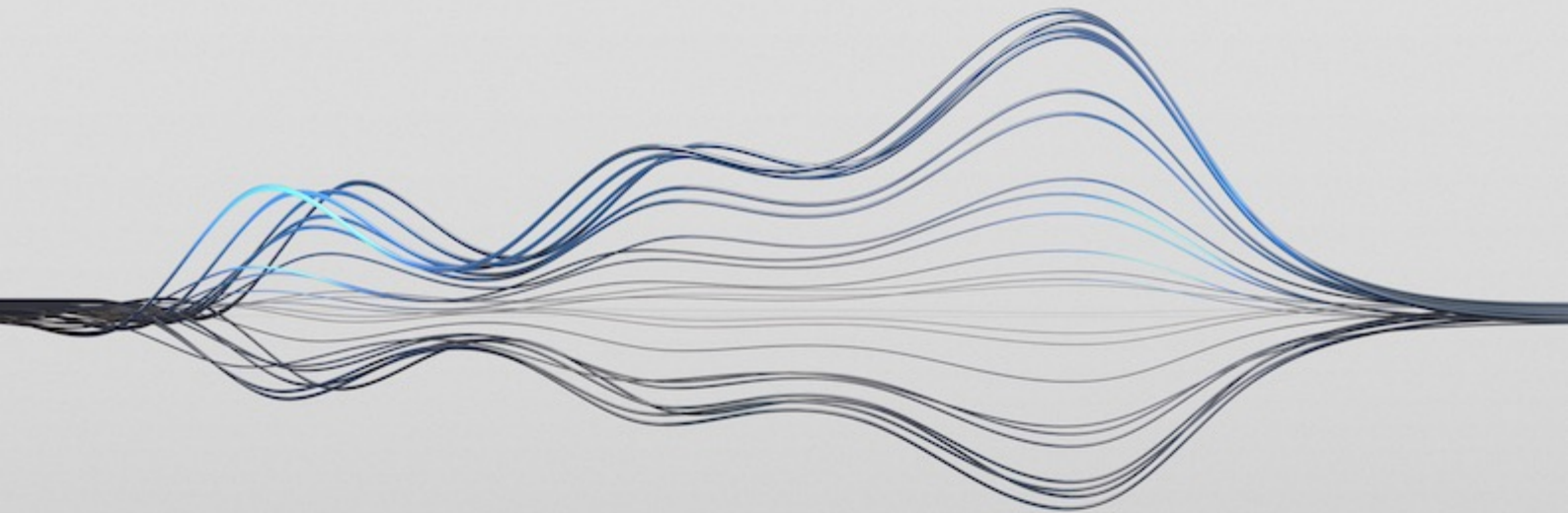


ALGERIA

Global Guide to Directors' Duties





Algeria

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Corporate entities

What type of company is typically used in group structures?

The joint-stock company (*sociétés par actions*) with board of directors is the most common type of corporate entity used in group structures in Algeria.

This guide therefore focuses on the management of joint-stock companies.

Types of director

What is a "director"?

The Commercial Code does not provide for a specific definition of a director.

Basically, a director is someone appointed by the shareholders to manage the company on their behalf.

What are the different types of director?

Directors validly appointed as such are known as *de jure* directors and may be executive (usually employees, with an operational /executive role) or non-executive (usually not employees).

In addition, the Algerian Commercial Code also recognises:

- The *de facto* director, which is a person who acts as though they are a director but is not validly appointed as such.
- The shadow director, which is a person in accordance with whose directions or instructions the directors of a company are accustomed to act.

It should also be noted that when a company employs over 150 employees, two seats at the Board of Directors should be assigned to workers' representatives appointed by the workers' council (*comité de participation*). The workers' appointed representatives only have a consultative power and cannot vote on decisions of the Board of Directors.

Eligibility

Who can be a director?

Algerian company law does not set legal limitations on who can be a director of a joint stock company. In addition, there are no nationality or residency restrictions.

As a matter of principle, the directors must be natural persons. However, a legal entity may be appointed as director if it designates a permanent representative (*representant permanent*) which should be a natural person.

Minimum / maximum number of directors

A joint stock company must have at least three and not more than twelve directors.

Appointment and removal

How are directors appointed?

Directors must consent to their appointment and are appointed by a decision of the company's shareholders in an ordinary general meeting. The first directors of the company are indicated in the articles of association.

How are directors removed?

Directors may be dismissed at any time by the ordinary general meeting by a majority resolution.

Directors may also resign at any time in writing.

Board / management structure

Typical management structure

Boards of Algerian private companies are unitary structures made up of all the company's directors. Unless otherwise specified in a shareholders' agreement, each director has the same obligations and accountability to the company. The directors are responsible for the management and operations of the company and for ensuring that the company meets its statutory obligations.

The Algerian Commercial Code also provides for the management board (*directoire*) under the supervision of a supervisory board (*conseil de surveillance*), which is an alternative management structure but very seldom used by Algerian companies. This guide therefore focuses on the board of directors (*conseil d'administration*).

How are decisions made by directors?

The directors take decisions at meetings of the board of directors by means of resolutions. The articles of association and shareholders' agreements usually provide the formalities of convening and conducting the meetings (e.g. physically, virtually or hybrid).

Unless the articles of association provide for a greater majority, decisions are taken by a majority of the members present.

It should be noted that the president of the meeting has a casting vote.

Authority and powers

The board of directors is vested with the broadest powers to act in all circumstances on behalf of the company; it exercises these powers within the limits of the company's purpose and subject to those powers expressly granted by law to the shareholders' meetings.

In its relations with third parties, the company is bound even by the acts of the board of directors which do not fall within the scope of the corporate purpose, unless it proves that the third party knew that the act exceeded that purpose or it could not have been unaware of it in view of the circumstances, it being excluded that the mere publication of the articles of association is sufficient to constitute such proof. The provisions of the articles of association limiting the powers of the board of directors may not be invoked against third parties.

Delegation

The board can appoint one or two general managers (*directeurs généraux*) to assist the chair of the board.

Duties and obligations of directors

What are the key general duties of directors?

Each director must act, at all times, in good faith and in the company's interest. They must act independently and exercise their duties with reasonable care, skill and diligence and avoid any potential conflict of interests. Each director has also a duty of confidentiality in respect of all the board's proceedings.

Additionally, a director is responsible for:

- Definition of the company's strategy.
- Appointment of the corporate officers in charge of managing the company on a day-to-day basis within the framework of the defined strategy.
- Supervision and control of the executives.
- To ensure the quality of the information provided to shareholders and the markets through the financial statements or the quality of the information provided to shareholders and the markets through the accounts or on the occurrence of major transactions.

What are directors' other key obligations?

At the close of each financial year, the board must draw up an inventory of the various assets and liabilities existing at that date. It must also draw up the general operating account, the profit and loss account and the balance sheet, together with a written report on the situation of the company and its activities during the past financial year.

Directors are also responsible for ensuring that the company complies with its other statutory and legal obligations, for example under environmental and health and safety laws, employment laws, consumer protection laws, competition laws and bribery/anti-corruption laws.

Transactions with the company

Any agreement between a company and one of its directors, either directly or indirectly, shall, subject to nullity, be submitted for prior authorisation by the board of directors after a report by the auditor.

The same applies to agreements between a company and another company, if one of the company's directors is a partner, director or manager of the company. A director who finds themselves in one of these situations must declare this to the board of directors.

The auditors present a special report to the general meeting on any of these agreements authorised by the board. The above does not apply to normal agreements relating to the company's transactions with customers.

Under penalty of absolute nullity of the contract, the directors of a company are prohibited from obtaining, in any form whatsoever, loans from the company, from being granted an overdraft on a current account or otherwise, as well as from having their commitments to third parties guaranteed or endorsed by it.

Liabilities of directors

Breach of general duties

Civil Code

Whilst there is no specific liability under the Civil Code attaching to directors, the directors and/or the chair of the board will be personally liable in the event of misconduct separable from their capacity as members of the board.

General law conditions will therefore apply for the exercise of any action for tort liability by third parties against directors (i.e. existence of a misconduct, a loss, and a causal link between this misconduct and the alleged loss).

In order for a third party to trigger the personal liability of a director or the chair of the board (as opposed to the company's tort liability, as a legal entity) the following conditions should be fulfilled:

- Characterisation of a fault separable from the person's functions and which is attributable to the director or the chair of the board personally.
- Characterisation of a particularly serious fault committed by the director or the chair of the board intentionally and incompatible with the normal exercise of their functions.

Commercial Code

Various liabilities may arise under the Commercial Code and notably the following:

- **Law infringement/breach of articles of association/mismanagement.** The directors are liable individually or jointly and severally, as the case may be, to the company or to third parties, either for infringements of the laws or regulations applicable to joint stock companies, or for breaches of the articles of association, or for faults committed in their management. Where several directors have cooperated in the same acts, the court shall determine the contributory share of each in the indemnification of the loss.
- **Allocation of fictitious dividends/concealment of the true situation of the company.** A term of imprisonment of up to five years and /or a fine of up to DZD200,000 (approx. USD1,500) shall be imposed if directors and/or the chair of the board, deliberately distribute fictitious dividends among the shareholders or deliberately present to the shareholders an inaccurate balance sheet in order to conceal the true situation of the company.
- **Obstructing a shareholder's participation in a meeting.** Any person who knowingly prevents a shareholder from participating in a shareholders' meeting shall be punished by imprisonment for a term of three months to two years and/or a fine of up to DZD200,000 (approx. USD1,500).
- **Offences relating to the ordinary annual general meeting.** The chair of the board or directors who have not convened the ordinary general meeting within six months of the end of the financial year or, in the case of an extension, within the period fixed by a court decision or who have not submitted the relevant documents for the approval of this meeting, shall be punished by imprisonment for a term of two months to six months and/or a fine of up to DZD200,000 (approx. USD1,500).
- **Offences relating to shareholder meetings.** Directors and/or the chair of the board shall be punished by a fine if they fail to send notice of all eligible shareholders, fail to provide proxy forms or other information relating to the holding of the meeting, fail to provide the necessary documents to shareholders, fail to provide necessary documents to shareholders within the prescribed time limits prior to the meeting or fail to comply with the procedures for holding meetings.
- **Providing false information in reports.** The chair of the board or any director who knowingly gives or confirms inaccurate information in the reports presented to the general meeting called to decide on the cancellation of the shareholders' preferential subscription right shall be punished up to two years imprisonment and/or a fine of up to DZD500,000 (approx. USD3,700).

Liabilities on insolvency

Under the Commercial Code, if the net equity of the company falls under one fourth of the share capital because of losses incurred by the company (as acknowledged in the accounting documents), the board of directors must convene an extraordinary shareholders' general meeting within four months of the approval of the financial statements in which the loss appeared in order to resolve on the company's early dissolution.

Offences under the Commercial Code relating to mismanagement may also apply (see [Breach of general duties](#)).

Other key risks

The directors' criminal liability could also be incurred in several matters related to operation of the company and its day-to-day management and activities (e.g. in case of breach of labour laws, tax laws, commercial laws, customs laws, foreign exchange control regulations, bribery/anti-corruption laws etc.).

Protection against liability

How can directors be protected from liability?

- **Ratification and *quitus*.** Shareholders can grant *quitus* (i.e. a discharge) and/or ratify conduct by a director which is negligent or in breach of duty by a majority resolution (excluding the votes of the director concerned or their connected persons). Ratification by shareholders does not, however, absolve a director from any liability to a third party in relation to the matter concerned.
- **Indemnity.** Although it is not possible for a company to exempt its directors from liability, a company is able to indemnify its directors against certain liabilities incurred to third parties. An indemnity can potentially cover both the award of damages against a director and the costs involved in defending a claim but cannot cover regulatory fines or the unsuccessful defence of, or fines imposed in criminal proceedings. The company may also pay a director's defence costs as they are incurred – however these costs become a loan which must be repaid by a director should the defence be unsuccessful and the costs are not covered by any permitted indemnity. The company may seek to obtain security for such loans if appropriate in order to protect the company's assets.
- **Powers of attorney.** Directors could have recourse to powers of attorney in order to delegate day-to-day tasks to competent persons in charge of operational management.

What practical steps can directors take to avoid liability?

Directors should:

- **Act in all circumstances in the interest of the company.** Directors must, regardless of the method of appointment, consider themselves as the representative of all shareholders.
- **Be fully aware of their rights and obligations.** They must, in particular, be familiar with and comply with the legal and regulatory provisions relating to their position, the applicable codes and good governance practices, as well as the rules specific to the company resulting from its bylaws and the internal regulations of its Board.
- **Preserve their independence of judgment, decision and action in all circumstances.** Directors must refrain from being influenced by any element alien to the company's interests, which they must defend at all times. Directors must alert the Board to any factor of which they are aware that may affect the company's interests.
- **Remain independent.** A director cannot be granted an employment contract by the company after their appointment. Directors must clearly express their questions, opinions and positions, and even their opposition. In the event of disagreement, they must ensure that these are explicitly recorded in the minutes of the deliberations.
- **Avoid any conflict between their moral and material interests and those of the company.** Directors must inform the Board of any conflict of interest in which they may be involved and must not contract with the company except in limited circumstances (see [Transactions with the company](#)). If directors cannot avoid finding themselves in a conflict of interest, they must abstain from participating in the debates and in any decision on the matters concerned. Directors must act in good faith in all circumstances and not take any initiative that could harm the interests of the company.
- **Maintain discretion with regard to information that is confidential or considered to be confidential.** A director personally undertakes to respect the total confidentiality of the information they receive, the discussions in which they participate and the decisions taken. They must also refrain from using for their personal profit or for the profit of anyone else the privileged information to which they have access.
- **Devote the necessary time and attention to their duties.** They should ensure that the burden of their duties as a director leaves them sufficient time to devote to those duties, particularly if the director also holds executive functions. A director should inform themselves about the company's business and specificities, its challenges and its values, including by interviewing its main managers. They should also attend meetings of the board of directors and any specialised committees of which they are a member assiduously and diligently, and attend shareholders' meetings. Directors should endeavour to obtain, within the appropriate timeframe, the information they deem essential for their deliberations within the Board in full knowledge of the facts. A director should also endeavour to update the knowledge that is useful and necessary for the proper performance of their duties.
- **Contribute to the collegiality and efficiency of the work of the board and any specialised committees that may be formed within it.** Directors should make all recommendations aimed at improving the functioning of the Board and accept the evaluation of their own actions within the Board. They should also ensure that the Board's guidance and control functions are carried out effectively and without hindrance, that procedures for monitoring compliance with laws and regulations are in place (in letter and in spirit) within the company and that the positions adopted by the Board are, without exception, the subject of formal decisions, properly reasoned and transcribed in the minutes of its meetings.
- **Delegate those tasks that cannot be performed due to skill or time constraints.**

- **Seek advice.** Directors should take decisions on the basis of knowledge and experience. Therefore, it is important for directors to seek advice, especially from relevant staff and external consultants.
- Obtain a directors' liability insurance policy.

Key contacts



Mounir Ait Belkacem

Partner

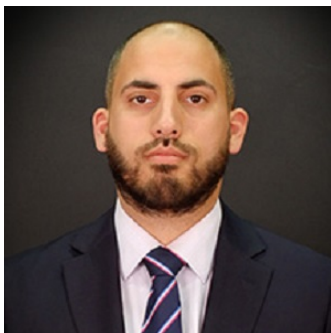
DLA Piper Africa, Algeria, L&P

Partners

T +213 21 48 29 84

maitbelkacem@dz-lpp.com

[View bio](#)



Steven Aldrich

Associate

DLA Piper Africa, Algeria, L&P

Partners

T +213 (0) 21 69 46 83

saldrich@dz-lpp.com

[View bio](#)

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