

Is a Holding Company Criminally Liable for Acts Committed by its Subsidiary? The Abu Dhabi Court of Cassation Responds

Ashraf Shoukri - Senior Counsel - Litigation
- Abu Dhabi

June - July 2017

Article 2 of the Penalties Law (Law No. 3 of 1987) states that “No person shall be held accountable for the crime of another person. An accused is innocent until proven guilty in accordance with law”. Rulings of the Court of Cassation have emphasised this point on multiple occasions.

Article 65(1) of the Penal Law (as amended) extends the principle that a person can only be accountable for his own acts by attributing criminal liability to legal bodies acting through their human agents: “Judicial persons, with the exception of governmental agencies and their official departments, public organisations, and establishments, are responsible for any criminal act committed, for their account or in their names by their representatives, directors, or agents.”

In a recent ruling of the Abu Dhabi Cassation Court dated 30 April 2017 in Penal Case No. 4542/2015, the principle that a person cannot be accountable for the acts of others was judicially examined. Al Tamimi and Company acted in this appeal.

Facts

The defendant was a holding company and special purpose vehicle. Its main, authorised commercial activity was the purchase and sale of shares in other companies. The acquired companies in turn became subsidiaries of the holding company. An employee of the subsidiary company was injured while repairing an aircraft engine when a steel object fell off the engine onto his hand. The treating hospital reported the matter to the police, who after completing their investigations referred the matter to the Public Prosecutor. The Public Prosecutor charged the holding company in respect of the injury, alleging that it had acted negligently in failing to take the necessary precautions for the safety of the employee.

The holding company based its defence on the liability of its subsidiary. Evidence showed the subsidiary was the injured man’s sponsor on his official residence visa and the injury occurred in the subsidiary’s engine maintenance department. The holding company argued it was not responsible for the subsidiary’s actions and could therefore not be held liable.

First Instance Decision

The Court of First Instance rejected this argument and convicted the holding company on the basis of the following:

- The person who has actual control over something that requires special attention, whether that person be an owner or a lessee, is responsible for the damage caused by that thing when it causes harm to others.
- It was proven to the Court, after considering the memorandum of association of the subsidiary company,

that the accused holding company owned shares in the subsidiary, thereby conferring criminal liability for the victim's injury on the holding company because it controlled the subsidiary.

- It was also proven to the Court that the holding company had failed to provide equipment to properly ensure the safety of workers. By its failures, the holding company had enabled the victim's injury.

The Court fined the holding company and ordered it to pay compensation to the injured worker.

Abu Dhabi Court of Appeal

The holding company appealed against this judgment on the following grounds:

- The First Instance decision violated the principle that a person is not accountable for another's actions in contravention of Article 93 of the Civil Transactions Law. Companies have independent legal personality and therefore have independent financial liability. The holding company had completely independent legal personality from its subsidiaries, including the subsidiary employing the injured worker.
- The First Instance decision confused civil and criminal liability when it found that ownership of shares in the subsidiary company made the holding company liable under the principle of control.
- The First Instance Court had wrongly applied civil law principles rather than criminal law principles. The Court had relied on a legal opinion to support the finding that a person who has actual control over something that requires special attention, whether an owner or a lessee, is responsible for the damage and harm caused by that object. That legal opinion was applicable in a civil law context and did not apply to the Penalties Law under which the holding company was charged. Evidence in the police inspection report did not prove that the holding company had a sufficient degree of control over the work place, and the holding company claimed it knew nothing about that particular site.

The Appeal Court upheld the judgment of the First Instance Court and stated that it was satisfied by the reasons given by the latter, as well as the evidential basis for the conviction of the holding company. The Appeal Court did not address the arguments raised in the holding company's defence.

Abu Dhabi Court of Cassation

Many commentators found the judgment of the Appeals Court disappointing, having expected that the case would assert the orthodox position on criminal liability. The holding company filed a further appeal to the Court of Cassation. The holding company sought an order remitting the case to the Appeal Court under Article 240 Penal Procedure Law for a retrial by alternative Judges. The alternative option was for the Court of Cassation to avoid remitting the case for retrial and deciding the case itself. However, such an order is rare and only happens when the Court of Cassation believes its intervention is necessary to settle a dispute decisively.

In reality, the reasons for challenging the Appeal Court's decision before the Cassation Court were similar to those before the Appeal Court. However, the arguments before the Court of Cassation stressed the grave violation of the principle that a person is not accountable for another's actions in terms of criminal liability and the implementation of the provisions of the Penal Law. They also stressed that the first instance and appeal courts had gravely erred in the implementation of law when they held the holding company's liable for criminal acts committed by its subsidiary.

The Court of Cassation brought the appeal hearing forward as a matter of urgency given the public importance of the appeal points. The Court simultaneously considered the points of appeal raised by the Public Prosecutor.

The Court heard the holding company's arguments that it should not be held responsible for the

subsidiary's actions given its separate legal personality and the holding company's lack of substantive control over the subsidiary. In a rare move, the Court exercised its power under Article 249 of the Penal Procedures Law and decided to impose its own decision on the facts of the case without remitting the matter back to the lower courts. It upheld the holding company's appeal and overturned the conviction.

The Court found:

"The context of Articles 2 and 65 of the Federal Penalties Law No. 3 of 1987 and the amendments thereto indicate that no person shall be held accountable for the crime of another person, and that legal persons are criminally responsible for the crimes committed by their representatives, directors, or agents thereof for the account and in the name thereof exclusively. The challenged judgment has violated the requirements of such articles and as such, it has violated the law and erred in the interpretation and implementation thereof."

The Court of Cassation thereby stood for the principles that no person shall be held accountable for the crime of another and that an accused is innocent until proven guilty in accordance with law. It also restated the conventional position that a company is a legal person, independent from its shareholders, and with its own financial liability.

Al Tamimi & Company's litigation team in Abu Dhabi regularly advises on criminal matters. For further information please contact Ashraf Shoukri (a.shoukri@tamimi.com).