Piercing the corporate veil: Qatari law

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Introduction

Due to the economic slowdown post the drop in oil prices, as well as recent measures imposed by the State in response to the COVID-19 pandemic, we have noticed an increase in companies that are unable to meet their financial obligations to their creditors such as banks, suppliers, sub-contractors and even employees and workers. As a result, many of these companies have been subject to liquidation procedures under Qatari law on the grounds of insolvency. Recently, we have initiated multiple legal proceedings on behalf of our clients against such insolvent/under liquidation corporations in order to seek recovery of our clients' dues, and have also been successful in securing favourable judgments.

However, we have noticed that it is often the case that during enforcement proceedings the insolvent/under liquidation company either does not have any assets or has siphoned off its assets to its parent company. As a result, despite securing a favourable judgment it is often the case that decree holders are not able to recover their outstanding dues.

The only available remedy in such instances is recovering outstanding dues from the insolvent/under liquidation company's shareholders and/or directors. While the concept that a company is a separate entity from its shareholders is well established and recognised in various common law and civil law jurisdictions, including Qatar, nevertheless, the concept is not absolute and courts have the power to depart from it in limited circumstances. Where such a situation occurs, it is often said that the courts "pierce" the corporate veil. This will usually lead to personal liability being imposed on the corporation's directors or shareholders for the corporation's debts. This article examines whether Qatari law provides adequate remedies for creditors seeking recovery from insolvent/under liquidation debtors. In other words, we will examine the conditions under which Qatari courts may pierce the corporate veil.

Analysis of legal regime relating to piercing of the corporate veil

Under the Commercial Companies Law No. 11 of 2015 ('Commercial Companies Law'), the liability of shareholders in public and private shareholding companies and limited liability companies, is restricted to the value of their respective contribution towards the capital of such company. However, the Commercial Companies Law does provide instances in which the general rule is overlooked, i.e. where the liability of the shareholders goes beyond their share capital investment and the circumstances in which shareholders may be held liable towards third parties for their own acts. We also discuss relevant legal provisions where the board of directors and managers may be held personally liable.

Shareholders and managers’ liability under Article 295 of the Commercial Companies Law where the company is in a loss

As per article 295 of the Commercial Companies Law, where the losses of a shareholding company amount to half of its share capital, the members of the board of directors shall, within 30 days of reaching such loss, propose to the shareholders at a general meeting to either cover the capital or liquidate the company. The failure of the manager to call the meeting and any failure of the shareholders to reach a decision on the matter could lead to managers and shareholders respectively being held personally liable. However, it should be noted that the corporate veil will not be pierced, and the shareholders will not be held personally liable for all corporate debts. The creditors need to establish that the damages they have sustained are a direct result of the failure to implement the provisions above.

Managers and board members’ liability under Article 732 of the Commercial Code where the company cannot pay its debts

As per article 732 of the Commercial Code Law No. 27 of 2006 (‘Commercial Code’), if, after the company’s bankruptcy, its assets appear to be insufficient to cover at least 20 per cent of its debts, the court may, upon the request of the liquidator, order to charge all the board members, managers, or some of them jointly or severally to pay all or some of the debts of the company unless they have proven that they exerted due diligence in conducting the affairs of the company. While Article 295 of the Commercial Companies Law has been invoked and relied upon by claimants previously, we note that Article 732 of the Commercial Code is relatively untested before local courts. Creditors should take note of such a provision in the Commercial Code.

Managers and board members’ liability under Article 113 of the Commercial Companies Law for acts of fraud

Article 113 of the Commercial Companies Law provides that the chairman and the members of the board of directors are jointly liable to compensate the company, its shareholders and third parties for damages resulting from acts of fraud, misuse of authority, gross mistake in performing their duties and breaches of the provisions of the Commercial Companies Law or the company’s articles of association.

With regards to liability of managers of limited liability companies, article 244 of the Commercial Companies Law provides that the liabilities of the manager shall be similar to the liabilities of the board of directors of public shareholding companies. Accordingly, managers are liable to the company, the shareholders and third parties for any loss arising from fraudulent acts, deceit, abuse of power, violations of the Commercial Companies Law or the company’s articles of association and any error in management (other than those made in good faith).

Managers and board members’ liability under Clause 229 of the Commercial Companies Law for failure to add the term “limited liability company”

Under Article 229 of the Commercial Companies Law, a limited liability company’s directors shall be jointly and severally liable in the event of failure of the directors to add the term “limited liability company “ to the company’s name in all official documents. This remedy has been confirmed by many judgments issued by the Qatar courts [1].

Conclusion

As discussed above, the only situation in which the corporate veil is pierced to attach liability to the shareholders is as per Article 295 of the Commercial Companies Law. Such a limited application of the concept of piercing the corporate veil is distinguishable from other jurisdictions where the concept of a separate legal form is disregarded during instances such as of fraud, wrongdoing or injustice to third parties.

With regard to personal liability of managers and board of directors, the takeaways are as follows: (1) creditors can seek personal liability of the debtor company's managers only if the debtor company incurs losses amounting to half of its share capital and if the company's managers fail to call for a shareholders meeting; (2) during occasions. where after the company's bankruptcy, its assets appear to be insufficient to pay at least 20 per cent of its debts, the board members or managers may jointly or severally be liable to pay all or some of the debts of the company unless they prove that they exerted due diligence in conducting the affairs of the company; (3) directors of a limited liability company may be liable if they do not add the term "limited liability company" to the company's name in all official documents; and (4) creditors can seek personal liability of the debtor company's chairman, members of the board of directors and managers for instances of fraud and misuse of authority.

It is suggested that Qatari legislative authorities amend the Commercial Companies Law to include liability of owners for acts of fraud, misuse of authority, gross mistake in performing their duties and breaches of the provisions of the Commercial Companies Law or the company's articles of association. Such amendments will place Qatar's legal regime relating to piercing the corporate veil in line with other jurisdictions, and also provide additional security to creditors and investors.

[1]*Court of cassation judgment no. 164 of 2010.*

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