

Corporate Authority in Qatar: To bind or not to bind

Frank Lucente - Partner - Corporate / Mergers and Acquisitions / Commercial / Competition / Family Business / Private Equity / Projects

f.lucente@tamimi.com - Doha

Sabrina Oumellal

s.oumellal@tamimi.com

June 2014

For companies registered in either Qatar and or the Qatar Financial Centre (“QFC”), Law 5 of 2002 (the “Commercial Companies Law”) and the QFC Contract Regulations (Regulation 4 of 2005) provide us with some rules regarding corporate authority in Qatar.

In Qatar, any binding corporate contract needs an “offer” and “acceptance of offer” evidenced by the company’s or its representative’s signature (what is known as an “expression of will”). Article 65 of Law 22 of 2004 stipulates, inter alia, that “the expression of will shall be by word, writing, common used sign, actual exchange denoting consent or by any other position which the circumstances leave no doubt of the true intention therefrom”.

An irrevocable binding authority lies upon the company in some specific cases.

Express or implied authority

When the approval to bind a company is explicit, the authority is known as “express authority”.

Such an authority to bind a company can be granted by the written articles of association (by-laws) or other approved corporate resolutions. It is often granted to the general manager (managing director) and/or the chairman.

As for limited liability companies, Article 240 of the Commercial Companies Law provides that “a company’s director enjoys the absolute authority in administering it, unless his authority is determined by the company’s contract [i.e. the articles of association]. The director’s acts are binding upon the company ...”

Therefore, a company’s director has full authority and all powers necessary to act on its behalf in the ordinary course of business, unless otherwise stated in the articles of association. Any action taken by the director will bind the company provided that he discloses that such acts are made by him in such capacity.

We quite often see the terms of such authorities expressed in the following manner “The director shall have the widest powers to manage the company, its business operations and administration and to carry on all activities that may be necessary or appropriate according to its objects and purposes. He shall without limitation: manage the business, financial and other affairs of the company; represent the company and sign all documents that may be required or necessary; execute and perform for the company in its name all things which shall be necessary or desirable concerning the matters herein described as freely as the company could do for the attainment of its objects”.

Regarding joint-stock companies, Article 102 of the Commercial Companies Law provides that “The

chairman of the board of directors shall be the president of the company and shall represent the company with regard to third parties and the judiciary; and he shall implement decisions of the Board and abide by its recommendations”.

As for single-person companies, Article 260 bis 6 of the Commercial Companies Law stipulates that “the owner of the capital shall manage the company. He shall be entitled to appoint one or more managers to represent the company before third parties and judicial authorities and be responsible for its management before the owner”.

These approvals may be granted with limitations placed upon their scope or upon the level of the authority. This is often referred to as a “signature authority” or an “authority matrix”.

Express authority need not be in writing, it can be given orally to do a particular task or to represent with authority to bind the company.

The other means by which authority can be determined is through what is known as “implied authority”. Implied authority is usually a result of a pattern of approvals to perform certain tasks, or to represent with authority to bind a company. That results in an understanding of authority to perform similar functions in the future. Approval to do a certain thing and to do so over and over without seeking additional confirmation each time the task arises. Over time, this becomes an implied authority.

Under article 15 (5) of the QFC Companies Regulations 2005 “a document is executed by an LLC if signed by two directors, or one director and the secretary”.

Agency

The principle of agency is consensual relationship created by contract or by law where one party (the Principal) grants authority for another party (the Agent) to act on behalf of and under the control of the Principal to deal with a third party. An agency relationship is fiduciary in nature, and the actions and words of an agent (a representative) exchanged with a third party bind the principal (here the company)”.

Under article 61 of the QFC Contract Regulations, giving authority to agents is defined as “the relationship which results from the consent of one person (the Principal) that another Person (the Agent) may act on behalf of the Principal and from the consent of the Agent to act on behalf of the Principal”.

Apparent or ostensible authority

Separate from “actual” authority (express or implied) is “apparent or ostensible” authority. This source of authority is different from actual authority in that apparent authority is viewed by another party. How the other party to the contract views the representations by the company’s members will determine whether the contract will be considered legally binding.

If the third party can be seen as reasonably viewing the member’s representations and actions as those of the company, then it is more likely that such reliance will result in a binding contract or obligation. Apparent authority can create unexpected risk for a company because the company is not in control of how the third party views the facts that created the authority to bind. This principle is readily accepted by common law courts and in other civil law jurisdictions the concept has been introduced to various civil codes, but this is still not applicable in Qatar. Therefore it is likely only to be accepted by QFC courts.

Power of Attorney

Binding authority can be given through a power of attorney (“POA”), being a written authorisation to represent or act on another’s behalf in private affairs, business, or some other legal matter. The person authorising the other to act is the principal (grantor or donor) of the power. The one authorised to act is the agent.

The POA has the role of granting the appointed person the right to represent the duly authorised person who grants the power, as well as undertake actions on behalf of the latter (or “by proxy”). A POA is necessary when the authorised person cannot attend the completion of formalities in certain transactions or any situations that require signing papers or legal representation.

The authority to bind a company can be limited in certain circumstances.

Article 68 companies limitations

A company is established pursuant to Article 68 of the Commercial Companies Law when there is an interest of the government or a government instrumentality in the company. Article 68 allows a company to be exempted from the provisions of the Commercial Companies Law where such law conflicts with the arrangements and agreements made upon its foundation as well as with the provisions provided by its company contract and by-laws. Therefore, any provision in the Commercial Companies Law can be overruled by a provision in the Articles of Association of the company.

For instance, the law provides that the chairman can bind the company whereas an article in the by-law provides that his authority is subject to the board of directors’ approval. When the second condition is not met, the signature of the chairman will not bind the company as there was a lack of authority of the chairman to enter into such contract.

Excess or lack of authority

Article 87 (1) of the Civil Code provides “If a person concludes a contract on behalf of another without representation, or he has exceeded in concluding that contract the limits of his representation, the effects of this contract shall not attach to the principal unless ratified in accordance with law”.

Not only is any contract entered into by a chairman without proper authority not binding upon a company but under Article 112 of the Commercial Companies Law, “The Chairman and Board members shall be jointly liable to compensate a company, its shareholders and third parties for damages resulting from deceit or misuse of power or violation of the provisions of this Law or the company’s by-laws and for any error in management. Any term to the contrary shall be void”.

Moreover, article 87 (2) of the Civil Code provides that if “the dealing has not been ratified, the other contracting party may pursue whoever has used the capacity of representation or exceeded its limits for compensation, unless he had known of the non-existence of the representation or the exceeding of its limits, or should have known of the same”.

Clearly in Qatar, there are different means by which one can ascertain whether a company will be bound to an obligation. The existence of two distinct jurisdictions within Qatar implies that parties have to be aware of subtle differences between the two when it comes to ascertaining whether a contract will be binding or not upon such companies. As always, diligence is recommended when dealing with any company with which one is entering into legal relations.