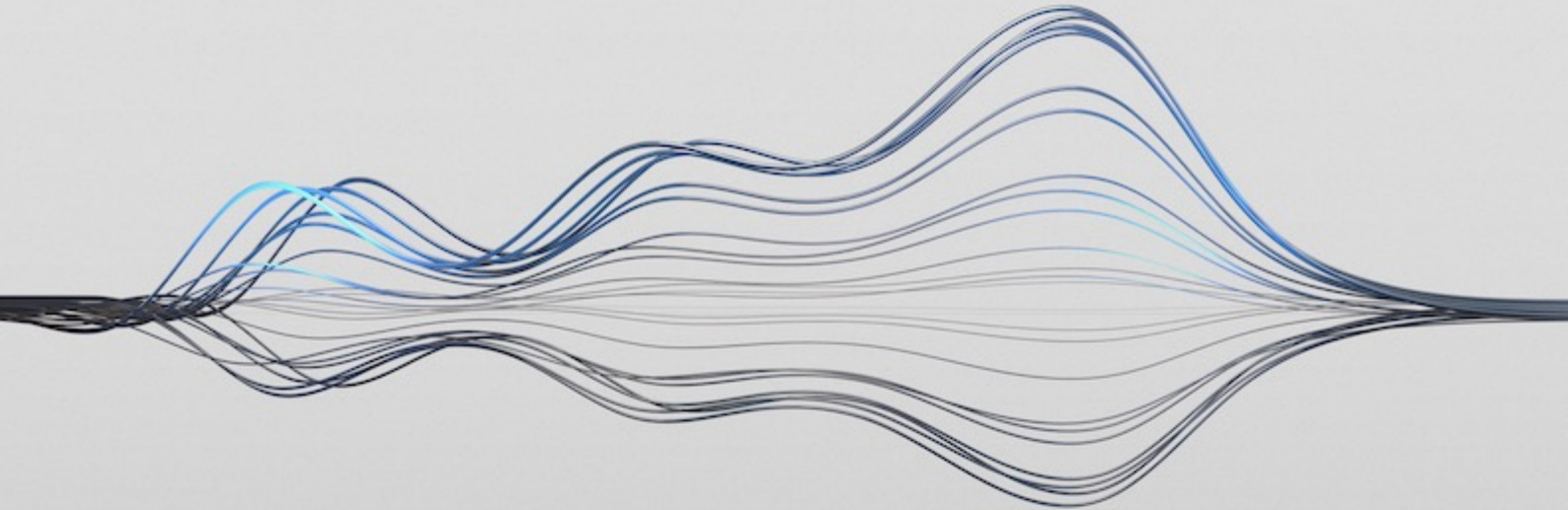


MOROCCO

Global Guide to Directors' Duties





Morocco

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Corporate entities

What type of company is typically used in group structures?

The most common type of companies used in group structures in Morocco are limited liability companies (*sociétés à responsabilité limitée*) (LLC) and public limited companies (*sociétés anonymes*) (PLC).

LLCs do not have a board of directors, but have a manager who is the legal representative of the company. PLCs have a board of directors.

Both directors of LLCs and PLCs have similar duties. This guide therefore focuses on the management of a PLC which has a board that includes *jure* managers besides the directors.

Types of director

What is a "director"?

There is no proper definition of the term "director" in law. However, a director has the broadest powers to act on behalf of the company in all circumstances. The director has the exclusive power to represent the company with respect to third parties.

What are the different types of director?

The notion of "director" or "manager" includes both *de jure* managers (generally members of the board of directors, the chair of the board of directors, the general manager and the deputy general managers of a corporation) and *de facto* managers (any natural or legal person who in fact exercises a preponderant and lasting influence on the management of the company). Among the directors, only the general manager and the managing directors are the legal representatives of a corporation.

Eligibility

Who can be a director?

A director must be a natural person, however there are no nationality restrictions.

Membership of the board of directors is not required. When not a member of the board of directors, the Chief Executive Officer attends meetings of the board of directors without the right to vote.

Minimum / maximum number of directors

Generally the number of directors in a LLC is either one or two managers.

A PLC usually has one director and one president of the board.

Appointment and removal

How are directors appointed?

Directors are nominated by a resolution of the members of the board. The general assembly of shareholders agrees on their nomination, then they are noted on the extract of the commercial registry.

How are directors removed?

Directors are usually removed after their appointment by a resignation letter. A board meeting is held in order to acknowledge the resignation of the former director and the co-option of a new director. The new director will then be noted on the extract of the commercial registry.

Board / management structure

Typical management structure

In a LLC, aside from the shareholders, the manager or director is the legal representative of the company.

However, in a PLC, the management structure is more complex. Aside from the shareholders, there are members of the board and a director. The director can be the president of the board and in this case they are appointed as CEO.

How are decisions made by directors?

The director provides the board with a managing report in order for the board to deliberate based on the said report. The general assembly of shareholders then proceeds to vote on the decisions and if the quorum and majority conditions are met then the decisions are executed.

Authority and powers

The director is the legal representative of the company. Therefore, they have the legitimate authority to take any decision for the benefit of the company. They also have the powers to sign any document on behalf of the company, together with banking powers which allow them to manage the company's bank account and other banking operations.

Delegation

Directors are able to delegate management responsibilities to their delegate (*Directeur délégué*). A delegate is appointed pursuant to the by-laws of the company, or by the board which determines, in agreement with the director, the scope and duration of the powers granted to the delegate. Delegates typically have the same powers with respect to third parties as the directors and are under the director's supervision.

Duties and obligations of directors

What are the key general duties of directors?

The powers and duties of the general manager(s) are primarily limited by the company's interests and corporate purpose. As the legal representative of the company, the general manager is responsible for its management. Therefore, the general manager will negotiate contracts, look for potential merger targets and determine the major commercial strategies of the company, subject to the verification and validation of the board.

The company will however be committed to third parties even by the acts of the general manager that do not fall within the corporate purpose, unless the bad faith of third parties is proven. Moreover, the powers of the general manager may also be conventionally specified in the articles of association. Exceeding these powers does not, however, entitle third parties to bring a claim.

What are directors' other key obligations?

There are several reporting requirements to the Trade Registry, for example the following must be filed:

- Approval of the annual accounts.
- Financial statements.
- Management reports.
- Auditors' reports on the financial statements.

The financial statements must also be filed with the tax authorities no later than three months after the end of the financial year.

Transactions with the company

Transactions typically take the form of loans, long-term service agreements, and the sale or purchase of important assets. These transactions may only be made with prior shareholder consent, unless an exemption applies.

Liabilities of directors

Breach of general duties

There are four cases under Moroccan law which are likely to engage the civil liability of the general managers.

- **Violations of laws and regulations.** The civil liability of the Legal Representatives may be incurred as a result of infringements of legal or regulatory provisions applicable to PLCs. This may include, in particular, failure to comply with the rules for convening and holding shareholders' meetings, failure to comply with obligations relating to the disclosure of corporate documents, failure to comply with the procedure applicable to regulated agreements, and irregularities in the keeping of corporate accounts or in the distribution of dividends.
- **Non-compliance with the articles of association.** Compliance with the company's articles of association is mandatory for the general managers. A breach of any provision in the articles of association limiting their powers is not enforceable by third parties and the company remains committed by the actions of its legal representative. Examples include exceeding the corporate purpose, failure to comply with limitations on powers or statutory deadlines for convening meetings, or failure to comply with restrictions applicable to transfers of shares or corporate units.
- **Liability for mismanagement.** It should be noted that the concept of mismanagement has not been defined by the Moroccan legislator and its interpretation is therefore left to the judges of the court of first instance. Mismanagement can take a variety of forms. It can include positive faults (unfair competition, presentation of inaccurate accounts, etc.) or faults of abstention (insufficiency in the supervision of the executive bodies, of the salaried personnel and of the accounting, etc.) which would not have been committed by a diligent, prudent, attentive, active and scrupulous manager placed in the same situation, and which are prejudicial to the interests of the company. The liability of legal representatives for mismanagement is generally understood to be a contractual liability that must be assessed in accordance with the general rules of agency set forth in Moroccan law.
- **Liability for actions taken outside the interest of the company.** The general managers may be held liable for any act taken outside the interest of the company. An act can be defined, in a common sense, as any act or a failure to act, whether intentional or not. Thus, the general managers are not only liable for mismanagement but also for errors in management. Further, Moroccan law specifies that even if they did not participate in the relevant acts, they will be declared responsible if they did not reveal them at the next general assembly after they had knowledge of them.

There are three actions that can be taken to hold the general managers liable:

- An individual action for compensation for damage suffered personally by a shareholder/partner or by a third party, distinct from any damage suffered by the company. In a PLC, if several shareholders have personally suffered a prejudice due to the same facts, they can group together and give a mandate to one of them to act in court on their behalf.
- A corporate action (*ut universi*) brought by the company against the general managers and which is brought by the new general or the general managers whose liability is not in question.

- A social action (*ut singuli*) exercised by the shareholders/associates aiming at repairing the damage caused by the general managers to the company. The implementation of this action necessarily requires the implementation of a corporate action as well. Any damages will be awarded to the company.

Liabilities on insolvency

Moroccan law specifies that, in a PLC, the members of the board of directors, the general manager (and, where applicable, the delegate general manager or the members of the board of directors) are liable, individually or jointly, as the case may be, to the company or to third parties, either for infringements of the legislative or regulatory provisions applicable to PLCs, or for breaches of the articles of association, or for faults committed in their management or for acts taken outside the interest of the company, during the execution of the mandate they have received.

Even if the liability of the managers/directors is subject to specific provisions which specify its scope, their civil liability is governed by the general law of liability, which, in order to be engaged, requires a fault, a prejudice and a causal link between the fault and the prejudice concerned.

Other key risks

Moroccan law provides for a number of specific offenses for which the general managers/directors of a PLC are criminally liable.

In addition, the competent court can order the persons held liable for certain acts to return to the company any profits they have made as a result of such acts.

The court may also prohibit the general managers/directors from directing, managing, administering, representing or controlling, directly or indirectly, any company for a period of 12 months.

Protection against liability

How can directors be protected from liability?

General managers/directors can be exempted from liability in two main ways.

- **Delegation of authority.** General managers/directors assume the criminal liability of the head of the company and are therefore liable for numerous violations of the regulations applicable to companies and, where applicable, to the regulations governing more specifically their sector of activity (press law, environmental law, etc.). However, the criminal liability of the head of the company can be set aside if, not having personally taken part in the commission of the offence, they can prove that they have delegated their powers to subordinates. Delegation in this context means a delegation of competence rather than a delegation of signature. The implementation of delegations is therefore recommended, especially when the company has several establishments.
- **The act of a third party and force majeure.** The general managers/directors remain liable towards third parties, even when they have committed a tort or a quasi-tort on the express order of the company or with the unanimous consent of the shareholders. However, the fact that they have obeyed a given order gives them a right of recourse against the company or the shareholders. In addition, the shareholders cannot claim that the general managers/directors have caused prejudice to the company by complying with their express orders. Acts of God or force majeure may exonerate the general managers/directors from all or part of their liability. The common law criteria of force majeure must be established (unforeseeability, irresistibility and exteriority).

What practical steps can directors take to avoid liability?

As stated in [How can the directors be protected from liability?](#) the delegation of authority, unlike a delegation of signature, can exempt directors from liability.

However, the validity of delegations of authority requires certain conditions to be met:

- the delegation must be necessary and justified in view of the company's organization
- the delegate must have the capacity, authority and means to exercise this delegation, and
- the delegation must be written, precise (specific to an area of intervention of the law), and accepted by the delegate.

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