

The Criminal Liability of Companies and their Representatives in Egypt

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The criminal liability of companies and their representatives in Egypt seems to cause confusion as to who is responsible for criminal actions. The main points of concern are (1) whether the legal representative of a company becomes personally liable for a crime committed by that company and (2) whether the company responds to a crime committed by its legal representative. Other points of concern are (3) whether a company becomes criminally liable for crimes committed not by its legal representative, but by one of its employees; and (4) whether the legal representative could also be liable in this case.

This article provides some clarity on who is responsible for what, and when; for there shall be no room for confusion when criminal liability is at stake.

The Relevant Egyptian Law Rules

Two general rules are of importance in providing answers to the mentioned questions: the principle that criminal sanctions are personal; and the general rule in Egypt that only natural persons (individuals) as opposed to juristic or legal persons (companies) can be subject to criminal prosecution and liability.

According to the Egyptian Constitution, a crime is a personal act for which no person other than its perpetrator can be subject to sanction. Accordingly, a parent cannot be criminally liable for an offence committed by her or his child and vice versa. Likewise, as a general principle, a manager cannot be criminally liable for an offence committed by one of her or his managed employees. A company too cannot be criminally liable for an offence committed by one of its representatives or employees.

In addition, companies or legal persons are in fact fictitious entities. As such, they have no personal will and have no personal voice. Instead, companies depend on the will and the voice of their managers, directors (their human representatives more generally), or employees to take actions. This is the reason why, up to very few years ago, companies could not have been subject to criminal prosecution; they have no individual will to commit a crime; and their will must depend on the will and action of an individual – a living human being.

Relying on these general rules, until very recently the Egyptian law has given classical and consistent answers to questions of criminal liability of companies and their legal representatives. These answers have recently seen a slight change due to amendments introduced to the some Egyptian laws.

The Classical Answers

According to this classical approach, companies could not be criminally prosecuted nor found criminally liable for offences committed by their employees or managers. The most companies could be liable for is being jointly responsible for payment of fines and/or compensation awarded as a result of the offence committed in the name and for the account of the company.

If the offence is not committed in the name or for the account of the company, it shall not be jointly liable for payment of fines or compensation.

As to responsible managers, their criminal responsibility may or may not be engaged depending on whether or not they knew that a crime was being committed in the name and for the account of the company and whether the crime was committed due to the failure of such manager to perform her or his duties.

As a general rule, in case the crime is committed by an individual (other than the manager) in the name and for the account of the company, that individual perpetrator alone should be criminally liable for the offence.

However, in case the offence is committed with knowledge of the responsible manager and as a result of her or his failure to perform her or his duties, the responsible manager too will be criminally liable for the offence committed by the employee.

The Newly Introduced Criminal Liability of Companies

As mentioned above, up to very few years ago, according to the classical answers a company was not subject to criminal liability for offences committed by its employees or legal representatives, even if such crimes were committed in the name and for the account of the company.

In the recent years, however, amendments were introduced to some Egyptian laws instituting criminal liability of companies in limited circumstances.

For instance, in 2014 an amendment was introduced to the Egyptian Law on Money Laundering by virtue

of which, in case a money laundering offence is committed in the name and for the account of a company by one of its employees, the company itself is considered criminally liable for the offence, and becomes subject to a fine reaching up to five million Egyptian Pounds. In this case the criminal court may also revoke the license of the company or ban it from exercising its activities for a limited period of time.

Another example is the old Egyptian Investment Law which was amended in 2015 in order to provide additional guarantees to investors. According to the 2015 amendment, a company would be found criminally liable if an offence is committed in its name and for its account, when such offence would be committed without the knowledge of its responsible manager or without this manager's intention to achieve a personal interest for that manager or a third party.

The same provision exists in Article 92 of the new Egyptian Investment Law. The new point about this provision is that, unlike most other criminal sanctions' provisions in different laws, it does not stipulate that the company shall be jointly liable for payment of fines or compensation awarded as a result of crimes committed in its name and for its account in case the responsible manager was found to be criminally liable for such offence.

However, in case the responsible manager was not found liable for an offence committed in the name and for the account of the company, the company itself may become criminally liable and be sentenced to pay a fine ranging between four and ten times the fine usually payable for such an offence. Additionally, in case of recidivism the court may revoke the license of the company or decide its dissolution.

While the Egyptian Investment Law institutes criminal liability of the companies, in very limited circumstances as mentioned, the law seems to confirm the constitutional principle that a crime is a personal act for which no one other than the perpetrator shall be sanctioned. The other Egyptian rule according to which companies cannot be subject to criminal prosecution or sanction is put in question by this law.

In conclusion, new laws and amendments have instituted criminal liability on companies and have therefore led to confusion as to whether it is the company or its legal representative who shall be responsible for offences committed in the name and for the account of a company.

The answer is that in general companies are not criminally liable for offences, even when such offences are committed in their names or for their accounts. They are not criminally liable for offences committed by their employees or their managers. However, if offences are committed in the name and for the account of a company, this company may be found jointly liable to pay fines and compensation.

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As an exception to such general rules on companies' criminal liability, in limited circumstances, currently related to the Egyptian Law on Money Laundering and the new investment law, the company itself may be found criminally liable for an offence committed in the name and for the account of the company.

As to managers, they are generally liable for crimes committed in the name and for the account of companies only if they knew such crimes were being committed and failed to perform their duties in a way that led to the commitment of such crimes. Absent such knowledge or such failure to perform duties, managers do not become liable for crimes committed in the name and for the account of the companies

they represent. Also, in some circumstances, even if knowledge and failure to perform duties existed, in the absence of an intention to achieve personal interest for the manager or a third party, the manager may also be exempted from criminal liability for offences committed in the name and for the account of a company.

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