

# Company capitalisation and limitation of liability



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The most common vehicle available to foreigners (personal or corporate) wishing to conduct business in Qatar is through the incorporation of a limited liability company (LLC) established pursuant to Law No (5) of 2002 as amended (Companies Law). The general principle in relation to LLCs is that the liability of the shareholders is limited, but in certain circumstances, Article (290) of the Companies Law (Article 290) allows the “lifting of the corporate veil” of a LLC, i.e. to look beyond its limited liability, and the imposition of the LLC’s liabilities on its shareholders, and potentially its general manager or equivalent.

## Law

Article 290 provides that if the losses of a LLC reach 50 percent of its capital, the shareholders must resolve, by the majority required to amend the Articles as defined therein, within thirty days either to (a) recapitalise the LLC’s debts or (b) dissolve the LLC. If the managers fail to call for a Shareholders’ General Assembly and/or if such a resolution is not passed, the shareholders and/or the managers as the case may be, will be jointly liable for all of the LLC’s debts.

The Companies Law does not specify when and how to determine a LLC’s losses. When read as a whole, the common interpretation of the procedure set out at Article 290 is that when the net position of a LLC is negative and the losses amount to 50 percent of the share capital, then Article 290 of the Companies Law could apply.

In this event, the general manager or any other managers of the LLC (e.g. an authorised signatory of the LLC) should call for a General Assembly within thirty days from the date of determination of the losses.

The shareholders are able to reinstate the capital or resolve for the dissolution of the LLC. It should be noted that when dissolution is resolved, this should be achieved through liquidating the LLC

(the set procedure is outlined in the Companies Law and includes the appointment of a liquidator).

If the managers and/or shareholders fail to call for a Shareholders’ General Assembly or to pass the requisite resolution as out-lined above, the managers and/or shareholders, as the case may be, may be jointly and severally liable for all the LLC’s liabilities.

In these circumstances the principle of limited liability is lost.

## The practice

It is not unusual for a LLC to incur losses that exceed half of its capital, particularly at the early stage of the business when the LLC has no revenue stream. An LLC could in theory exist and operate as normal so long as no third party creditor files any debt recovery claim and/or bankruptcy claim for defaulting in payment against the LLC.

Many LLCs fall below the statutory capitalisation requirement and continue to trade as normal. The issue of solvency of the LLC would only be crystallised when a shareholder wishes to sell his/its shares and the question of valuation of the LLC arises, or when a creditor files a claim against the LLC.

The application of Article 290 of the Companies Law remains largely untested through the Qatari courts, though at present the commencement of dissolution proceedings is becoming more common.

To avoid the risk to shareholders (and managers) the initial capitalisation of the LLC should be carefully considered. While the minimum capital requirement is QR200,000 (approx. US\$54,000), the Companies Law requires the LLC’s capital “shall be sufficient to realise its objects ...” (Article 232). Sufficiently capitalising the LLC on establishment and monitoring its capital requirements is

likely to assist in mitigating against any claims in relation to a potential breach of Article 290.

The general principle in relation to LLCs is that the liability of the shareholders is limited, but in certain circumstances, Article (290) of the Companies Law (Article 290) allows the “lifting of the corporate veil” of a LLC

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