

## Managers' liability in UAE limited liability companies

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**T**he new UAE Companies Law which came into effect from 1 July makes significant changes to the provisions governing a limited liability company (LLC). There is not much deviation from the old Companies Law in the provisions relating to the liability of a manager of an LLC. However, considering that most LLCs do not have a board of managers or directors and are generally managed by a single manager with wide decision-making powers and responsibilities, it is important to understand the relevant provisions regarding a manager's liability.

### Key provisions

Article 84 of the Companies Law states that every manager shall be liable to the LLC, the partners/shareholders and third parties for: (i) any "fraudulent acts"; (ii) any losses or expenses incurred due to "improper use of the power"; (iii) contravention of the provisions of any applicable law, the memorandum of association (bylaws) of the LLC or his/her employment contract; or (iv) any "gross error". Article 162 of the Companies Law, containing similar provisions, makes a manager liable for an "error in management".

Except the liability for gross error, the old Companies Law has similar provisions relating to the liability of a manager. While article 84 of the new Companies Law introduces the concept of liability for gross error, which potentially increases the liability threshold, article 162 continues to make a manager liable for an error in management.

Article 84 precludes the possibility of limiting a manager's liability through the LLC's memorandum of association or the manager's employment contract. Article 84 states that any provision in the memorandum of

association of the LLC or the employment contract in conflict with article 84 shall be deemed void.

### Company name and notice

Article 72 provides that the name of an LLC must be followed by the expression "Limited Liability Company" or, in short, "LLC". If a manager contravenes this provision, the manager will be liable for the obligations of the LLC and, as applicable, for the payment of compensation to affected parties. The individuals and entities dealing with an LLC should be aware that it is a limited liability company. Failure to convey that the company is a limited liability company will make the manager liable for the obligations of the LLC.

Article 15 provides that an LLC must notify the competent authority within 15 working days of any amendment of the memorandum of association (or any change in the registered particulars of the LLC), and managers will be jointly liable for damages arising out of failure to do so.

### Other relevant provisions

Article 84 further provides that the provisions of the Companies Law applicable to the directors of joint stock companies shall apply to the managers of an LLC. Such provisions are contained in articles such as articles 150, 165 and 167.

Article 150 provides that every member of the board of directors that may have a common interest or a conflicting interest in a transaction referred to the board of directors for approval must notify the board of such interest and this acknowledgement must be entered in the minutes of the meeting. Such a member may not vote on the decision concerning such a transaction.

Article 165 provides that the company may file a claim for liability against the board of directors for errors causing damage affecting all shareholders. The general assembly must adopt a resolution appointing a person to pursue the claim in the company's name. Therefore, the partners of an LLC would be similarly permitted to file a claim for indemnification against a manager for losses the LLC incurred as a result of the manager's wrongful acts.

Article 167 provides that a decision passed by the general assembly to relieve the board of directors from liability for errors will not prevent the filing of a civil liability lawsuit against the directors in relation to errors committed by them during the performance of their duties. Therefore, a resolution of the general assembly of an LLC that purported to release a manager from liability for his or her errors would be ineffective.

### Penalties and indemnification

The Companies Law does not preclude a manager from maintaining professional liability insurance, or taking an indemnity from the LLC or its shareholders. However, the indemnity may be open to challenge before the courts.

The Companies Law imposes various penalties on managers in case of a breach of provisions of the Companies Law. The penalties are criminal in nature and include fines and imprisonment.

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