



## What are my liabilities under the UAE law as Manager of an LLC?

### 1. What are my liabilities regarding accounting?

As a limited liability company, a Company is not under any official obligation, as yet, to publish its financial accounts or otherwise make its accounts available to the public. However, this in no way exempts the Company from having to keep proper accounting records, undertake audits or disclose these to the relevant parties, particularly the Partners of the Company. In this regard, **Article 87 of the Companies Law** requires the LLC's manager to prepare the annual budget, profit and loss account and annual report on the company's activities and financial standing, and shall provide suggestions to the Partners on the basis of these.

In the event that the Manager has failed to maintain proper accounts generally, **Article 348 of the Companies Law** imposes fines of between Fifty Thousand Dirhams and Five Hundred Thousand Dirhams'. Further, **Article 349** goes on to prescribe a fine of between Twenty Thousand Dirhams and One Hundred Thousand Dirhams for any Company that fails to maintain such records for the minimum period of time required by law.

In the event that the Manager has maintained proper accounts as required by the Companies Law but has failed to make these available to the Partners, **Article 348** imposes a fine for the Company or the Manager of between Ten Thousand Dirhams and Fifty Thousand Dirhams.

Although any fines imposed on the "Company", as above, is to the detriment of all Partners, it is of note that the Manager may be liable to the Partners or the Company itself in the event that his actions result in losses thereto, as discussed further in Section 3 below.

Therefore, in the event that a Partner can evidence its requests for the relevant information, if you as Manager have failed to provide these, this may leave you liable to a fine.

Furthermore, as Manager, you must alert the Partners about any negative equity of the Company, and they must resolve to continue with the business in light of the negative equity. A Manager is not authorised to make decisions in this request, and therefore you should call an Annual General Meeting or a general meeting accordingly, or you may find yourself liable for mismanagement, as discussed in Sections 2 and 3 below.

**Article 364 of the Companies Law** provides:

*“Any manager, director, auditor or liquidator who provides intentionally false information in the company’s budget, profits and losses account or financial reports, or neglects material incidents in such document in order to hide the actual financial position of the company, shall be punishable with an imprisonment for a period not less than six months and no more than three years, with a fine of no less than one hundred thousand Dirhams and no more than five hundred thousand Dirhams, or by one of these two punishments”.*

Any deliberate attempt by the Manager to conceal information pertaining to the Company’s finances should therefore be considered as a criminal offence, with the potential consequences including a custodial sentence.

## **2. What is my responsibility regarding General Assemblies?**

**Article 92 of the Companies Law** requires that an LLC shall have a general meeting of all the Partners at least once every year within the four months following the end of the LLC’s previous fiscal year at the invitation of the Manager., which may be held virtually unless the Memorandum of the LLC provides otherwise. Further, the Manager is authorised to invite the Partners to hold a general meeting if requested by one or more Partners holding at least a quarter of the LLC’s capital. Failure of the Manager to adhere to a Partner’s request to call a general meeting accordingly may request may result in a fine.

In the event that the Company has suffered significant financial losses to the extent that financial losses equate to half the capital, the Manager’s individual liability becomes significant, in that a fine of between Fifty Thousand Dirhams and up to One Million Dirhams may be imposed on the Manager personally, the extent to be ascertained upon inspection of the Company accounts and analysis of any losses incurred.

## **3. What happens if I am deemed to have mismanaged the Company and caused losses?**

As referenced above, **Article 84(1) of the Companies Law** provides that the Manager shall be liable to a Company and its Partners in the event that losses are incurred further to his breach of contract or law, and that the Manager shall *“shall compensate the company against any losses or expenses incurred thereby due to misuse of his powers or violation of applicable law, company’s MOA or manager’s appointment contract or any serious error on the part of the Manager”*. Further, the aforementioned may also create liabilities towards third parties. Therefore, it is vital that you as Manager always act within your authority, in the best interests of the Company, and in a transparent and ethical manner, in order to protect yourself from such claims.

In the event that any of the above courses of conduct result in fines to the Company, the Manager may be personally liable to the Company accordingly so that such liabilities do not in turn affect the Partners. Pursuant to **Article 84(1)**, the Manager may not contract out of liability in this regard.

## **4. What are my responsibilities in case of a liquidation of the LLC?**

Pursuant to Sections 1 and 3 above, the Manager is under a lawful obligation to call a General Assembly in the event that the losses sustained by the Company are equal to half its capital. **Article 301(1) of the Companies Law** then goes further to provide that:

*“If a limited liability company sustains loss amounting to one half of the capital, the Directors shall refer dissolution of the company to the General Meeting. It is a requirement that a valid resolution for dissolution be adopted by the same majority required for the amendment of the company’s Memorandum of Association”.*

In the event that the Company has sustained losses reaching this threshold, the Partners therefore shall have the option to consider dissolution. However, in the event that any losses exceed this threshold to the extent that the said losses constitute three quarters of the Company’s capital, **Article 301(2)** states that *“if the loss amounts to three quarters of the capital, partners holding one quarter of the capital may request its dissolution”.*

In the event that a qualified partner is able to successfully demonstrate that the Company capital has fallen below either of the thresholds stipulated by **Article 301** under the Manager’s management and is as such insolvent on account of such losses, the scope for taking drastic action against the Manager for mismanagement widens considerably.

## **5. What are my responsibilities in case the LLC declares Bankruptcy?**

**Article 879 of UAE Federal Law Number 18 of 1993** (the “Commercial Transactions Law”) states that:

*“In the case of a conclusive judgement being issued on the declaration of bankruptcy of a company, members of its board of directors or its managers or the liquidators, shall be sentenced to imprisonment for a period no exceeding five years, if it is established that they have committed any of the following acts:*

- 1. That they have concealed, destroyed or altered the books of the company.*
- 2. That they have misappropriated or concealed part of the company’s property.*
- 3. That they have knowingly acknowledged debts, which are not payable by the company, or abstained from presenting certain document held in their possession.*
- 4. That they have obtained a special arrangement for the company by way of fraud.*
- 5. That they have disclosed untrue information on the subscribed or paid up capital, or have distributed fictitious profits or received bonuses in excess of the amount provided for in the laws or in its memorandum of incorporation, or articles of association”.*

Both **Articles 881 and 882 of the Commercial Transactions Law** specify that further to a conclusive judgement being made on a declaration of bankruptcy of a company, the manager may be sentenced to a term of imprisonment in the event that he has *“failed to keep commercial books sufficient enough to reflect the true financial position of the company”.*

## 6. What happens if I am deemed to have committed a Criminal offence?

The above provisions of civil law are without prejudice to the routes of action available should the partners show that there has been a commission of any criminal offences by the Manager. **Article 404 of UAE Federal Law Number 3 of 1987** (the "Penal Code") clearly provides that:

*"Shall be punishable by confinement or by fine any individual who embezzles, uses or dissipates funds, instruments or any other movables, in such a manner as to cause prejudice to persons having title thereto, whenever such funds, instruments or movables were committed to him in a fiduciary character by way of trust, lease, mortgage, loan for use or proxy.*

*For the application of this stipulation, shall be considered as good as a proxy, any partner in a joint property, any agent of necessity with respect to the property of the concerned party and any person to whom an object is committed to be used for a specific matter for the benefit of its owner or of another".*

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