

ABSTRACT

In successfully managing a company, directors have to make commercial decisions to maximize profits, which are sometimes undertaken by directors with limited information at their disposal, which create risks. In such situations directors attract personal liability if they make business decisions and fail in achieving the set objectives, or if the desired deliverables are not met. Due to this reason, decision-makers become overly risk averse and it is be detrimental to the operations of the corporation as a whole. In the long run, this will stifle the economy of the country as companies play a vital role in the stability and growth of a nation's economy. The situation has become more problematic with the imposition of the statutory duties on directors. Therefore, the aim of this study is to examine the necessity of the business judgment rule as a defence for the statutory duty of care, skill and diligence provided in section 189 of the Companies Act No. 07 of 2007. The study adopts comparative research method as cross-jurisdictional study of the business judgment rule. Further, a survey is conducted to obtain the view of academics, legal professionals, directors and shareholders of companies regarding the need of business judgment rule as a defence for the duty of care and skill. The shift of the common law duty of care, skill and diligence from a subjective standard to an objective standard and its transformation to a statutory duty of care and skill is traced in the study. Then, the approaches taken by other jurisdictions to shield directors from the duty are examined, which is the business judgment rule. It is found that this rule affords a valid protection to directors, who make decisions good faith, informed and in the best interest of the company and further will strike a balance between accountability and entrepreneurship. After analysis of the approaches taken by jurisdictions such as Australia, South Africa, Germany, Malaysia and UK, the study recommends the adoption of a statutory business judgment rule suitable to corporate environment of Sri Lanka.