of documentation does not, by itself, establish good faith.

International scholarship also cautions against defining directors' protection too broadly. Spamann (2016) explains limitations on monetary liability for breaches of the duty of care by considering litigation costs and the benefits of liability-based incentives. His analysis indicates that the justification for limiting liability is contextual rather than a universal basis for eliminating accountability. Because the study concerns monetary liability within corporate governance, its findings cannot be directly translated into restrictions on criminal liability. This research draws on that analysis to examine the proportionality of legal intervention and the importance of distinguishing different forms of misconduct and their legal consequences. Johnson (2005) argues that the rationales for applying the business judgment rule to directors do not extend with equal force to corporate officers. This debate demonstrates that the scope of the doctrine depends on organisational functions and the allocation of authority. In the Indonesian context, the distinction requires careful treatment because the terms *directors* and *officers* in United States scholarship do not necessarily correspond to the organs of an Indonesian company. Its contribution to this study lies in highlighting the need to identify who made a decision, who implemented it, and which conduct provides the basis for liability before connecting an organisational position to criminal consequences.

The sources examined indicate a need to connect three levels of analysis: corporate management standards, the elements of the relevant criminal offence, and the attribution of liability to individuals and corporations. Scholarship on judicial restraint, assessment bias, and managerial liability provides an important foundation but does not, by itself, determine how these dimensions should be integrated within Indonesian law following criminal law reform. The proposed contribution is an analytical framework that evaluates the quality of the decision-making process *ex ante*, the relevance of identified departures to the elements of an offence, and the basis for each person's or entity's involvement. This framework is proposed for examination through legal materials and judicial decisions rather than premised on a conclusion that all corporate losses constitute protected business risks. This study aims to analyse the position of the business judgment rule in relation to directors' criminal liability, identify the boundary between justifiable business risk and conduct satisfying the elements of a criminal offence, and formulate an assessment framework that reconciles the protection of discretion with accountability. The research questions address how domestic regulations and international instruments shape that boundary, how business decision-making processes should be assessed in criminal proceedings, and how individual liability should be distinguished from corporate liability. Through this approach, the study seeks to provide a reasoned foundation for careful legal assessment while preserving effective enforcement against proven criminal conduct.

II. METHODS

This study adopts a normative legal research design to examine the relationship between the business judgment rule and directors' criminal liability in Indonesia. It combines statutory, conceptual, and case-based approaches to identify the legal boundaries between legitimate business risk, breaches of managerial duties, and criminal conduct. The distinction between *das sollen* and *das sein* guides the analysis of normative standards and their application in judicial reasoning. Judicial decisions are examined as documentary legal materials rather than treated as evidence of the prevalence of particular enforcement practices. The statutory approach examines the provisions governing directors' managerial authority, duties, and liability under Law Number 40 of 2007 concerning Limited Liability Companies and its amendments. It also considers the corporate criminal liability framework under Law Number 1 of 2023 concerning the Criminal Code, as amended by Law Number 1 of 2026 concerning Penal Adjustments. Relevant provisions are analysed according to their substantive scope, hierarchical relationship, and temporal applicability. For earlier conduct and judicial decisions, the analysis distinguishes the legislation applicable at the time of the alleged offence from subsequent legal developments, including relevant rules governing changes in criminal law.

International instruments are examined according to their legal status and relevance to the research questions. These include the *United Nations Convention against Corruption*, particularly its provisions on private-sector integrity and the liability of legal persons, and the *International Covenant on Civil and Political Rights*, particularly its guarantees concerning fair trial rights and legality. The *G20/OECD Principles of Corporate Governance 2023* are used as non-binding comparative guidance on informed decision-making, good faith, due care, and conflicts of interest.

Treaty obligations, domestic legislation, and governance recommendations are distinguished throughout the analysis to avoid attributing equivalent legal effects to instruments with different normative foundations. The conceptual approach examines managerial discretion, the duty of care, the duty of loyalty, good faith, conflicts of interest, criminal fault, and the attribution of liability. Scholarly discussions of judicial restraint and hindsight bias are used to assess how the timing and availability of information affect the evaluation of business decisions. Concepts developed in foreign legal systems are considered with attention to differences in corporate structures and terminology. In particular, distinctions between directors and corporate officers are not assumed to correspond directly to the allocation of functions under Indonesian company law.

The legal materials comprise primary and secondary sources. Primary materials include legislation, international instruments, and judicial decisions obtained from official legal repositories and institutional publications. Secondary materials include scholarly journal articles addressing the business judgment rule, directors' duties, judicial assessment, and corporate liability. Literature searches use combinations of the terms "business judgment rule," "directors' criminal liability," "corporate criminal liability," "business risk," "duty of care," and "hindsight bias," together with their Indonesian equivalents. Materials are selected for their direct relevance to the research questions, identifiable authorship, traceable publication details, and accessibility of the relevant text. This constitutes a focused doctrinal literature review rather than a systematic review intended to capture every publication on the subject.

The case-based analysis focuses on Supreme Court Decision Number 121 K/Pid.Sus/2020 concerning the investment in the Basker Manta Gummy Block. The decision is selected because it directly addresses the relationship between business decision-making and alleged criminal liability. The examination distinguishes the allegations, material facts accepted by the court, legal provisions applied, judicial reasoning, and operative disposition. Official summaries are used as supporting materials and distinguished from the judgment itself. The case serves as a purposively selected doctrinal illustration; it is not treated as representative of all prosecutions involving directors.

The materials are organised in an analytical matrix recording the source, applicable provision or legal proposition, relevant period, decision-making standard, alleged misconduct, and basis for attributing liability. Analysis proceeds through grammatical, systematic, and purposive interpretation, followed by comparison across corporate and criminal law. Particular attention is given to the information available when a decision was made, the corporate purpose pursued, the presence of conflicts of interest, preventive measures, and the individual's role in the alleged conduct. These considerations are then assessed against the elements of the relevant offence. Failure to satisfy a condition of corporate-law protection is not treated as sufficient proof of criminal liability.

The reliability of the analysis is supported by checking statutory wording against official texts, tracing scholarly propositions to their original publications, and distinguishing judicial findings from allegations and editorial commentary. Competing interpretations are considered before formulating conclusions. The proposed framework is developed through legal reasoning and is not presented as an empirically validated assessment instrument. Because the study relies on publicly available documentary materials, it involves no interviews, participant observation, or collection of personal data from research participants. Its conclusions are limited to the legal materials examined and do not establish the frequency of criminalisation, the motives of enforcement authorities, or the broader behavioural effects of prosecution on directors.

III. RESULT AND DISCUSSION

A. Legal Boundaries between Protected Business Decisions and Directors' Criminal Liability

The analysis identifies three legally distinct matters: an adverse business outcome, a breach of managerial duties, and conduct constituting a criminal offence. Although they may originate from the same transaction, establishing one does not automatically establish the others. A decline in investment value demonstrates an economic consequence, while liability requires an examination of the applicable obligations, the director's conduct, and the requirements of the relevant legal regime. Under Article 92(1)–(2) of Law Number 40 of 2007 concerning Limited Liability Companies, directors exercise managerial authority for the company's interests and purposes within the applicable statutory and constitutional framework of the company. Article 97(2) requires management in good faith and with responsibility, while Article 97(3) concerns personal liability for losses attributable to fault or negligence. Article 97(5) establishes conditional protection where a director demonstrates the absence of fault or negligence, good faith and due care, the absence of conflicts of interest, and measures to prevent the occurrence or continuation of losses (Republic of Indonesia, 2007).

Read together, these provisions place the quality of managerial conduct at the centre of the assessment. Commercial success cannot independently establish proper management, just as commercial failure cannot independently establish wrongdoing. Nevertheless, the protection under Article 97(5) concerns liability for corporate losses and should not be treated as a general exemption from criminal law. Failure to establish its conditions likewise does not relieve the prosecution of proving the requirements of the offence alleged. The distinction becomes clearer when corporate duties are considered alongside criminal fault. Article 36 of the Criminal Code establishes the general framework for intentional and negligent offending, with negligence punishable where expressly prescribed. Article 37, as amended by Law Number 1 of 2026, permits liability without regard to fault where legislation specifically provides for it. Consequently, an allegation of managerial negligence must identify the applicable criminal provision rather than derive criminal culpability solely from an imprudent decision or procedural departure (Republic of Indonesia, 2023; Republic of Indonesia, 2026). Corruption allegations require an additional distinction between commercial loss and the elements of the offence. Article 603 of the Criminal Code addresses unlawful enrichment that causes loss to state finances or the national economy. Article 604 concerns abuse of authority, opportunity, or facilities arising from office or position, undertaken for the specified benefit and causing the required loss. An accounting calculation cannot substitute for evidence concerning unlawful conduct, abuse of authority, or the connection between the accused and the transaction. Conversely, the absence of personal enrichment does not necessarily resolve liability where the relevant provision also addresses benefits to another person or corporation.

The assessment of state-owned enterprises requires particular attention to legislative developments. Article 9F of the State-Owned Enterprises Law, introduced through Law Number 1 of 2025, provides conditional protection concerning losses. It must be interpreted alongside Article 9D on compliance and Article 9E prohibiting unauthorised personal benefits. Law Number 16 of 2025 subsequently amended Article 4B concerning the profits and losses of state-owned enterprises and deleted Article 9G. Accordingly, an analysis based exclusively on the earlier legislative framework may misstate the current legal position (Republic of Indonesia, 2025a; Republic of Indonesia, 2025b). These provisions require careful reconciliation rather than a categorical assumption that every loss suffered by a state-owned enterprise constitutes a corruption offence or that its classification as a corporate loss excludes every possibility of criminal liability.

The inquiry must identify the transaction, the applicable legal provisions, the legally relevant loss, and the alleged conduct connecting them. The practical solution is to separate the assessment into identifiable legal questions: what loss occurred, which managerial obligation applied, whether that obligation was breached, and whether the evidence satisfies a criminal offence. Each conclusion requires its own justification. This structure preserves legitimate commercial discretion while allowing liability to be imposed where the applicable requirements are established.

B. International Standards, Judicial Reasoning, and Individual Attribution

International instruments provide complementary standards for corporate integrity and the protection of persons facing criminal allegations. Their legal functions differ, however, and they should not be treated as interchangeable sources of criminal liability or immunity. Article 12 of the *United Nations Convention against Corruption* addresses private-sector integrity, accounting standards, and internal controls. Article 26 requires States Parties to establish the liability of legal persons consistently with domestic legal principles while preserving the criminal responsibility of natural persons who commit offences. Article 28 permits knowledge, intent, or purpose to be inferred from objective factual circumstances. Article 30(9), in turn, reserves the definition of offences and applicable defences to domestic law (United Nations, 2003). The combined significance of these provisions is that corporate accountability should rest on substantive examination of conduct. A compliance programme may assist prevention and detection, but its existence does not independently establish lawful behaviour. Its evidential relevance depends on implementation, management's response to warnings, and the reliability of the underlying records. Similarly, an inference of intent must connect objective circumstances to the legally required state of mind rather than rely solely on the transaction's adverse outcome.

The *International Covenant on Civil and Political Rights* provides procedural safeguards. Article 14(1) protects fair adjudication, Article 14(2) establishes the presumption of innocence, and Article 15 addresses legality, non-retroactivity, and the benefit of a lighter penalty following a relevant legal change (United Nations, 1966). These guarantees require meaningful opportunities to challenge allegations, examine evidence, and contest expert conclusions. Requirements concerning corporate-law protection must not be used to bypass the prosecution's obligations under applicable criminal procedure. Principle V.A.1 of the *G20/OECD Principles of Corporate Governance 2023* supports protection against litigation for decisions made in good faith and with due diligence. Its explanation emphasises an informed basis, procedural care, and the absence of conflicts of interest. As non-binding governance guidance, the principles inform the evaluation of decision-making quality rather than create an independent criminal defence (OECD, 2023).

Comparative legislation illustrates the value of defining the scope of protection expressly. Section 180(2) of Australia's *Corporations Act 2001* provides conditional protection concerning specified duties of care, while section 184 separately addresses criminal offences involving the relevant forms of recklessness or dishonesty. The comparative implication is that protecting responsible risk-taking does not require eliminating scrutiny of independently established criminal conduct. Any adaptation to Indonesian law must nevertheless account for differences in statutory language, corporate structures, and liability rules. Within Indonesian judicial practice, Supreme Court Decision Number 121 K/Pid.Sus/2020 illustrates the importance of legally characterising the alleged conduct. The Court's official account records the reversal of the lower judgments and a discharge from all legal charges. Its published principle connects the treatment of business losses with the absence of fraud, conflicts of interest, unlawful conduct, and intentional wrongdoing (Supreme Court of the Republic of Indonesia, 2020).

The decision supports an examination of the circumstances underlying a failed transaction. Its reasoning should remain connected to the particular facts and charges, however. It does not establish automatic protection for every investment undertaken under a corporate expansion strategy. Its application to another case requires comparison of authority, available information, conflicts, alleged misconduct, and offence requirements. Individual attribution presents a related issue. Article 49 of the Criminal Code, as amended by Law Number 1 of 2026, distinguishes corporate responsibility from responsibility that may be imposed on functionally positioned management, persons giving orders, controllers, and beneficial owners. Its elucidation expressly distinguishes criminal conduct from criminal responsibility (Republic of Indonesia, 2026).

The analytical consequence is that corporate wrongdoing does not automatically establish the liability of every director. Transactions may involve different actors performing assessment, approval, implementation, and supervision. Responsibility should therefore be examined through evidence of each subject's authority, participation, knowledge, control, and relevant omissions. Where liability rests on an omission, the applicable duty to act and the person's capacity to discharge it must be identified. The proposed solution is a

combined assessment of decision-making integrity and individual involvement. This approach avoids concentrating exclusively on formal officeholders while overlooking effective controllers. It also prevents collective approval from obscuring material differences between active participation, independent advice, documented objection, and limited administrative involvement.

C. An Integrated Framework for Evidence, Corporate Governance, and Legal Enforcement

The study proposes an integrated framework connecting managerial standards, offence requirements, and attribution. Its purpose is to organise legal reasoning without replacing legislation, creating a new defence, or altering statutory evidential burdens. The first component is an *ex ante* assessment. A decision should be examined against the information reasonably available when it was made. Subsequent losses may justify investigation but cannot retrospectively expand the director's knowledge. Relevant considerations include the commercial objective, principal assumptions, alternatives considered, professional advice, conflicts disclosed, and responses to material warnings. The depth of examination should reflect the transaction's scale and complexity. The second component is offence-specific analysis. Findings concerning inadequate preparation, procedural irregularities, or weak supervision must be connected to the requirements of the offence alleged. These matters may support further inquiry, but their criminal significance requires explanation. Equally, formal compliance should not prevent examination of evidence suggesting concealed benefits, deception, or other misconduct.

The third component concern's evidential reliability. Law Number 20 of 2025 concerning the Criminal Procedure Code entered into force on 2 January 2026 and replaced Law Number 8 of 1981. Article 235 recognises categories of evidence that include electronic evidence and requires authentication and lawful acquisition. Contemporary assessments must therefore address the applicable procedural framework and transitional arrangements rather than automatically reproduce the former Code's provisions (Republic of Indonesia, 2025c). For corporate transactions, evidential reliability requires preserving records in their original context. Meeting minutes, financial models, risk assessments, correspondence, and approval histories should be examined for completeness and provenance. Investigators should distinguish contemporaneous records from explanations prepared after the event. Expert opinions should disclose the materials reviewed, assumptions applied, and limitations affecting their conclusions.

Table 1. Integrated framework for distinguishing business risk from corporate crime

Assessment dimension	Principal question	Proposed response
Applicable law	What information and alternatives were reasonably available?	Examine contemporaneous analysis, professional advice, and deliberation records.
Managerial authority	Who could assess, approve, implement, and supervise the transaction?	Compare actual participation with statutory powers and delegated authority
Decision-making quality	What information and alternatives were reasonably available?	Examine contemporaneous analysis, professional advice, and deliberation records.
Integrity	Were conflicts, deception, or improper benefits involved?	Review disclosures, transaction relationships, communications, and payment flows
Risk management	How were warnings and emerging losses addressed?	Trace monitoring, escalation, corrective measures, and assigned responsibilities
Offence requirements	What evidence supports each required element?	Distinguish financial findings from conclusions concerning criminal conduct
Individual attribution	How is each person connected to responsibility?	Assess participation, knowledge, control, duties, and relevant omissions separately
Evidential reliability	Are the records authentic and lawfully obtained?	Document preservation, provenance, acquisition, and expert methodology

Source: Authors' proposed doctrinal synthesis.

At the corporate level, the principal solution is substantive decision documentation proportionate to the transaction. A useful decision record explains why the transaction was pursued, which uncertainties were recognised, and how those uncertainties would be monitored. Independent advice should assist genuine deliberation rather than function as a formal shield. Directors should consider whether advisers addressed the relevant questions and disclosed material limitations. Conflict management requires more than a general declaration of independence. Companies should identify relevant interests, document their treatment, and allocate decisions to persons with appropriate authority and independence. Where material concerns arise, escalation mechanisms should specify who must respond and how corrective action will be recorded. These measures improve both decision quality and the subsequent assessment of conduct. At the enforcement level, the proposed solution is an analytical memorandum linking the alleged offence to supporting evidence and each subject's involvement. It should identify unresolved issues and reasonable alternative explanations requiring investigation. This memorandum is a recommended analytical practice, not an additional statutory condition for prosecution. Its purpose is to make the reasoning transparent and reduce reliance on assumptions derived from corporate losses or organisational position.

At the policy level, coordination between company law, state-owned enterprise legislation, substantive criminal law, and criminal procedure would improve consistency. Interpretive guidance should clarify the scope of conditional protection, the treatment of conflicts, and the relationship between managerial shortcomings and offence requirements. Such guidance must preserve the investigation of substantiated misconduct while preventing commercial failure from becoming a substitute for proof. The framework's contribution lies in connecting commercial context with legally differentiated responsibility. It protects reasonable discretion through careful examination of the decision-making process while maintaining accountability for conduct that satisfies criminal requirements. Its practical effectiveness requires testing against a broader body of judicial decisions; it is therefore presented as a doctrinal proposal rather than an empirically validated instrument or a universal safe harbour for directors.

IV. CONCLUSION

This study concludes that the boundary between legitimate business risk and corporate crime depends on the legal character of directors' conduct rather than the financial outcome alone. An unsuccessful transaction does not independently establish criminal liability, while a profitable transaction does not exclude criminal wrongdoing. The business judgment rule provides conditional protection for responsible managerial discretion, but it does not constitute general immunity from prosecution. Equally, failure to satisfy the conditions for protection against liability for corporate losses does not automatically establish a criminal offence. A defensible assessment requires three connected inquiries: the quality of the decision-making process, the elements of the alleged offence, and the attribution of responsibility to the relevant individual or corporation. Decisions should be evaluated against the information reasonably available when they were made, with attention to authority, good faith, conflicts of interest, professional advice, and responses to material warnings. Criminal responsibility must then be determined through the applicable offence requirements and reliable evidence of involvement. Corporate responsibility and individual responsibility require distinct justification.

The study proposes an integrated assessment framework supported by contemporaneous documentation, effective conflict management, proportionate risk oversight, and an element-by-element examination of allegations. Its significance lies in reconciling managerial discretion with accountability: directors retain reasonable scope to undertake uncertain business activities, while conduct satisfying criminal requirements remains subject to enforcement. Clearer coordination between corporate legislation, state-owned enterprise regulation, criminal law, and criminal procedure would strengthen legal certainty. The proposed framework remains a doctrinal contribution requiring further examination across a broader body of judicial decisions.

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