

CORPORATE CRIME IN MYANMAR: LEGAL FRAMEWORK AND IMPLEMENTATION*

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Abstract

Company transactions in Myanmar have been growing since 1989 when the market-oriented economic system was first adopted. As more companies are established, more corporate crimes tend to be committed. A number of such crimes have occurred in Myanmar. This research focuses on corporate crimes leading to corporate manslaughters and corporate homicides like passenger accidents of private transportation services, fatal accidents in the workplace, and unsuccessful treatments in health services and private hospitals. The lack of public awareness of corporate crime and corporate liability results in legal actions against individuals who actually committed the crimes but not the corporations employing them. Injured parties take legal action against the employee only through criminal prosecution, not against the corporations and would request damages only from the employees. Thus, corporations always escape from criminal prosecution and civil liability for their wrongs. This research will explore what kinds of corporate crime generally occur in Myanmar, the basis for corporate criminal liability and how regulatory systems for corporate criminal liability have been developed and implemented in countries such as the UK, the US and Australia. It will also explore legal frameworks of corporate crime especially corporate killing and its implementation process in Myanmar.

Keywords: *corporate body, corporate crime, corporate liability, corporate criminal liability.*

Introduction

Along with the initial existence of companies in Myanmar, the Myanmar Companies Act was passed on 1st April 1914 during the British Colonial Era. After the independence in 1948, the Revolutionary Council took over the power of the State in 1962 and many companies were abolished due to a socialist economic system. When the State Law and Order Restoration Council (later called the State Peace and Development Council) handed over the State's power in 1988, the market-oriented economic system was started in Myanmar while companies have flourished throughout the country.

Since the time when the new government has taken the responsibility of the State in 2016, Myanmar has experienced many political changes including its economic policies. Several laws and regulations are enacted to address the current situation. The new Myanmar Companies Law was enacted in 2017. With the growing business and a flourishing of various companies, many challenges including corporate wrongdoings arise in business transactions. This research will focus on corporate killings such as passenger bus accidents on private transportation services, workplace accidents in mining and construction sites, poorly done treatments in health services and private hospitals or clinics.

Objectives

The main aims of the research are to define corporate crime and corporate criminal liability, to describe how to develop corporate criminal liability, to discuss the state practice of corporate criminal liability in some leading countries such as the UK, the US and Australia, and to explore the legal framework of corporate crimes and the challenges implementing them in Myanmar.

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Research Methods

A review was made of the concept of corporate crime and corporate criminal liability. The Corporate Manslaughter and Corporate Homicide Act (UK), 2007, the Model Penal Code (US), 1962, the Criminal Code Act (Australia), 1995 and the relevant cases are studied. Published law books, journals, articles and reports are used.

Research Findings

For taking legal action for corporate crime effectively in Myanmar, it is necessary to consider enacting a specific statutory provision for corporate crime in Criminal Law. However, it is impossible to insert directly as a provision of corporate crime in the Penal Code, 1860. Hence, it should be added a specific provision of "corporate criminal liability" as a part of the Penal Code of Myanmar.

Discussion

Corporate Crime Issues in Myanmar: Crime is generally defined as an act or omission, prohibited by law as injurious to the public at large and punishable by the State.¹ Corporate crime is such a crime that is committed by a corporate body or its individuals acting on its behalf.² Corporations are already subject to the criminal law,³ and they can also be punishable by the law when they do commit the crimes. Some corporate offences, however, are based on corporate officers' mismanagement and careless manner, for instance, managing in operating a motor vehicle and other machineries causing bodily harm or death,⁴ showing wanton and reckless disregard for the lives or safety of others,⁵ and supervising medical treatment by wrongful advices or

¹ Garner, Bryan A., *Black's Law Dictionary*, 9th Edition, Thomson/West, 2009, p. 427; Martin, Elizabeth A., *Oxford Dictionary of Law*, 4th Edition, Oxford University Press, 2007, p. 119; Ba Han, Dr., *The University English - Myanmar Dictionary; Volume. I*, 3th Edition, Yone Kyi Chet Sar Pay, 2007, p. 185; F.G. Neave, LL, *Mozlay and Whiteley's Law Dictionary*, 4th Edition, Butter Worth & London, 1923, p. 82.

² Garner, Bryan A., *Black's Law Dictionary*, 7th Edition, St.Paul, Minn. West Publishing Co., 2000, p. 165.

³ Modern criminal statutes, such as the Model Penal Code of the United State, and other Statutes, the Uniform Commercial Code, either expressly provides that corporation may convict crime or define the term person to include corporation. In English Law, this was matched by the decision in *Salomon v. Salomon*, [1897] AC 22 and in Australian Law, under the Corporation Act, 2001; it is provided that a corporation is legally a person. Likewise in Myanmar, the Penal Code, 1860 also provides that the word "person" includes any company or association, or body of persons, whether incorporated or not. A corporation, therefore by the law, regarded as a person and may be held responsible for a crime.

⁴ Than Naing Soe, '*Bus Crash on Deathly Highway Kills Five, Injures Fifteen*', The Arrawaddy, 01 June 2015. An Elite Express bus running from Yangon to Pyin Oo Lwin turned over near Milestone 357 on the Yangon-Mandalay highway on May 31. The bus, which was carrying 35 passengers, flipped with it collided with Tataroo Circle at high speed. Driver has charged by the Police under Penal Code Section. 337, Section. 338 and Section. 304 (causing the death of any person through a rash or negligent act not punishable as homicide or murder)

⁵ Toe Wai Aung, '*Three Killed in Construction Site Accident*', Myanmar Time, 25 January 2016, Three workers, including a child, were killed and another three are still missing after a retaining wall under construction at a Yangon monastery collapsed yesterday. The accident occurred while the workers were digging up dirt to use on the retaining wall at Withuddhayone Dhamma Beikman Pakokku monastery in Mayangone Township. Construction site accidents are common around the country and the injured parties can claim compensation according to the Workmen Compensation Act, 1923.

services.¹ But they do not actually know themselves committing such kind of crime as a corporate crime and having responsibility on them because they do not actually committed these crimes. Those are only committed by an individual during the time when he or she is serving for the benefit of the company. The main issue here is that the company or corporation itself or the responsible staffs working are lack awareness and understanding towards the term "corporate criminal liability" because there are not any impositions of corporate liability in the legal framework of Myanmar. This leads to the issue of absence of taking action for corporate crime in Myanmar, which is the first problem/issue addressed by this research.

Relating to corporate crime in Myanmar, there are several kinds of corporate crime in their respective business dealings. But the people in Myanmar do not really know or have the knowledge of putting the companies' owner of these businesses on trial for the accidents. All they know for these accidents are taking legal actions to single individuals like a careless driver, a worker, or a medical servant on trial only with the Penal Code. They are taken action by section. 304A of the Penal Code, 1860 (causing death by negligence) and all cases are punished within the criminal law. The lack of or limited knowledge possessed by local people of Myanmar towards normal criminal litigation on corporations lead to the second problem/issue.

All the crimes committed by the company are actually committed by their employee who is serving as an agent for the benefit of the company. In this respect, most of the companies in Myanmar are not used to solve the problems legally. The liable companies of those accidents solve their problems in cash by giving "Ka Yu Nar Kyae"² informally so that any problem and reported case would not emerge legally. This becomes an important third problem/issue where corporate crimes are exempted without legal enforcement and measure.

The final problem/issue which will be addressing in this research is a corporation has no body that could be imprisoned. The local people have been known that the corporations are not like as natural persons and they cannot be jailed. So they cannot be taken in criminal action. It is only concerned to civil proceeding and not to criminal proceeding.

Corporate Criminal Liability: A corporation is created as a separate person;³ it has no physical existence like a natural person, it cannot commit a crime physically but can commit only through its human agents. Furthermore, corporations can also be criminally liable when their human agents' activities negligently caused death or injury, regardless if it were an accident and the act had no intention to kill or cause severe damage in any way. According to Stephen Tully,⁴

¹ Yamon Phu Thit, 'Myanmar Medical Council (MMC) Suspends Doctor for Five Years over 2010 Death', Myanmar Times, 11 February 2013. This is the second case in which a new-born baby died from premature births due to medical negligence of a gynecologist. Although the victim's mother pledged to Myanmar Medical Council and Ministry of Health to take legal action on private hospital for failing to provide medical care and so to provide compensation, only the gynecologist who handled the newborn baby's delivery got legal charge by withdrawing her medical license for 5 years. In that case, the injury party had told the private hospital which is responsible on the incident to give K50 million as compensation but the hospital had refused and denied any suggestion that it was to blame for the child's death.

² "Ka Yu Nar Kyae"-The meaning is a financial payment to the victims and beneficiaries in sympathy for their troubles or grievances.

³ *Salomon v. Salomon* [1897] AC 22; *Macaura v. Northern Assurance Company* [1925] AC 619; *Lee (Catherine) v. Lee's Air Farming Ltd* [1960] 3 ALL ER 420.

⁴ Stephen Tully, *International Corporate Legal Responsibility*, Wolters Kluwer, 2012, p. 9.

"corporations become criminally responsible for their employees acting within the scope of their employment where the conduct was intended to benefit the corporation".

The Basis for Corporate Criminal Liability: Under the English common law, the basis for corporate criminal liability was the identification theory.¹ It based on the doctrine of respondent superior. The theory originated from the civil case of *Lennard's Carrying Co. Ltd v. Asiatic Petroleum Co. Ltd*,² and it was decided that a corporation was responsible only for the actions and state of mind of those of its directors and managers who present its directing mind and will. It means the court must look for the 'directing mind and will' of the company. If the offenders are those of its senior officers, the court will impose the liability upon the corporation.³ If not, the court will not impose upon it.⁴

This approach has been criticized because it restricts corporate liability to the acts of directors or senior officers and has been recommended as 'narrow view'. The identification theory led to the unsatisfactory situation of corporations escaping liability due to the fact that it was difficult to find out a manager or senior officer who was to blame for the crime.⁵ This unfairly favors larger corporations because they will escape criminal liability for the acts of all the employees who manage the day-to-day activities of the corporations.⁶

In order to overcome the weakness of the identification theory, the court would simply impose liability on the corporation without identification of the senior or controlling officer.⁷ It would apply the vicarious liability upon the corporation without applying to the identification theory.⁸

Both in the UK and in the US, the industrial revolution and the attendant expansion of the railroads led courts to apply the civil doctrine of vicarious liability in criminal cases.⁹ In Australia, the courts applied the doctrine of vicarious liability in the criminal cases first and later they followed the identification theory when it was developed in the UK. So the UK which is leading country in progress of corporate criminal liability, the US and Australia which followed the UK are described as some examples in expressing the development of corporate criminal liability.

¹ Dorothy Farisani, "Corporate Homicide: What can South America Learn from Recent Development in English Law?", [2008] 9 IUS Gentium 3, 221.

² [1915] AC705.

³ *HL Botton (Engineering) Ltd v. TJ Graham & Sons Ltd* [1957] 1 QB 129, [1956] 3 All ER 624 (Court of Appeal).

⁴ *Tesco Supermarkets v. Natress* [1972] AC153

⁵ *National Rivers Authority v. Alfred McAlpine Homes East* [1994] CLR 760.

⁶ Simon Parsons, "The Doctrine of Identification, Causation and Corporate Liability for Manslaughter" [2003] 67 Journal of Criminal Law 69.

⁷ *Environment Agency v. Empress Car Co. (Abertillery) Ltd* [1998] 2 WLR 351, HL.

⁸ *Tesco Stores Ltd v. Brent London Borough Council* [1993] 1WLR1037; *Meridian Globle Funds Management Asia Ltd v. Securities commission* [1995]2 AC 500, PC; *National Rivers Authority v. Alfred McAlpine Homes East* [1994]CLR 760.

⁹ Mark Pieth & Radha Ivory, "Corporate Criminal Liability, Emergence, Converence, and Risk", Part I the Analytical Framework, Chapter 1 Emergence and Convergence: Corporate Criminal Liability Principles in Overview, [2011] 9 IUS Gentium 3, 5.

The Development of Corporate Criminal Liability: UK, US and Australia: In the UK, English common law initially rejected that a corporation could commit a crime and could be criminally responsible for the actions of its human agents. However, as corporate activities play a major part in social life and societies need to control their activities, the common law rules on corporate criminal liability have begun to change since early 1840s.¹

After one hundred years, the English court held that it was possible to prosecute corporations.² Criminal liability against corporations for their employee's actions was first imposed in 1944.³ A corporation being prosecuted for manslaughter was accepted in 1990. In *R v. P&O Ferries (Dover) Ltd*,⁴ Channel ferry "Herald of Free Enterprise" capsized in at the harbor in Zeebrugge. Consequently, P&O Ferries Ltd was prosecuted for the deaths of 154 passengers and 38 crewmembers. After investigation it was made clear that the cause of the accident was due to the fact that the ferry's bow doors had been closed. The trial judge insisted that a company can be prosecuted for deaths in law, however in this instance there was no senior officer who could be blamed for the deaths and thus, the court held that a corporation could be properly indicted for manslaughter.

The first successful case in conviction for corporate manslaughter was *R v. Kite and OLL Ltd*⁵ in 1996 and the first time a company was charged with a culpable homicide was *Transco plc v. HM Advocate*⁶ in 2004.

At the time, there was no statutory law to prosecute corporations for corporate killing. Because of the public pressure to reform the law on corporate manslaughter and corporate homicide, the United Kingdom's Parliament adopted a new statutory regime of corporate criminal liability for manslaughter and homicide in 2007; the Corporate Manslaughter and Corporate Homicide Act (UK), 2007.

This legislation in section.1 provided that

- (1) an organization to which this section applies is guilty of an offence if the way in which its activities are managed or organized (a) cause a person's death and (b) amounts to a gross breach of a duty of care owed by the organization to the deceased."
- (3) an organization is guilty of an offence under this section only if the way in which its activities are managed or organized by its senior management is a substantial element in the breach referred to in subsection(1).
- (6) an organization that is guilty of corporate manslaughter or corporate homicide is liable on conviction on indictment to a fine.⁷

¹ *R v. Birmingham and Gloucester Rly Co* [1842] 3QB 224 and *R v. Great North of England Rly Co* [1846] 9 QB 315.

² Simon Goulding, *Company Law*, 2nd Edition, Cavendish Publishing Limited, 1999, p. 59.

³ *DPP v. Kent and Sussex Contractors Ltd* [1944] KB 146; *Moore v. I Bresler Ltd* [1944] 2 All ER 515; *R v. ICR Haulage* [1944 KB 551.]

⁴ [1990] 93 Cr App R 72.

⁵ [1996] 2 Cr App Rep (S) 295.

⁶ [2004] JC 29; [2004] SLT 41.

⁷ Section.1 of the Corporate Manslaughter and Corporate Homicide Act (UK), 2007.

The first conviction on corporate manslaughter under the 2007 Act was *R. v Cotswold Geotechnical Holdings Ltd.*¹ In this case, it was alleged that an employee of a company had entered an unsupported pit and had died when the pit collapsed. This accident was considered to have happened due to a gross breach of the company itself as it had not stopped the deceased from entering the trial pit due to a lack of strict prohibition enforcement in place, unless it was made safe by shoring or otherwise. The defendant, who was the director of the company, had alleged that the deceased had experience in the field and had the capacity to form his own judgment about safety of the particular trial pit, the allegation was not agreed upon as the court held the company convicted of corporate manslaughter and fined £385,000.

In the United States, the concept of convicting a corporation of a crime had generally been rejected until the eighteenth century. In 1852, the courts held that corporations could be indicted for criminal nuisance² and criminally liable for wrongful death.³

In 1904, there was a case; *United States v. Van Schaick*,⁴ set a contrary precedent by holding a corporation could be indicted for manslaughter. In 1909, there was a landmark case that the doctrine of *respondent superior* allowed courts to impute the corporations with the misbehavior of employees acting within the scope of their employment and for the benefit of the corporation. It was *New York Cent. & Hudson River R.R. Co. v. United States*.⁵ In this case, the Court held that a corporation can be indicted for the acts of its agents when the agent is acting within the scope of his employment; in the business of the principal; a corporation will be held responsible for any damages done to the individual(s) who have suffered by such conduct. This US practice of imposing criminal liability for crimes committed is inclusive of even low-level employees of a corporation.⁶

In 1962, the American Law Institute presented its proposed official draft of the Model Penal Code (MPC), which adopts the *respondent superior* standard.

The Model Penal Code, 1962 provided that

- (a) An offense by an agent acting within the scope of his/her employment, and on behalf of a corporation, is imputed to the corporation when a legislative purpose to impose such liability “plainly appears.”
- (c) a corporation is liable only if “the commission of the offense was authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting on behalf of the corporation within the scope of his/her office or employment.”⁷

¹ [2012] 1 Cr. App. R. (S.) 26.

² *State v. The Morris and Essex R.R.*, 1852 WL 3499(Sup. Ct.1852).

³ *State v. Dilmore*, 1852 WL 2109(Sup. Ct.1852).

⁴ 134 F. 592(S, Dist. N.Y. Cir. Ct.1904).

⁵ 212 U.S.481(1909).

⁶ Ved P. Nanda, "Corporate Criminal Liability, Emergence, Convergence, and Risk", Part II Country Report, Chapter 2 Corporate Criminal Liability in The United States: Is a New Approach Warranted?, [2011] 9 IUS Gentium 3, 4.

⁷ Section. 2.07(1) of the Model Penal Code, 1962.

In the 1980s, American courts began to hold that corporations could, indeed, be prosecuted for manslaughter and negligent homicide. In *Commonwealth v. Fortner LP Gas Co.*,¹ where a corporate driver was unable to stop his truck because of defective brakes and fatally injured a child, the Kentucky Court affirmed that the corporation could be criminally liable for manslaughter. In the *Vaughn & Sons, Inc. v. State*² case whereby two persons died in a motor vehicle collision caused by the corporate defendant's agents, the Court of Criminal Appeals of Texas affirmed that the defendant corporation could be criminally prosecuted for criminally negligent homicide.

In Australia, the Courts initially relied on principles of vicarious liability,³ but have largely followed the identification theory since it was developed in the UK in the 1940s. The courts have generally followed the House of Lords' decision in *Tesco Supermarkets Pty Ltd v Natrass*,⁴ which limited liability to cases involving a senior officer who can be assumed as the directing mind and will of the corporation. This narrow standard continues to apply in most cases, but several legislative initiatives have imposed broader standards.⁵

In 1990, the federal government of Australia undertook a major review of corporate criminal liability, in part because of an awareness of several disasters that had caused loss of life.⁶ In 1995, the national commission recommended a major revision of corporate criminal liability, which was adopted as part of the new federal criminal code. Accordingly, the Criminal Code Act (Australia), 1995 was passed as a new legislation and it provided the general principle in section 12.1 that this Code applies to bodies corporate in the same way as it applies to individuals...⁷ and a body corporate may be found guilty of any offence, including one punishable by imprisonment.⁸ And if a physical element of an offence is committed by an employee, agent or officer of body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the physical element must also be attributed to the body corporate.⁹

Australian National Railways Commission case¹⁰ was the first successful prosecution inclusive of corporate criminal liability in Australia. In this case, an employee of the Australian National Railways Commission (ANRC) died in a shunting accident at Pt Pirie in South Australia in 1993. ANRC was charged responsible of offences which were against *Occupational Health and Safety (Commonwealth Employment) Act 1991* which places an obligation on employers to secure the health, safety and welfare of Commonwealth employees. The man was employed as a

¹ 610 S.W.2d 941 (Ky.Ct. App. 1980).

² 737 S.W.2d 805 (Tex. Crim.App.1987).

³ *Trade Practices Commission v Tubemakers of Australia Ltd* [1983] 47 ALR 719 (relying on the UK decision in *Tesco Supermarkets Pty Ltd v Natrass* [1972] AC 151); *Entwells Pty Ltd v National and General Insurance Co Ltd* [1990-91] 5 ACSR 424.

⁴ [1972] AC 151.

⁵ Sara Sun Beale, "Article: a Response to the Critics of Corporate Criminal Liability"[2009] 46 Am Crim L Rew 9

⁶ John Thornton, Criminal Liability of Organizations (2008) <www. isrc.org> accessed 17 October 2018.

⁷ Section.12.1(1), the Criminal Code Act (Australia), 1995.

⁸ Section.12.1(2), Ibid.

⁹ Section.12.2, Ibid.

¹⁰ [1993] HCA78; 67 ALJR 526. John Thornton, Criminal Liability of Organizations (2008), DPP Annual Report: 1996-1997 <www. isrc.org> assessed 17 October 2018.

rail operator and he had suffered fatal injuries whereby he was run over by a loosed shunted rail wagon that had been directed to come to a stop. In 1996, it was finally affirmed that ANRC was convicted of three summary offences against section 16(1) of the Occupational Health and Safety Act. ANRC defended the charges and the trial ran for six weeks. However, the magistrate found that ANRC had exposed the dead worker to some unnecessary risks. ANRC was fined \$50 000 and ordered to pay costs of \$101596.

Legal Frameworks of Corporate Crime and Implementation Process of Myanmar: In order to taken legal measures against the crimes committed by the companies in Myanmar, a specific law should be enforced with the measures and provisions in the Criminal Law. In Myanmar, the two Acts concerned with the companies are the Myanmar Companies Act, 1914 and the Special Company Act, 1950. However, in order to match with the modern day's need, the new Myanmar Companies Law was enacted on 6th December 2017. However, there is a lack of provisions on the corporate crime and corporate criminal liability in them.

That is why, the Penal Code, 1860 taken from India has to be referred to in making enforcement and taking measures. However, in the Penal Code, 1860, there is no provision regarding the corporate crime and corporate criminal liability. Instead, in the Penal Code, 1860, 10 there are provisions, which include the section. 299 (culpable homicide not amounting to murder), section. 300 (murder) and section. 304A (causing death by negligence).

Thus, if a person or a group of people dies due to negligence or poor management of a corporate officer, the crime is taken under section. 304A (causing death by negligence) to the direct committer or the person who directly committed the act. And he will get prosecuted under the Penal Code, 1860 for the case of death by the persons related to the dead. There is no specific provision under the criminal law and thus, it is not possible to take action against the company because of its poor management and negligence of corporate officers with the criminal law.

To explore the implementation process of the Corporate Crimes in Myanmar, in this research, it will present the three areas of accidents occurring in the private sectors. Among the three areas, the first case is regarding the passenger bus accidents of private transportation services. In this case, if there is a death of a person or of the customers who are riding the bus, the driver of the bus is charged with the section. 304A of the Penal Code, 1860. The owner of the car is sued according to the Law of Tort and the expected legal action outcome from the owner is only to pay for the compensation fee. Besides, if there is an insurance scheme, the victim or the victim's family members (in case of a fatal accident) could ask for the compensation from the insurance company according to the Third Party Liability Insurance under the Law of Insurance.

In the second case, the workplace accidents, if another worker die due to the negligence of a machine driving worker. Then, that machine driving worker can be punished with Section. 304(A) of the Penal Code, 1860. Then, the legal representative of the dead worker could ask for the compensation fee from the employer according to Section. 4(1)A of the Workmen Compensation Act, 1923.

In the third case, the medical negligence, if a patient gets injured or dies as a result of the careless or faulty treatment of a doctor due to the medical negligence, the doctor may be

punished by the Penal Code's section. 304 (A). And the injured party can also sue by the Law of Tort.¹ Then, the offender could be charged for his/her negligence according to Section. 45

(c) of the Medical Council Law, 2015 as well as by the administrative action under Section. 51

(b) of this law.

In the legal actions taken on the corporate crime in Myanmar (the corporate killing in this research for instance), the disadvantages could be found as follows:

- (1) The usage of existing laws to punish the corporate crime based on its types.
- (2) The inability to effectively take actions and punishments due to the lack of specific provisions assigned especially for the corporate crimes.
- (3) The inability to provide legal protections for the actual loss.

So there is an important need to have specific provisions for the corporate crime in Myanmar. Regarding crimes committed by the company, there is a need in Myanmar to consider enacting specific statutory provisions relating to the corporate crime specifically in the area of corporate killing. This will help solve problems in the case of such corporate crime. Thus, the following questions should be addressed:

- (1) Should a specific law following the legal system of the United Kingdom (UK) be adopted? (or)
- (2) Should a section of provisions for corporate criminal liability be added to the existing New Myanmar Companies Law? (or)
- (3) Should "the corporate criminal liability" provision be added as a part to the Penal Code of Myanmar in order to emerge as a criminal law?

To answer the questions, it will not be possible to provide as a specific law regarding the corporate crime and corporate criminal liability if it is only for the case of accidental deaths or murders committed by the companies in Myanmar. In the new Myanmar Companies Law, 2017, it is not appropriate to incorporate the punishable provisions that are relating to crimes. Thus, in the Penal Code of Myanmar, the sections detailing the provisions on the corporate crime and corporate criminal liability should be merged as a criminal law by inserting it in the Code.

For imposing the corporate criminal liability on the corporations or companies, the following provision described in the criminal law book is to be taken as a good example. According to the book of Criminal Law for the 21st century- A Model Code for Singapore, the provisions of corporate criminal liability are given below as a potential sample provision to put in the Penal Code of Myanmar. In the book, it says

"Corporate Criminal Liability"

¹ U Win Tin v. Myotaw Hospital (it's Representative: Daw New New Win), Civil Case No. 584, Mandalay District Court, 2016. 11

- (1) Unless it is provided for otherwise, a corporation may be convicted of an offence if:
- (a) the act is performed by an agent of the corporation acting on behalf of the corporation within the scope of his office or employment;
 - (b) the act was expressly or impliedly authorized or permitted by the board of directors or by a high managerial agent acting on behalf of the corporation within the scope of his office or employment;
 - (c) the corporate culture in the corporation expressly or impliedly authorized or permitted the non-compliance with the relevant offence provision; or
 - (d) the corporation failed tacitly or implied to create and maintain a corporate culture that required compliance with the relevant offence provision.
- (2) If intention, knowledge or rashness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a corporation that expressly authorized or permitted the commission of the offence.
- (5) A corporation may be found guilty of an offence, including one punishable by imprisonment (either on its own or combination with any other punishment), in which case a fine will be imposed instead.¹

The above simple provisions can potentially be taken as a sample and can be adopted and enacted as a part of the Penal Code by amending it to fit well with the needs of Myanmar. By doing so, a specific provision may be emerged as a criminal law to solve the cases of corporate crimes and corporate liability. If there is a specific provision for corporate criminal liability, the actions could be effectively taken towards the corporation which is liable for the offences of corporate killing in Myanmar. So a specific provision for corporate killing should be inserted in criminal law but it is impossible to insert directly as a provision of corporate crime in the Penal Code. Hence it should be added a specific provision "corporate criminal liability" as a part of the Penal Code.

Conclusion

In Myanmar, there is no specific provision as well as reported cases to be described for corporate crime and corporate liability. If these kind of similar cases occur, it may be taken action by criminal law; section. 304A (causing death by negligence) of the Penal Code. According to the new Myanmar Companies Law, 2017, it is updated some provisions of the law for the stock share business and the public companies have been occurred in Myanmar nowadays. There surely will arise many complicated cases and problems including corporate crime between companies and their dealers. So to handle these problems, the specific or detail rule or law should be well- prepared ahead especially in corporate killing.

In order to take legal action for corporate crime effectively in Myanmar, a lot of effort should be put legal awareness into the community first and should try to help them in legal proceeding. Furthermore, legal educations are also required to help supporting the legal practitioners. And it should be provided in Criminal Law by adding a specific provision of

¹ Chan Wing Cheong, Stanley Yeo, Micheal Hor, *Criminal law for the 21st Century: A Model Code for Singapore*, Academy Publishing, 2013, p. 123& 124.

"corporate criminal liability" as a part of the Penal Code. By doing so, it can be taken action for those corporations which are actually liable for the offences of corporate killing in Myanmar and the people can also realize that corporations, as participants in society, must accept and abide by social rules like all other persons. As a corporation is a separate legal person, it can enter into contract, sue and be sued and own property. Therefore, they are properly subject to criminal laws and can be punishable by the criminal proceeding.

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