

Authorised manager accountability

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An 'Authorised Manager' is defined as any person appointed by the members of a company, or other persons, according to the company's type of activity and its need for persons with expertise. An Authorised Manager's financial, managerial and legal specialisations and authorisations shall be determined by a company's management board (for shareholding companies) or its company's board of directors (for limited companies, co-operatives, sole proprietorships, and simple company vehicles).

Amongst the wide scope of authorisations assigned to Authorised Managers in Iraq under the Companies Law No. (21) of 1997 ('Companies Law') accountability in companies registered in Iraq ('Companies') is considered one of the most essential responsibilities. In addition, the Companies Law regulates a number of other matters regarding the role, responsibilities and obligations of Authorised Managers including: the grounds on which legal protection is provided for Authorised Managers and Companies so as to guarantee their respective rights; the terms of their authorisations; the restrictions imposed on such authorisations; the mechanisms for appointing and terminating them; and the types of accountabilities of Authorised Managers and towards third parties.

This article briefly discusses Authorised Managers' accountability obligations towards their respective Companies pursuant to the Companies Law, the Labour Law No. (37) of 2015 (the 'Labour Law'), and the Penal Code No. (111) of 1969 (the "**Penal Code**").

Authorised manager accountability pursuant to the Companies Law

It is important, prior to discussing Authorised Manager accountabilities, to refer to Authorised Manager specialisations and authorisations, stipulated under Article 123 of the Companies Law to include: implementing General Assembly decisions, preparing financial reports at the end of each fiscal year, preparing a comprehensive report on the Company's activity, including a discussion of the preceding fiscal year's financial report, opening current accounts at banks, depositing, withdrawing and collecting funds, closing bank accounts, securing insurances against the Company's movable and immovable assets, collecting and receiving payables in favour of the Company and paying its debts, signing agreements and contracts and entering into bidding and procurement processes, contracting with official directorates and public-private project parties on behalf of the Company, appointing Company employees, signing their employment contracts and determining their salaries, and performing other activities in relation to the Company's internal bylaws and regulations.

Notwithstanding the aforementioned wide scope of authorisations, the Companies Law stipulates restrictions against an Authorised Manager's authorisations in its Article 119-120, which prevent an Authorised Manager or member of the Management Board / Board of Directors from benefiting, whether directly or indirectly, from any contracts or agreements executed with the Company without the permission of the General Assembly, granted after disclosure of the nature and extent of the relevant benefits. In addition, it is prohibited for a General Manager or a member of the Management Board / Board of Directors to vote on any matter in which they maintain a benefit, whether direct or indirect, without disclosing the nature and end extent of the relevant benefits and subsequently obtaining permission to participate through an absolute majority vote between non-benefiting participating parties.

The Companies Law, in light of the aforementioned authorisations and restrictions, imposes upon an Authorised Manager a duty of care in securing the Company's interests equivalent to that in securing their own interests. In addition, an Authorised Manager must manage the Company in a legally compliant manner, exercising the duty of care stipulated under the Iraqi Civil Code as the reasonable person's duty of care.

Authorised manager accountability pursuant to the labour law:

The basis of the contractual relationship between an Authorised Manger (the General Manager) and the Company is defined under the Labour Law, the relevant employment contract, and the relevant Regulations and Instructions, whereby the Labour Law obliges the Authorised Manager to perform their assigned duties with precision and integrity, and to exercise in doing so a reasonable person's duty of care. Upon contravention of the relevant duties and obligations, an Authorised Manager may be penalised by the employer, such penalties amounting in some cases to termination (e.g.: gross negligence by the Authorised Manager leading to a grave loss against the Company which damages business, employees, or production pursuant to a final judicial decision).

Authorised manager accountability pursuant to the penal code:

Pursuant to Article 80 of the Penal Law, a general principle applies against legal persons whereby liability in cases of criminal activity committed on behalf of the Company by an Authorised Manager shall fall against such Manager in breach. A legal person may as such be penalised only financially, by suspension, or by winding up. The application of Article 80 of the Penal Code is subject to the person committing the crime being a representative, agent, manager or authorised person of the relevant legal person, and the criminal activity being committed on behalf of the legal person, in its name, or in its interest.

In light of the foregoing, it is observable that Iraqi law has not only stipulated the authorisations and privileges pertaining to an Authorised Manager appointed or elected by the Management Board / Board of Directors, but has also regulated such authorisations and privileges with a framework of legal protection measures preserving the interests of Companies.

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