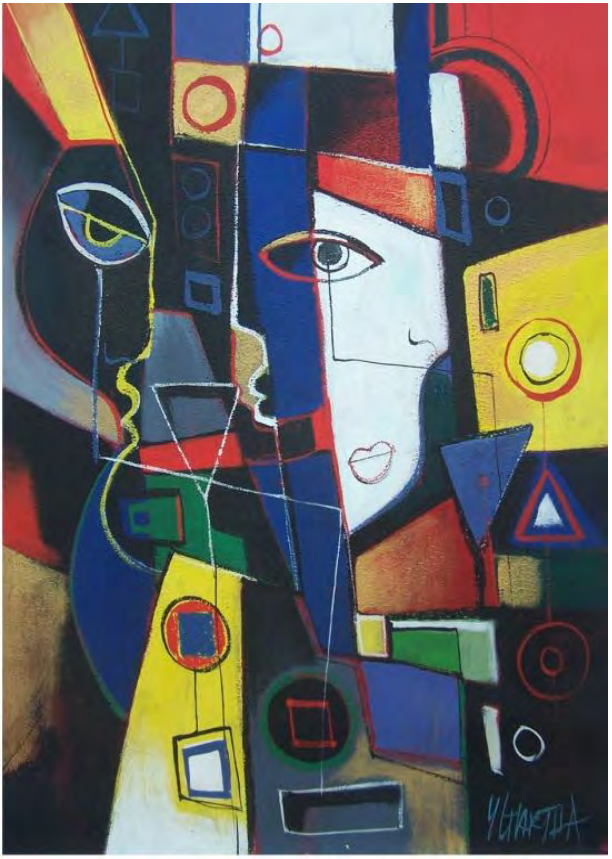
opción

Revista de Antropología, Ciencias de la Comunicación y de la Información, Filosofía, Lingüística y Semiótica, Problemas del Desarrollo, la Ciencia y la Tecnología

Año 35, 2019, Especial N° 21

Revista de Ciencias Humanas y Sociales
ISSN 1012-1587/ ISSNe: 2477-9385
Depósito Legal pp 198402ZU45



Universidad del Zulia
Facultad Experimental de Ciencias
Departamento de Ciencias Humanas
Maracaibo - Venezuela

Opcion, Año 35, Especial Nº 21 (2019):*2899-2921*
ISSN 1012-1587/ISSNe: 2477-9385

The Responsibility Of The Partners In Their Own Funds For The Debts And Obligations Of The Limited Liability Company

Dr. Elham Jihad Suleiman Saleh

Assistant professor; Prince Sultan University; Elham.jihad@yahoo.com

Abstract

The Saudi regulator in the Companies Law issued in 1437 decided that the responsibility of the partners in the limited liability company is limited to the amount of his share in the capital that he placed in this company, and this is the general principle, except that when reviewing the texts of the Saudi companies system, we find that the organizer has put Cases in which the partner in the limited liability company is asked about the debts and obligations of the company personal responsibility with his own money, i.e. his responsibility exceeds the amount of his share of the capital, and exceeds it to his own money, and this is what we will explain through two requirements, we talk in the first demand about the original, which is the limited responsibility of the partner in The company in charge The limited liability is limited to his share in the capital, and we speak in the second request about the exception in the partner's responsibility in the limited liability company for the debts and obligations of the company with his own funds.

Keywords : The limited liability company, the responsibility of the partners with their own funds, the Saudi Companies Law.

La Responsabilidad De Los Socios En Sus Propios Fondos Por Las Deudas Y Obligaciones De La Sociedad De Responsabilidad Limitada

Resumen
El regulador saudí en la Ley de Sociedades emitida en 1437 decidió que la responsabilidad de los socios en la compañía de responsabilidad limitada se limita al monto de su participación en el capital que colocó en esta compañía, y este es el principio general, excepto que cuando Al revisar los textos del sistema de compañías sauditas, encontramos que el organizador ha puesto Casos en los que se le pregunta al socio de la compañía de responsabilidad limitada sobre las deudas y obligaciones de la responsabilidad personal de la compañía con su propio dinero, es decir, su responsabilidad excede el monto de su parte del capital, y lo excede a su propio dinero, y esto es lo que explicaremos a través de dos requisitos, hablamos en la primera demanda sobre el original, que es la responsabilidad limitada del socio en la compañía a cargo. la responsabilidad se limita a su participación en el capital, y hablamos en la segunda solicitud sobre la excepción en la responsabilidad del socio en la compañía de responsabilidad limitada para el deudas y obligaciones de la empresa con sus propios fondos.

Palabras clave: la sociedad de responsabilidad limitada, la responsabilidad de los socios con sus propios fondos, la Ley de Sociedades Sauditas.

Research Methodology

This research is based on the descriptive analytical method, as the researcher considered looking at the texts of the Saudi corporate system and trying to describe and analyze them and put examples that are appropriate for the research topic to facilitate the reader, whether the regular reader or the specialized reader to understand the topic clearly

Research problem

The problem of this research is limited to a statement of whether there is a personal liability of the partner in the limited liability company with his own funds for the debts and obligations of the company, and a statement of cases in which this partner or partners are responsible with their own funds for the debts and obligations of the company and the determination of the

legal bond in the Saudi corporate system about Topic .

The first requirement

The partner's liability is limited by the amount of his share in the capital in the limited liability company

The original part of the partner's responsibility in the limited liability company is limited to his share in the company's capital only. If he owns fifty percent of the capital, then he is responsible with only that percentage, and if he owns seventy percent of the capital, he is responsible with this percentage, The other partner or other partners are responsible for the remaining thirty percent, and so on. If the capital of the limited liability company is two million riyals, and the company has a debt or commitment of one million riyals, then the partner who has 70% of the capital will bear 70% of that debt Or obligations, deducted from its share of the capital, The rest is 30% deducted from the other partner or other partners if they are more than two partners, and this is the general basis for which the limited liability company was found, and the Saudi organizer stated that the limited liability of the partner in the limited liability company is explicitly stated in paragraph (1) of Article one hundred and fifty-one of the Saudi Companies Law issued on 28/28/1437 AH corresponding to 10/11/2015, according to which this article states:

"A limited liability company is a company with no more than fifty partners, and its liability is independent of the financial liability of each partner. The company is solely responsible for the debts and obligations arising therefrom, and the owner or the partner therein is not responsible for those debts and obligations"

By reviewing the text of paragraph (1) of Article (151), we find that it considered that the liability of the limited liability company is independent of the financial liability of its partners, and that the financial liability of the company is an independent statement that is solely responsible for its debts and obligations, and also considered that the owner or partner in it is not Responsible for those debts and obligations.

To show what we have mentioned above, we say if we have a limited liability company with a capital of only one million riyals, and debts or obligations amounting to two million riyals are arranged for that company, then the owner of this debt or commitment to the original can only claim the company by the amount of its capital and the amount of its assets that are from It is possible that it does not cover the entire debt or obligation owed to it by the company, and it is not possible, according to what we have already mentioned above, to return to the owner or partner for their

personal request to pay the rest of the debt or obligation that he did not collect from the company.

The second branch

The exception in partner responsibility or the owner of the company with limited responsibility for the debts and obligations of the company for his money

The principal in the obligation of the owner or partner in the company with limited liability for its debts and obligations is limited to the amount of his share in the capital, and this commitment does not extend to his own funds.

However, this principle is not absolute, as the partner or owner of the limited liability company may be responsible in his own funds for the debts and obligations of the company arising from others, so when the partner or owner is responsible with his own funds for the debts and obligations of the company and whether the Saudi regulator mentioned in the corporate system issued In 1437 cases where the partner or owner of the limited liability company is responsible for the company's debts and obligations in his own funds and not only to the extent of his share in the capital? And are there other ways or situations in which the partner or owner may be responsible for the company's liabilities and debts in his own funds?

To answer these questions, by referring to the Saudi Companies Law, we find that the Saudi Regulator has stipulated in Article 155 under Chapter One (General Provisions) of Chapter Six (The Limited Liability Company) in the Companies Law of 1437 on cases where the partner or owner is considered to be in The limited liability company is responsible with its own funds for the debts and obligations of the company, as stated in the text of Article (155) the following: "The person who owns the limited liability company is responsible in his own funds for the company's obligations vis-à-vis the (other party) he deals with in the name of the company, And in the following cases:

- If he - in bad faith - liquidates his company, or stops its activity before its term ends or before achieving the purpose for which it was established.
- If he does not separate the company's business from his other private business.
- If he does business for the company before acquiring his legal personality.

By looking at the text of the above article, we find that the Saudi organizer has clearly and courageously departed from the general principle for

which the limited liability company was found, which is that the responsibility of the partner or owner is in the amount of his share in the capital, whereby the organizer put cases where the partner or owner is The limited liability company is responsible in its own funds for the company's obligations and debts vis-à-vis the (other party) that it dealt with in the name of the company, and in our opinion the aim of the organizer's revenue for these cases is to protect the funds of the (other party) dealing with the limited liability company from being lost, Especially since so many people As they establish companies with limited liability and take them as a means to eat people's money unlawfully, taking advantage that their responsibility in them is originally only to the extent of their share in the capital. The partners or owners of the limited liability company must one of these cases, they are responsible in their own funds for the debts and obligations of the company with their own funds.

We will detail those cases where the partner or owner of the limited liability company is responsible with his own funds for the company's obligations and debts to others, and we will set examples to illustrate what they are as follows:

First case: If - in bad faith - he liquidates his company, or ceases its activities before the end of its period or before achieving the purpose for which it was established:

That is, if the partner, partners, and owners, if they in bad faith liquidated the company, or ceased its activity before achieving the purpose for which the company was established, they were responsible for the debts and obligations of the company arising from the third party who dealt with them in the name of the company.

However, is it not the right of the partners and owners to liquidate their company or stop its activities whenever they want, or is this right not absolute?

This right is available to the partners, but according to what is stated in the text of the article, the partners in order to use this right they must adhere to two conditions, the first is that the liquidation of their company or the cessation of its activity was done without bad intent from them, and the second is that the liquidation or cessation of activity was not done before achieving the purpose that For him, the company was founded.

How is bad faith when liquidating the company? To clarify this, we say that the partners are not entitled to liquidate the company before they implement their obligations and contracts that they entered into with the (other party) that dealt with them in the name of the company, it is not

acceptable for a limited liability company with a capital of two hundred thousand riyals to contract with (the other party).) Provided that a commodity worth one million riyals is supplied to him within a month, two months, or during a year, for example, and this (the other party) pays the value of that goods in full to the limited liability company, then the owner of this company decides (if it is one person's company) or its owners (if It consisted of more than one partner) liquidating the company and dissolving it before they supplied the eggs Lighter contracting with that (the other party) who dealt with them in the name of the company,

Thus, they evaded the supply of the goods for which they received the full price of it (the other party) that he contracted with in the name of the company, because here they have liquidated their company in bad faith, and it is not accepted if they are considered responsible for the obligations and debts of the company that is arranged for others only by the amount of their shares with the capital of two hundred Thousand riyals, but according to Article 155, they will also be responsible for their own money for the debts and obligations of the company that were arranged for this (the other party) that dealt with them in the name of the company, and this (the other party) has the right to file a lawsuit against them to demand a full refund of his goods as well as a claim for compensation for his right From harm c DONC breach implementation of the supply of goods and backwardness to him based on the rules of the contractual liability or tort according to the case.

As for stopping the activity for which the company was established before achieving the purpose for which it was established or before its term ends, we say that if a limited liability company was established with a capital of two million riyals, and the company's ten-year period was to practice financial consulting activity, and then contracted with Another company to be a financial consultant for it to prepare it to switch from being a closed shareholding to become a public shareholding, and the two parties agreed that the limited liability company that engages in financial advisory activity will receive an amount of five million riyals in exchange for the completion of the closed shareholding transformation company, and that fee has been paid in full For a company with limited liability, except that before the achievement of that purpose for which the liability company was established, and it is the same purpose for which a financial consulting contract was concluded between it and the closed joint stock company, the partners in the limited liability company canceled or suspended that activity before achieving it or Before the end of the company's

term, and therefore it will not be able to provide the service that was contracted for, so do we say here that (the other party) (the closed joint-stock company) that contracted with it will not be able to recover what you paid to it except by the amount of its capital which is two million or is this (party) The other) can return to polytheism E in their own money because they have committed an act in bad faith cancel the company's activity before achieving the purpose of which it was created?

The answer is clearly and explicitly stated in Article 155, paragraph 1 of that this (the other party), as mentioned above, can refer to the owner or the partners in the company in their own funds to pay the amounts that were arranged for him as a result of the failure of their company to implement its commitment to provide financial advice because of their cancellation of their company's activity before achieving its purpose. For which it was established and contracted for or before its term expires, and this (the other party) also has a claim to them for compensation for the harm caused because of their doing so if there is a reason for this compensation.

We see that bad faith is assumed in the partners whose company contracts with (the other party) in contracts and then before the implementation of their limited liability company by the obligation due in those contracts, the partners liquidate them or cancel and stop the activity for which the company was established even though their company has fulfilled The value of those contracts.

The second case: If the company's business is not separated from its other private business:

It is one of the problems that may result from a person being a partner in a company, the risk of confusing the financial liability of the partner in the company with the financial liability of the company itself in terms of money, due to the difficulty of separating the partners 'private funds and their funds that they allocated to the company, especially if These partners do other business in person or within other companies that mix with the business of the limited liability company they are partners in, and therefore it is difficult to know the money that entered for these partners is it the result of their other business or the result of the business of the limited liability company, then it may This confusion causes Damage to the (other party) dealing with the company with limited liability, as this partner or partners may, as a result of mixing their own money with the company's funds, claim that all of these funds are private money and have nothing to do with the limited liability company that they participate in, and this must It reduces the guarantee of the (the other party) that dealt with them in the

name of the company, because this (the other party) may have debts and obligations arising on the company with limited liability that exceeds the amount of the capital that the partners allocated to it, what should this (the other party) do if there is a confusion between funds The business of the private partners and between the funds and business of the company itself Limited liability?

Is it sufficient for him to collect the debt or obligation he owed to the company from the paid-up capital of the limited liability company registered in its commercial registry, and therefore will not be able to fulfill its full right to claim the partners that each of them is responsible only to the extent of their share in the capital, or is this (the other party)) Can he consult the partners of the limited liability company with their own personal funds? And the answer here: Yes, this (the other party) who dealt with these partners in the name of the company can refer to the private funds of these partners in the limited liability company because they confused their business with their own money between the limited liability company business in which they are partners, and therefore they weakened The assets of the limited liability company, and by their confusion, they reduced its financial solvency, which is a guarantee for the third party.

What we explained above is a clear and explicit explanation of what was mentioned in paragraph 2 of Article 155 of the Saudi Companies Law for the year 1437 AH.

The third case: If he does business for the company before acquiring the legal personality:

What is meant by the corporate personality of the company is to grant the company the necessary powers to acquire rights and assume obligations similar to that of individuals, and under this personality the company becomes an independent entity, and it has the right to buy, sell, pledge, lease, or perform any other legal behavior within the limits of the purpose that was established from It is postponed, and at the same time, it is subject to legal and legal accountability within the limits of the violations it issues.

The company acquires a legal person after its registration in the commercial register, however the company during the incorporation period has a legal personality to the extent necessary for its incorporation, provided the completion of the incorporation process. However, before the company is registered in the legal registry, it has not acquired its legal personality, and the partners in it may not conduct any business for this company.

Therefore, if we assume that a group of people wanted to establish a limited liability company, and they have already started the incorporation

procedures, they did not register them in the commercial register, yet during that period they engaged in business and concluded deals with (the other party) (on behalf of the company), However, these deals and actions that the partners engaged with (the other party) on behalf of the company, the partners did not implement the obligation of their company that has not yet acquired the legal personality, so what is the situation (the other party) that contracted with them in the name of the company and paid them money and fulfilled its commitment to the company and became a creditor She has rights or money, so can I Here obey wrangler company and sue them for taking his money or fulfillment of his rights accrued or incurred for him because of the partners to practice the activity of the account of the company before the acquisition of a personal legal entity? Absolutely not. The company has not yet acquired the legal personality that enables it to receive rights and fulfill obligations and the ability to be a litigant in a legal dispute.

Accordingly, it cannot be said that the funds and rights of the (other party) who dealt with the company before its acquisition of the legal person went in vain without compensation, rather that this (the other party) is entitled to refer to the partners who dealt with him in the name of the company and to collect his money and rights from them personally and from their money Private, in order to protect him and deter them from violating the system by practicing business and deals for the company's account before it acquired the legal personality.

After I have finished clarifying the cases in which the partners or one of them is responsible for the debts and obligations of the limited liability company with their own funds out of the public origin from that they are only responsible for the amount of the share in which they participated in this company, someone may say, that the cases that I have clarified above and incoming He mentioned it in Article 155 of the Companies Law for a one-person company with limited liability only. The provisions of that article and these cases cannot be made on companies with limited liability consisting of two or more partners on the pretext that article 155 was arranged after Article 154 that talks about the one-person company With limited liability, we reply to him that there is no difference, and if one of these three cases and violations (Article 155) is available, whether the company is a company of one person or consists of two or more partners, then they are also responsible for their own funds for the debts and obligations of the company, and by analogy with them

It should be said that this view of the possibility of the partners in the

limited liability company with their own funds being responsible for the debts and obligations of the company, and not only to the extent of the shares they have paid in its capital, has a legal bond that we provide with the following points:

1. That the principle of limited liability contradicts what was agreed upon because the debt relates to the person's debt, not to his money, because he said, "The soul of the believer is suspended by his debt until he pays for it." It was included by Ibn Majah on the Book of Charity, Chapter on Hardening Debt.
2. The principle of limited liability is contrary to the provisions of the company's contract in Islamic law, which is that the partner should bear the losses that occur to the company in the amount of his share in the capital. The loss is in communion for each one as much as they have, so if what they have is equal in fate, then the loss between them is two halves, and if it is three, then the situation is three. We do not know about this a dispute between the scholars.
3. That the principle of limited liability leads to a profit that is not guaranteed, and God's blessings and Prophet(p),forbade a profit that was not guaranteed, by saying: "There is no precedent and sale, nor two conditions in selling, nor profit unless it is guaranteed, nor selling what you do not have." And he drew that: The limited liability partner will take the profit of the debt that is not responsible for and does not guarantee him, and this is not permissible
4. The principle of limited liability leads to deception, because limiting the responsibility of the partners does not exceed the amount of their share in the capital, while allowing the company to borrow from (the other party) or borrow or deal with (the other party) in a way that exceeds the amount of the capital This means that creditors (the "other party") will not get back their money or part of it, and this situation entails a great deceit for creditors.
5. The introduction of the principle of limited liability gives an excuse to the partners or the management of the company to deceive the parties who deal with them by claiming bankruptcy and resorting to liquidating the company when they insure the prosecution in their private funds that do not represent shares in the company, because their responsibility is limited in their shares only, thus losing the rights of creditors and dealers with The company. Then they create another company with limited liability, return the ball and so on.1 -

Judgments have already been issued by the Commercial Court in the Kingdom of Saudi Arabia regarding this meaning, including what was stated in the judgment issued in case No. (5022/1/ k)1433 AH, which was supported by the Court of Appeal No. (4327 / k) of 1435 AH issued on 02/15/1436 AH.

Findings and recommendations Findings and recommendations
The researcher reached important results through her study, which are:
1. That the partners of the company with limited liability in order to insure the limited liability of them to the amount of the share that they put in the company, they must not violate the provisions of the system, especially Article 155 of the system, and they must deal with (the other party) in good faith and not to deal with large amounts that exceed the amount of their capital For the purpose of eating the money (the other party) that deals with them.

---

[1] Where the reasoning stated in the ruling is: "If the partners deal with debts and do not have enough of the company's capital to cover it, then this is an attempt to forfeit the rights of others and eat people's money unlawfully, And God has said (And eat up not one another property unjustly nor give bribery to the rulers that you may knowingly eat up a part of the property of others sinfully) (Albaqarah :188) It came in the interpretation of Al-Tahreer&Al-Tanweer 2/237: (Do not eat your money in vain in the event of a rebate in money with the rulers, so that you beg by judging the rulers to eat the money in vain when you cannot eat it in the mostly)
Including the exploitation of private laws to eat people's money unlawfully, which contravenes the requirement of justice, and this matter - the inclusion of partners in the limited liability company when negligence and deceit - agrees with the spirit of the law on limited liability, as the determination of responsibility is not intended to take this as a purpose to deny the rights of others Fixed, and this is known even to the West, who created such kind of companies, as stated in the book of limited liability companies: Are your personal assets at risk? P :78 (It is important to understand that limited liability does not always reflect the full protection of their owners from personal obligations. Where courts can penetrate the veil of limited liability companies when some form of fraud or fabrication occurs or under certain conditions when the owner of the company is used as the "I" (, In other words, he neglects the rights of others, and his conduct and dealing with him in the company's name exceeds the limits of the company's responsibility. In addition, the limited liability company determines liability, according to the capital. If the company owes or deals with more than its capital, then this is a deception of the customer with it (Seduction). Accordingly, the article mentioned in the corporate system, but it is confirmed to a previous meaning and does not add a new meaning, and therefore the absence of this text does not harm during the transaction. Whereas, the liquidator was summoned and presented the liquidation report of the defendant company with limited liability, and in his report proved that the company has insufficient assets to pay its debts and that the largest of them is the plaintiff's debt .... That is why the department ruled:
First: obliging the partner ... to pay the plaintiff an amount of (584,720) Riyals.
Second: Obliging the partner to a company ..... to pay the plaintiff an amount of (2.338.880) Riyals.
The Court of Appeal ruled to uphold the ruling of the Commercial Court of First Instance with the completion of the judiciary) is over

2. That the cases mentioned in Article 155 of the Companies Law apply, whether the company is made up of one person or more than one partner, and whether the violation was committed by one or more partners.
3. The Saudi entrepreneur has improved his usual and courageously exit by stipulating clear and explicit cases in which the partner in the limited liability company is responsible with his own funds for the company's debts and obligations.
The researcher recommends that article 155 should be amended to be in the plural form and not in the singular form so that some people do not understand that the cases mentioned therein are limited to the owner of the one-person company.

Summary
The partner in the limited liability company is not always responsible only to the extent of the share he set as his share in the limited liability company, he may remove him from the limited liability veil and he may become responsible in his private funds in the event he committed fraud and fraudulent acts, as well as violating the provisions of the system that make him then responsible With his own funds for the company's debts and obligations, in order to protect others and deter such people from using the system illegally

References:
1. Judge Abdul Mohsen bin Abdullah bin Ibrahim Al-Zakri, Partner responsibility in the joint-stock company and the limited liability company in Islamic law and jurisprudence, Master Thesis, Imam Muhammad bin Saud Islamic University, Library of the Higher Institute of the Judiciary, 1414 AH.
2. Saudi Companies Law issued in 1437 AH - 2015 AD.
3. Judicial rulings - The Commercial Court of Appeal ruling issued in the case No. 5022/1 / s for the year 1433 AH supported by the Court of Appeal No. 4327 / BC for the year 1435 AH issued on 02/02 / 1436H

UNIVERSIDAD
DEL ZULIA

opción

Revista de Ciencias Humanas y Sociales

Año 35, Especial N° 21, (2019)

Esta revista fue editada en formato digital por el personal de la Oficina de Publicaciones Científicas de la Facultad Experimental de Ciencias, Universidad del Zulia.
Maracaibo - Venezuela

www.luz.edu.ve

www.serbi.luz.edu.ve

produccioncientifica.luz.edu.ve