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## **The Role and Application of Business Judgment Rule—Some Extended Thoughts on the UMC Case**

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### Abstract

Whether the business judgment rule (“BJR”) should be imported into Taiwan’s corporate directors’ civil liability regime has been fiercely debated among scholars and practitioners. It is surprisingly noted that white collar crime defense attorneys also try to employ the BJR to protect their clients from criminal liability. Inspired by the attention-grabbing UMC case, this article seeks to offer some different thoughts on related issues. This article believes, contrary to the received wisdom, the plaintiff bears the burden of proof on the director’s breach of fiduciary duty under the no-BJR regime. As a result, the importation of the BJR will increase, but not shift, the burden for the plaintiff to state their claims. This view will not only weaken the case against the legal transplantation but clarify the role the BJR can play in the criminal prosecution on violations of the Article 342 of the Criminal Code. The discussion also sheds light on the impact of shareholder ratifi-

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cation on the determination of criminal liability and offers some guides for prosecutors and litigants to build their cases.

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