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Administration of Legal Entities: Economic Analysis of Legal Powers and Duties

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Abstract

This article aims to analyze the powers and duties of administrators of private legal entities as provided in the Brazilian Civil Code, examining their foundations through the lens of the economic analysis of law. The approach is based on a descriptive-analytical, theoretical, and qualitative methodology, systematically exploring, from a multidisciplinary perspective, the interconnection between legal and economic concepts. It begins with an analysis of the scope of powers and duties of administrators of private legal entities in Brazil and the consequences arising from their breaches.

Keywords

Legal Entity, Management, Powers and Duties, Liability, Economic Analysis

1. Introduction

Private legal entities are institutions created by individuals with the purpose of carrying out economic, social, cultural, religious, or charitable activities, among others, without direct connection to the government, although they may be subject to its regulation. As abstract (non-human) entities, they lack the capacity to act on their own, requiring an administrator to express their will. Therefore, the administrator of a private legal entity is the one who manages and represents it, both actively and passively, in judicial and extrajudicial matters (Article 46, III, of the 2002 Civil Code, CC/02).

The representation of legal entities is thus carried out by their administrators, whose powers are defined in their respective constitutive acts (Article 47, CC/02). By virtue of the theory of appearance, the legal entity is bound before third parties by the acts performed by the administrator while exercising its administrative function. Therefore, as long as the act is regular, only the legal entity will be liable to third parties, as it is not to be confused with its partners, members, founders, or administrators.

However, if the administrator acts with abuse of right, fraud, or fault while managing the entity, they may be held personally liable for the acts performed, even if done on behalf of the legal entity (Articles 50, 1.015 to 1.017, and 1.177, sole paragraph, CC/02; Articles 158 and 159 of Law No. 6.404/76).

On this basis, the need arises to analyze the powers and duties of the administrator, with the aim of clarifying the legal mechanisms available to deter undesirable behaviors from a legal-economic standpoint.

The administrator, in exercising their duties, must act with "the care and diligence that every active and honest person ordinarily uses in managing their own affairs" (Article 1.011, CC/02). Additionally, by being subject to the rules of mandate (Article 1.011, §2, CC/02), the administrator must observe the duties established for agents, as provided in Articles 667 to 674 of the Civil Code. Accordingly, the administrator is subject to the duties of care and diligence, probity, good faith, loyalty, transparency, and efficiency. Deviations from these expected standards of conduct may trigger legal sanctions and liability.

The economic analysis of law enables a better understanding of the legal norms that regulate the conduct of administrators of private legal entities, assessing their consequences and identifying solutions that enhance efficiency and social welfare.

Therefore, the research problem addressed in this article concerns the legal norms that regulate the powers and duties of administrators of legal entities under the perspective of economic analysis of law, aiming to understand their scope and respective consequences in the context of protected or punishable conduct.

Thus, the objective of this article is to identify the proper interpretation to be given to the general legal concepts governing the actions of administrators and, based on economic analysis of law, to propose an interpretative solution to such powers and duties.

Initially, this article examines the powers and duties of administrators in relation to legal entities and the consequences arising from the breach of such responsibilities, seeking to understand the legal frameworks applicable and the role of the administrator within an organization.

Subsequently, without intending to exhaust the subject, an economic analysis is conducted regarding the administrator's powers and duties, with the aim of understanding the economic incentives that may encourage behavior aligned with the law, as opposed to conduct in violation of it.

From an economic perspective—and through its dialogue with the law—the analysis will address theories of agency conflicts, decision-making under uncertainty (risk and insurance), correction of informational asymmetry, and, finally, the economic theory of contracts.

2. Legal Powers and Duties of Legal Entity Administrators

Private legal entities are fundamental instruments for organizing the economic, social, and cultural life of any country, as they allow groups of individuals to structure themselves and act as a single entity, with rights and obligations distinct from those of their members.

Brazilian law recognizes various forms of legal entities, including associations, corporations, foundations, religious organizations, and political parties (Article 44, I-V, CC/02). Specifically, corporate entities may take the form of general partnerships, limited partnerships, limited liability companies, corporations (joint-stock companies), partnerships limited by shares, or cooperatives, each with distinct characteristics.

Regardless of their legal form, they are created by private initiative and are not directly tied to public authorities, expressing themselves legally through their administrators—natural persons. Each legal type establishes its own rules regarding the powers, rights, duties, and liabilities of administrators, though such provisions tend to converge and complement one another.

Since a legal entity is a legal fiction without its own will, the administrator is essential, serving as its legal representative in all respects, pursuant to Article 46, III, of the Civil Code.

The relationship between a legal entity and its administrator is, therefore, complex. It requires not only a clear delineation of the powers granted (Article 47, CC/02), but also the imposition of duties and responsibilities that ensure integrity, efficiency, and ethical conduct in the execution of legal acts—preventing abuse of rights, fraud, or negligence.

In exercising their role, the administrator does not act in their personal capacity, but on behalf of the entity they represent. Accordingly, under the theory of appearance, the regular acts performed by the administrator bind the legal entity in its dealings with third parties, ensuring legal certainty and predictability.

However, the powers granted to administrators are accompanied by strict duties. According to Article 1.011 of the Civil Code, administrators must act with the same care and diligence that a prudent and honest person would use in managing their own affairs. Moreover, under §2 of that article, the rules of mandate apply subsidiarily, requiring administrators to act in good faith, loyalty, transparency, and efficiency in accordance with Articles 667 to 674 of the Civil Code.

Failure to comply with these obligations can lead to severe legal consequences.

When an administrator acts with abuse of right, intent or fault, deviation of purpose, or commingling of assets, the law permits the disregard of the legal entity's separate personality, holding the administrator personally liable for damages caused to third parties that would, in principle, be attributable to the legal entity (Article 50, CC/02). Thus, the legal and financial separation between the entity and its administrator may be pierced as a measure of justice and protection for creditors—especially in cases where the legal entity is used for illicit or fraudulent purposes.

Additionally, the administrator may be held civilly liable for acts that cause harm to the legal entity, its partners, members, or third parties. The purpose of such liability is not only to compensate for damages, but also to deter undesirable conduct and promote fairness and ethical standards in both economic and non-economic activities.

Thus, under the 2002 Civil Code, the administrator of a private legal entity is not merely a manager of economic interests, but a legal agent bound by technical and ethical duties. Their actions directly impact the integrity and reputation of the entity they represent, being essential to the security of contractual relations and the preservation of market confidence.

Accordingly, the Brazilian legal system, by regulating the powers and duties of administrators, establishes a necessary balance between authority and accountability, between decision-making power and the duty of care. This normative framework not only governs administrative action, but also safeguards the legal and economic environment from unfair practices, thereby strengthening the social function of legal entities and promoting the sustainable development of their activities.

Given the legal rules outlined, one can infer the existence of open-ended legal concepts (e.g., care and diligence, prudent person, good faith, loyalty, transparency, efficiency, etc.) that demand interpretation of the institution studied, with support from economic science and its analytical tools that assist the legal interpreter in identifying, predicting, and measuring the consequences of norms in real-world contexts.

Specifically regarding the duty of diligence, Coelho (2014: p. 274) states:

> A diligent administrator is one who applies the methods, recommendations, principles, and guidelines of the "science" of business management to the conduct of corporate affairs. Thus, the duty of diligence is an obligation of means, not of result. The administrator is expected to employ accepted administrative techniques in pursuit of the enterprise's goals but is not held accountable for the effective achievement of those goals, which may depend on external conditions beyond the scope of the norm.

Similarly, Silva (2020), addressing the duties of administrators in corporations, explains:

> Legal scholarship understands that the duty of diligence includes the obligations to (i) be informed (seek all necessary information for decision-making), (ii) monitor (follow the development of the company's business), and (iii) supervise (the administrator must not remain passive when facing informational asymmetry). It is important to highlight that these are obligations of means, not of result. If the administrator has fulfilled their legal, contractual, and statutory duties, they cannot be held liable.

Thus, it can be affirmed that a diligent administrator is one who applies sound business management practices in representing and managing the legal entity.

Masiero (2013: p. 8) adds:

> Administrators play a key role in mediating the two original poles of the en-

> terprise—capital and labor. In the ongoing pursuit of cooperation and the reduction of conflict between employers and employees, administrators seek to reconcile higher productivity with the effective conduct of business.

And further (Masiero, 2013: p. 15):

> The idea that work must be carried out rationally is emphasized by administrative theory. It is essential that actions be coordinated and consistent in order to foster organizational stability and enable the prediction of events by the various agents involved. Each individual must occupy a position within the hierarchical structure, with the authority and responsibilities necessary to perform the assigned tasks. Upon entering an organization, a person is expected to assume responsibility for effectively fulfilling their duties with quality and timeliness.

Among the various theories that examine the role of the administrator within organizations, behavioral theory appears to be the most coherent with the object of this study. According to Mayo (1968), individuals are motivated not only by economic incentives but also by psychological and social factors.

In this context, the legal norm functions as an incentive mechanism, guiding the expected behavior of administrators by establishing duties and the consequences of their breaches.

For instance, the Civil Code sets forth duties such as care and diligence, probity, good faith, loyalty, transparency, and efficiency as guiding principles for administrators' behavior, along with the respective consequences for their violation, including civil liability (Articles 50, 1.015-1.017, and 1.177, sole paragraph, CC/02).

Complementarily and in alignment with the Civil Code, Law No. 6.404/76 (the Brazilian Corporations Law) provides in Articles 153 to 157 the core duties of administrators and in Articles 158 and 159 the criteria for civil liability in case of breach. This normative structure establishes a system of accountability aimed at ensuring sound corporate governance and protecting the company's social interest, market integrity, and shareholder rights.

Article 153 establishes the duty of diligence, requiring administrators to act with the care of a diligent and honest person managing their own affairs. Article 154 introduces the duty of purpose, obliging administrators to pursue the company's interests and social function, and prohibiting the use of corporate resources for personal or third-party gain without proper authorization.

The duty of loyalty, addressed in Article 155, prohibits conflicts of interest, imposes confidentiality, and forbids the misuse of business opportunities for personal gain, especially in publicly traded companies.

Article 156 directly addresses conflicts of interest, requiring administrators to abstain from decisions where personal interests are involved under penalty of nullity and restitution of undue advantages. Article 157 imposes the duty to inform, particularly in publicly held corporations, with emphasis on transparency toward shareholders, the market, and regulatory authorities such as the Securities and

Exchange Commission (CVM).

The link between these duties and civil liability is reinforced in Articles 158 and 159. Article 158 provides that administrators are not liable for obligations regularly undertaken in the performance of their duties but are civilly liable for damages caused by intentional or negligent acts or by breaches of law or corporate bylaws. Such liability may be joint, including for failure to prevent misconduct by other administrators.

Article 159 regulates actions for liability, allowing the company or minority shareholders (holding at least 5% of the capital stock) to bring legal action against the administrator if the general assembly fails to act. Liability depends on proving a causal link between the administrator's conduct and the harm suffered by the company. Paragraph 6 introduces an exculpatory clause recognizing good faith and the pursuit of social interest as mitigating factors if proven.

Therefore, Law No. 6.404/76 also establishes a legal causal link between breaches of duties (diligence, loyalty, purpose, conflict abstention, and transparency) and the administrator's civil liability. The sanction is not merely punitive—it seeks to promote ethical, transparent, and efficient corporate governance. It is, thus, a system of control and attribution that reinforces accountability within corporate management.

The rules mentioned above serve as illustrative examples of the consequences of breaching the administrator's duties, aiming to discourage such conduct.

It is important to emphasize that, despite the existence of various legal instruments dealing with the same subject—administrators' duties and liabilities—these provisions may be interpreted together to resolve disputes involving potential misconduct by administrators.

Having reviewed these legal elements, the article proceeds to analyze the economic theories that explain the causal relationship established by law to guide the administrator's behavior in decision-making processes that must align with their powers and duties.

3. Economic Analysis of the Administrator's Powers and Duties

The administrator's performance, like that of any other worker within a capitalist system, is driven by the outcomes of their work, which are, for the most part, financially compensated. This remuneration serves as one of the main incentives considered when assuming the role of administrator. However, considering that the administrator is responsible for managing the production factors of a legal entity, their actions must be guided not only by managerial science but also by legal norms, in order to avoid abuses of rights resulting from unregulated behavior solely aimed at personal profit and benefit.

As previously discussed, according to the behavioral theory of Mayo (1968), among others, individuals are motivated by economic incentives as well as various psychological and social factors in this regard, legal norms function as psychological and social mechanisms to shape administrator behavior through economic incentives, preventing conduct that may harm social welfare (Articles 193 and 219, Federal Constitution of Brazil/1988), and directing their powers and duties toward paths that uphold labor valorization, human dignity, free enterprise and competition, the social function of property, environmental protection, among others (Article 170, I–IX, CF/88).

To this end, infra-constitutional norms impose on administrators duties of diligence, good faith, loyalty, transparency, and efficiency. Violations of these duties may result in civil liability and loss of personal assets, in addition to potential criminal sanctions.

As a discipline that studies how human beings make decisions and behave in a world of scarce resources—and the consequences of those choices—economics offers valuable theoretical and empirical tools for understanding the law, thereby enhancing its development, application, and effects.

Without aiming to exhaust the subject, this section seeks to analyze the administrator's duties and the consequences of noncompliance in light of economic theories, particularly the theory of agency conflicts, decision-making under uncertainty (risk and insurance), information asymmetry correction, and the economic theory of contracts.

3.1. Value Maximization and Agency Conflicts

It is inherent in contractual relationships that parties engage with the goal of maximizing individual benefits. However, in transactions involving legal entities, it is crucial that such interactions aim at mutual gains—in other words, that value is maximized for all parties involved.

Regardless of the type of legal entity—be it an association, foundation, corporation, or other—the administrator's role is to ensure the maximization of value for all stakeholders (the legal entity itself, members, partners, shareholders, etc.). However, without the imposition of duties and corresponding legal consequences, administrators might prioritize personal benefit over the collective interest, seeking to maximize their own gains at the expense of others.

Here, agency theory emerges as a valuable framework for examining conflicts of interest that arise from the opportunistic behavior of agents acting on behalf of the legal entity. The theory identifies structural weaknesses that hinder the administrator from pursuing the mutual benefits they are expected to safeguard.

On this point, Mackaay and Rousseau explain:

> The development of corporate activities generally leads to specialization of functions. As the company grows and its operations become more complex, there is a natural separation between ownership and control—originally united in the hands of shareholders. In mid-sized and large corporations, shareholders tend to adopt a passive role as capital providers, delegating the power of administration to others. [...] If one person owns all the shares of a company, their interests as shareholder and administrator naturally align. If they use company assets for personal purposes, they will personally bear the

> consequences of declining share value. The same occurs if they mismanage the company. The owner-manager has little interest in opportunistic behavior, as they themselves bear the costs. Conversely, an administrator with no equity stake in the company may pursue strategies that are personally beneficial but detrimental to the company and its shareholders. [...] In this situation, the administrator enjoys the full benefit of their opportunistic strategies, while the shareholders bear the disadvantages of the reduced company value. For example, an administrator may maximize personal perks—excessive remuneration, luxury cars, lavish offices—that do not generate value for the company. It is primarily the shareholders who incur the losses due to declining share prices. An administrator may also lead the company to undertake a series of investments aimed at expanding their power and compensation without delivering returns to shareholders. Between these extremes, the extent of agency conflict is influenced by the percentage of shares held by the administrator: the greater the shareholding, the lower the conflict of interest, as the administrator shares in both the risks and rewards. However, in widely held corporations, administrators generally do not own enough shares to align their interests with those of the shareholders. Such companies face specific governance problems arising from managerial opportunism. (Mackaay & Rousseau, 2015: pp. 555-557)

The excerpt above illustrates the classic problem of separation between ownership and control in business corporations, especially mid-sized and large ones. As businesses grow, shareholders delegate management to administrators, creating a divergence between those who own (shareholders) and those who control (administrators) corporate assets.

In contrast, interest alignment is more natural in single-shareholder companies where the administrator is also the main or sole owner. In such cases, the administrator avoids harmful decisions since any damage directly affects their personal wealth.

In companies with dispersed ownership (i.e., no controlling shareholder), administrators lack direct incentives to act in shareholders' best interests. This misalignment may give rise to opportunistic behaviors, such as excessive compensation, personal use of company resources, or prestige-driven investments that add no real value.

In such structures, the administrator's equity stake significantly influences agency conflicts: the smaller the stake, the greater the potential for divergent interests. Moreover, dispersed ownership exacerbates governance issues, as there are fewer effective control mechanisms available to shareholders.

It is worth noting that while agency theory is traditionally applied to business corporations, the same logic may be extended to any type of legal entity. Administrator behavior is directly influenced by the degree of economic advantage they stand to gain from their managerial decisions.

Agency conflicts give rise to what are known as agency costs, which erode corporate profitability. These costs are generally categorized into three types: monitoring costs, bonding costs, and residual losses (Charreaux, 1997: p. 147; Eisenhardt & Bourgeois 1989: pp. 60-61; Jensen & Meckling, 1976).

Monitoring costs are incurred to limit opportunistic behavior.

Bonding costs involve mechanisms such as signaling, where administrators engage in actions to gain shareholder trust and differentiate themselves from opportunistic managers—for instance, by submitting to legal regimes that impose personal liability, thereby using personal assets as a form of guarantee and increasing their commitment.

Residual loss refers to the opportunity cost borne by shareholders who are unable to directly monitor administrative opportunism.

One of the most effective ways to reduce such costs is through legal regulation that clearly defines the administrator's duties and prescribes consequences for noncompliance. The legal provisions discussed earlier in this article serve precisely this regulatory function.

This analysis substantiates the theory of agency conflicts and underscores the necessity of corporate governance mechanisms to protect shareholders' interests in corporations.

As noted, although agency theory is rooted in corporate contexts, its principles apply broadly to all legal entities, particularly in evaluating administrator duties and the need to curb opportunistic behavior.

From this perspective, legal norms must deter administrators from pursuing personal advantage at the expense of other stakeholders (e.g., the legal entity, creditors, members, board curators, partners, and shareholders). Legal norms, therefore, serve as essential tools in implementing governance structures suitable for all forms of legal entities.

3.2. Decision-Making under Uncertainty: Risk and Insurance

Decision-making under conditions of uncertainty and risk requires the administrator to adopt a structured approach to evaluate alternatives and select the best option, taking into account the likelihood of various outcomes and the potential occurrence of adverse events. In this context, the administrator must identify risks, assess possible consequences, develop contingency plans, and, in some cases, choose to purchase insurance to mitigate financial losses.

Among the risks to which the administrator is exposed in the decision-making process is the possibility of being held personally liable for actions taken—even when such actions are carried out in the name of the legal entity.

To ensure the administrator maintains the behavior expected under the law—fulfilling duties of care and diligence, probity, good faith, loyalty, transparency, and efficiency, among others—the legislator imposes the possibility of personal liability for obligations contracted on behalf of the legal entity in the event of a breach of those duties.

This legal consequence aims to discourage administrators from engaging in conduct that may expose them to personal liability. It also serves as a positive incentive for honest behavior, reducing uncertainty and risk for all other parties involved with the legal entity (third parties, shareholders, members, associates, etc.), especially in the face of potentially opportunistic conduct by the administrator that could cause economic and financial harm.

Because the administrator controls the legal entity, they have access to its assets and financial resources. Consequently, they may misuse such resources for personal gain or to benefit third parties. To prevent this without leaving such conduct unsanctioned, the law extends responsibility and obligations to the administrator that would, in theory, rest solely with the legal entity.

Good faith is a legal requirement (Articles 113, 187, 422, among others, of the Civil Code). As a manifestation of the principle of objective good faith, certain ancillary or protective duties apply to all contractual relationships—including that of the administrator—such as (a) mutual loyalty and trust; (b) assistance; (c) information; and (d) confidentiality.

As Pablo Stolze Gagliano and Rodolfo Pamplona Filho explain:

> [...] Loyalty is nothing more than faithfulness to one's commitments, with respect for the principles and rules that guide honor and probity. [...] Trust, in this sense, refers to the belief in the moral probity of others. The law cannot remain entirely indifferent to the potential frustration of such trust. [...] The duty of assistance, also known as the duty of cooperation, refers to the notion that if a contract is made to be fulfilled, the parties must collaborate to ensure proper performance of the principal obligation. [...] The duty to inform constitutes a moral and legal obligation to disclose to the other party all relevant characteristics and circumstances of the contract and of the legal object involved. [...] The duty of secrecy or confidentiality is a logical imperative of loyalty, which must be observed between contracting parties in order to safeguard personality rights. (Gagliano & Pamplona Filho, 2014: pp. 107-112)

Loyalty, trust, assistance or cooperation, and confidentiality form a group of ancillary duties closely linked to the expected behavioral standard of the administrator in the performance of their role. These duties also outline the expected conduct of all other parties involved with the legal entity.

The duty to inform, in particular, is a fundamental tool for regulating and correcting the information asymmetry between the administrator and the members of the legal entity. While the administrator has an obligation to provide relevant information about their management, members, partners, shareholders, and interested third parties, have the right to access such information—for example, through the duty to render accounts (Article 1.020, Civil Code) or the obligation to produce management-related documents in court (Article 421, Brazilian Code of Civil Procedure).

In addition to the duty to inform, loyalty and trust are central to the relationship between the administrator, the legal entity, and all associated individuals. Trust (placed by third parties in the administrator) and information asymmetry (between the administrator and others who lack management knowledge) are key elements of this dynamic. These elements are governed by the principle of objective good faith, which includes duties of loyalty and cooperation and seeks to prevent frustration of legitimate expectations.

The greater the legal certainty provided by the law to the parties involved in legal entity administration, the more stable and reliable the environment becomes. In turn, the greater the trust fostered by legal norms and their enforcement, the lower the transaction costs—such as the risks of losses caused by the administrator—thus creating more favorable conditions for the legal entity to fulfill its intended purpose. As a result, trust established through legal norms facilitates a reduction in risk, costs, and financial losses.

Conversely, the more unrestricted and unregulated the administrator's actions, the lower the level of trust and the greater the transactional risks.

Consequently, greater transaction costs will be necessary to mitigate the increased risk posed by the administrator's conduct in an unregulated environment. In such cases, when facing risk, the most likely course of action for the administrator among the typical options (purchasing insurance to reduce opportunistic and bad-faith behavior, externalizing risk, or internalizing it) is to externalize the risk—shifting the cost of misconduct to the legal entity and third parties—which becomes a natural tendency in the absence of regulatory norms.

In this regard, Ejan Mackaay and Stéphane Rousseau emphasize:

> Commercial companies typically face uninsurable risks due to their unique nature and the moral hazard inherent in their business. These risks are allocated differently. One technique is the limited liability of shareholders in corporations (in North America) or joint-stock companies (in Europe and Brazil). This allows individuals to engage in business activity without endangering their total personal assets. The result is a general increase in available capital for business ventures, as individuals prefer to diversify their investment portfolios. [...] In addition to corporations, in limited liability companies, once capital is fully paid in, shareholders are liable only up to their investment. In that sense, a capital investment in the company makes the shareholder functionally equivalent to an insurer, limited to the subscribed amount. This raises the issue of moral hazard for those who administer the company. Corporate law provides for various oversight mechanisms, such as the powers of the general shareholders' meeting and the board of directors. In addition, moral hazards are restrained through market-based measures. When shares are tradable, a market is formed that prices them. The price reflects the expected profit of the company, which depends, among other factors, on the quality of management. Empirical studies have shown that stock markets efficiently and quickly reflect available information about the prospects of listed companies (efficient market hypothesis). The movement of a company's stock price can rapidly alert investors interested in increasing returns

> by influencing the company's direction and management. The potential for takeover serves as an instrument to control managerial moral hazard. (Mackaay & Rousseau, 2015: pp. 148-149)

The excerpt above highlights the existence of legal mechanisms intended to limit the economic and financial risks inherent in the activities of legal entities while simultaneously incentivizing individuals to engage in business or other endeavors. Since legal entities lack volition, they depend on administrators to act on their behalf. Therefore, mechanisms to prevent abuse (i.e., risk) in the performance of functions are necessary to protect those who interact with legal entities, such as third-party contractors, members (in associations), and shareholders (in corporations).

In light of risk and insurance theory, whether or not an administrator complies with ancillary duties (good faith, loyalty, trust, assistance or cooperation, confidentiality, among others) is a determining factor in shaping a secure environment in which both the legal entity and third parties can pursue their respective goals (e.g., profitability, growth, development, outreach in social projects).

Given that the law serves to regulate and incentivize behavior, it is incumbent upon both legislators and legal interpreters to establish regulatory and incentive-based mechanisms to foster compliance with these duties by administrators, thereby aligning conduct with the overarching interests and purposes of the legal entity.

Therefore, in interpreting and applying the norms that govern administrator behavior, careful attention must be paid to whether ancillary duties are being fulfilled or breached. Legal analysis should be grounded in economic considerations—cost, risk, and insurance—while viewing norms and their enforcement as incentive structures that shape expected conduct.

3.3. Duty to Inform, Trust, and the Correction of Imbalance Caused by Information Asymmetry: Information Failure as a Parameter for Establishing Administrator Liability

As discussed, the administrator's legal and contractual duties serve as interpretative guidelines for evaluating specific cases and for determining whether the obligations of the legal entity should be extended to the administrator, thereby enabling their liability. This framework aims to prevent imbalance in otherwise legitimate and equitable conduct.

Good faith, a general principle of law that guides private behavior, also structures the legal analysis of administrators' duties. Among these is the obligation to provide all relevant information regarding their management to other stakeholders of the legal entity (partners, shareholders, members, etc.).

Conversely, the absence or failure of such disclosure results in information asymmetry, which, in turn, gives rise to a duty to account for one's management, including to third parties who interact with the legal entity through its administrator.

In a legal transaction, information is considered symmetric when all contracting parties are adequately informed about the advantages, risks, and obligations stemming from the established relationship. Asymmetry occurs when one party lacks access to material information that would influence their decision-making in the transaction.

Information asymmetry is an economic concept and a specific type of market failure:

> "Information asymmetry constitutes an impasse, obstacle, and impediment to the realization of efficient economic relationships. It is clearly observable in consumer relations, given the very nature of such negotiations—where one party typically holds technical knowledge and the other does not." (Pimenta & Lana, 2010: pp. 109-110)

When an administrator, in bad faith, withholds relevant information from stakeholders in the legal entity, this constitutes a breach of duty that justifies and legitimizes their personal liability for actions undertaken on behalf of the entity. This is grounded in the fact that the administrator is the party with control over the relevant managerial information. Therefore, legal norms impose a duty to inform in a clear, objective, and comprehensible manner all relevant data from the administrator's conduct that may pose risks or lead to losses for the legal entity.

Examples of information failure or asymmetry attributable to the administrator include the failure to disclose relevant business matters that could cause financial or economic harm to the entity. To avoid liability for such omissions, the administrator should immediately submit these matters to the legal entity's governing body (general meeting of partners, shareholders, or members, or, in the case of foundations, the board of trustees) for deliberation—thereby shifting responsibility through shared governance.

3.4. Contracting Behavior Guided by Honesty or Opportunism

The economic study of decision-making in contractual relations also applies to the administrator of legal entities, as it evaluates actors' behavior and their contractual obligations. In this context, entering into and performing rights and duties in any legal transaction involves two possible modes of conduct: honest or opportunistic.

> "In the abstract, one may assume an equal probability that the counterparty will act either 'honestly', collaborating in the achievement of the objective associated with the initial investment, or 'opportunistically', appropriating the welfare generated by the initial investment without offering any corresponding benefit—taking advantage of the temporal irreversibility of the initial investment (the counterparty holds up or 'takes hostage' that investment). If they act honestly, both parties will attain a welfare surplus, making them better off than before the contract (unless disrupted by exogenous shocks), and the sum of these surpluses—total welfare—will, in principle, be maximized, thereby satisfying the criteria of Pareto efficiency. If the party acts op-

> portunistically, they will cause the initial investor to lose part or all of their investment—possibly causing additional harm. This prospect will likely lead to an initial decision not to invest. The total gains and losses resulting from opportunism will almost certainly fall short of the welfare total that would have resulted from honest performance." (Araújo, 2007: p. 49)

This tension between honest and opportunistic behavior is further illustrated by the prisoner's dilemma, as referenced by Fernando Araújo:

> "[...] In the absence of shared knowledge or information, and in the absence of informed trust by one party in the other—or by both within a mutually accepted regulatory framework—'opportunism' becomes the dominant strategy. Very simply, it offers the counterparty a high probability of capturing the total available welfare, rather than merely a portion arising from honest cooperation." (Araújo, 2007: p. 50)

Thus, opportunistic behavior—which is legally discouraged due to its opposition to social welfare and solidarity (Article 3, I-IV, Brazilian Constitution)—is enabled by information asymmetry, the lack of reciprocity incentives, and overly broad interpretations of legal norms. In contrast, legal provisions establishing administrator duties and their restrictive interpretation promote honest, cooperative behavior toward members of the legal entity (partners, shareholders, members, etc.) and third-party creditors. Violations of such duties give rise to legal sanctions.

This principle is exemplified in a ruling by the Court of Justice of the State of Minas Gerais, which disregarded the legal personality of a company and held the administrator personally liable for misconduct:

> "[...] The accounting expert identified significant amounts recorded as 'advances to partners' without return or justification, characterizing the diversion of company assets for personal use—violating the separation between corporate and personal assets. The failure to provide mandatory accounting books, irregular distribution of profits, and asset concealment reinforced the presence of asset commingling and abuse of legal personality, justifying the disregard of the legal entity's autonomy."
> (TJMG—Agravo de Instrumento-Cv 1.0000.24.153584-8/001, Rel. Judge Marcelo de Oliveira Milagres, 21st Civil Chamber, decided on 24/10/2024, summary published on 25/10/2024)

In this case, the administrator breached their duties of care and diligence, probity, good faith, loyalty, transparency, and efficiency—triggering personal civil liability and extending the entity's obligations to them personally.

The aforementioned understanding is consistent with the position of the Superior Court of Justice, as illustrated in the following ruling:

> CIVIL PROCEDURAL LAW. LEGITIMACY OF A LEGAL ENTITY TO CHALLENGE A DECISION THAT DISREGARDS ITS LEGAL PERSON-

> ALITY. A legal entity has standing to challenge an interlocutory decision that disregards its legal personality to reach the assets of its shareholders or administrators, provided it does so with the intent to defend its proper management and autonomy—that is, the protection of its personality—without improperly interfering in the rights of the shareholders or administrators who have been added as defendants as a result of the disregard. According to Article 50 of the Civil Code, when an "abuse of legal personality" is identified, the judge may determine that the effects of certain obligations be extended to the personal assets of the administrators or shareholders of the legal entity. Such abuse, according to the law, is characterized either by misuse of the legal entity's purpose or by commingling of the assets of the shareholders/administrators with those of the legal entity. The disregard for legal personality is essentially tied to the principles of morality, integrity, and good faith that shareholders and administrators must uphold in managing the legal entity. It is also worth highlighting that although the concept of abuse is not always associated with fraud, the doctrine holds that it is closely linked to harm, inconvenience, unease, or distress caused to a third party due to the excessive exercise of a particular right. Thus, the disregard for a legal entity's personality ultimately protects the interests of both creditors and the legal entity itself when it has been improperly manipulated. Accordingly, as stated in Statement No. 285 of the IV Civil Law Conference, "the theory of disregard, as set forth in Article 50 of the Civil Code, may be invoked by the legal entity in its own favor." In this sense, both the interest in the disregard or in the maintenance of the protective veil may originate from the legal entity itself, provided that, in light of the requirements authorizing this exceptional measure, it is able to demonstrate the relevance of its intention, which must always be connected to the affirmation of its autonomy—that is, the protection of its legal personality. REsp 1.421.464-SP, Reporting Justice Nancy Andrighi, ruled on April 24, 2014 (STJ—Jurisprudence Bulletin No. 544, dated August 27, 2014).

Therefore, to encourage honest behavior from administrators, there must be rules that establish their duties and the respective consequences for noncompliance. Moreover, in applying such rules, the judge should choose an interpretation that also incentivizes the administrator to manage the legal entity honestly and refrain from engaging in undesirable opportunism, as previously stated.

Although a comparative law analysis is not the focus of this study, it is worth noting that, similarly—and purely as an example—the United States developed the "Business Judgment Rule." This doctrine grants immunity from liability to administrators who fulfill their duties in good faith, prudently, and reasonably (see Business Judgment Rule, available at: https://www.law.cornell.edu/wex/business_judgment_rule, 2025). In other words, if an administrator breaches these duties, they may be held liable for acts performed on behalf of the legal entity.

Thus, in the absence of regulatory rules governing the behavior of the administrator—or if a more restrictive interpretation of their duties is adopted—the administrator may feel incentivized to pursue individual advantages from their role, as it becomes more personally beneficial. This, in turn, may impose unforeseen financial burdens on affected parties (such as partners, shareholders, members, or third parties), which, following market logic, would socialize the financial losses among other members of the legal entity or third parties dealing with the entity. Consequently, this would generate a negative externality (an additional burden on those harmed) in the legal entity's representation, ultimately serving the administrator's private interest (i.e., obtaining financial and patrimonial gain).

Such behavior occurs when the administrator is tempted to use the entity's financial or material resources for personal benefit, harming those who contract with the entity or are members thereof. The administrator may reason that complying with their duties delays the personal acquisition of desired goods or services, whereas diverting resources achieves those goals faster.

Without laws defining the administrator's rights and duties and the consequences of breaching them—including loss of personal assets—the administrator may pursue the shortest path: exploiting the legal entity for personal objectives and transferring losses to the entity, its stakeholders, and third parties.

In such a deregulated environment, unable to immediately afford a desired good or service, the administrator may intentionally act in bad faith, preferring immediate gratification over ethical behavior consistent with their formal duties.

This pursuit of immediate welfare through opportunistic behavior gives rise to a dilemma: whether or not to violate their duties to obtain short-term personal gain at the expense of the legal entity and third parties.

Knowing they can act with impunity, the administrator is likely to engage in opportunism, leveraging their position for personal gain—ultimately damaging the entity and undermining trust.

By contrast, honest behavior is incompatible with self-serving deviations that compromise the legal entity and those connected to it. If the administrator accepts the risk of deviation, they must also accept the consequences in keeping with the principle of objective good faith, which mandates cooperation, loyalty, and the protection of legitimate expectations in legal relationships.

Hence, the law's role in defining the administrator's duties (diligence, loyalty, good faith, etc.) and consequences (financial loss, liability) is essential to deterring opportunistic behavior.

4. Conclusion

The role of the administrator of private legal entities under Brazilian law goes beyond technical management; it constitutes a legally regulated function of economic and social relevance. The analysis of the administrator's powers and duties reveals a position inherently linked to the preservation of institutional integrity, trust in contractual relations, and the legal security of interactions with third parties.

The Brazilian Civil Code of 2002 and the Corporations Law (Law No. 6.404/76) form a normative framework that governs administrator conduct based on principles and duties such as good faith, loyalty, diligence, transparency, purpose, and efficiency. These duties are both preventive and protective in nature, operating as instruments of behavioral regulation, mechanisms against abuse of power, and tools for promoting responsible governance. Breaches of these duties trigger civil and financial liability and may justify the disregard of legal personality, pursuant to Article 50 of the Civil Code.

From the perspective of the Economic Analysis of Law, such rules serve as incentive mechanisms, guiding administrators to act ethically and efficiently. Economic theories such as agency conflicts, moral hazard, information asymmetry, and bounded rationality demonstrate that, in the absence of effective legal mechanisms, administrators are more likely to pursue personal gain at the expense of the collective interests of the legal entity and its stakeholders (partners, shareholders, members, and creditors).

Information asymmetry, in particular, emerges as a principal source of imbalance. When administrators conceal or manipulate relevant information, they undermine the trust placed in them by those who depend on their leadership. Information failure, when intentional or negligent, violates the duty of loyalty and imposes on the administrator the obligation to repair the resulting harm—including potential personal liability to third parties.

Furthermore, the administrator's conduct may oscillate between honesty and opportunism. The absence of clear rules or overly broad interpretations of their duties encourages opportunistic behavior, which, though individually beneficial in the short term, generates high social costs, institutional instability, and negative externalities. In this context, legal norms function not only as punitive tools but also as rational instruments that promote cooperative, honest, and efficient behavior.

In summary, an integrated legal and economic analysis shows that the administrator's role must be exercised with full awareness of its legal and economic implications. The Brazilian legal framework, by regulating administrators' powers and duties, fosters a balance between authority and responsibility, enhancing the integrity of legal relations and contributing to the sustainable development of legal entities' activities. By regulating administrator behavior, the law corrects market failures, reduces transaction costs, and builds trust in private institutions, thereby reinforcing their social function and their role in promoting collective well-being.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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