

Liability of Directors of Limited Liability Companies (“LLC”)

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In principle, a company is a legal person in its own capacity to create rights and bear liabilities, and as such can own property, enter into contracts with other parties and be involved in any dispute with other legal people. The company can only enjoy those rights and incur those liabilities through decisions made by those that own, control or may be one or more directors of the company. The day to day management of a company is usually entrusted to its directors. The Commercial Companies Law of Qatar, No. 5 of 2002 (“The Law”) imposes duties upon directors of a Limited Liability Company “the Company” based on the particular nature of the company. However, each company’s constitutional documents should include the directors’ duties, responsibilities and any limitation upon their authority. What is the liability of the directors for any unlawful act and what remedies are imposed?

The aim of this article is to provide a basic explanation of the main liabilities of directors of limited companies towards the Company and third parties under the law in Qatar, and the information hereunder is not exhaustive and not sufficiently detailed to apply to the circumstances of any particular situation.

Civil liability of LLC directors:

1. Civil liability to the Company and its shareholders:

In principle, the Company is bound by actions and decisions made by its director which have been carried out under their competence. However, the Company’s directors should maintain a duty of care, of an ordinary person in managing the company, and they are liable to company, shareholders or third parties for damages as a result of the following actions, as imposed by Article (112) of the Law:

- Deceit: A misrepresentation of fact, which, when made with the intention that the other party will rely on it to his detriment, constitutes the torts of fraud or misrepresentation.
- Abuse of authority: This is sometimes referred to as “Control Fraud” which occurs when directors use their powers to subvert the company and to engage in fraud for personal gain.
- Breach of the provisions of the Commercial Companies law;
- Breach of the company’s Articles of Association; and
- Default in performance; Directors’ failure in performing their duties and responsibilities set out in the Company’s Articles of Association or in the law. This may also include willful neglect.

2. Civil liability to others/ third parties:

In addition to the matters set out in Article (112) of the Law, the directors may also be personally liable for the company’s debts either if (1) they have undertaken personal liability (such as giving a written guarantee), or (2) if they have been deemed to have acted in their personal capacity where they did not disclose that they are acting on behalf of the Company.

Although the Company is liable to compensate any damages that may have resulted from any unlawful act or neglect of its directors, the Company has the right of return for compensatory indemnification. Such right is set out in the Law through the “Directors Liability’s Law Case” which can be raised within five years of the date of any illegal action or neglect. Without prejudicing the right to claim compensation when needed, any act or dealing or decision issued in contrary to the provisions stipulated in the Law will be null and void, without prejudicing the right of bona-fide third parties.

Where losses of the Limited Liability Company have reached half its capital, the directors should, within thirty days of reaching this loss limit, propose to the General Assembly to reinstate the capital or dissolve the company. If the directors neglect to call the Assembly, they may be personally responsible for the Company's obligations resulting from their neglect.

Criminal liability of LLC directors:

The directors of the Company are exposed also to criminal liability according to the provisions of the Corporate Commercial Law in Qatar (No. 5 of 2002). Some of the more serious offences may result in a term of imprisonment for two years or less and/or a fine of between ten and one hundred thousand Qatari Riyals. The wording is wide enough to include misdistribution of profits and interests, misstatements in the memorandum, and specifically refers to forecasts and the dishonest concealment of material facts or disclosing of confidential information.

It is fundamental for parties dealing with a Company, shareholders in a Company and directors of a Company to seek legal advice in order to prevent any contravene of the Law, the company's Articles of Association or to prevent any action that may impose the personal liability upon directors in their day to day management of the Company.