

## Airline Directors And Managers Liability In Panama



The object of this article is to determine the level of liability that the directors and managers of airline companies in Panama could be subject to in connection with the nature of their position within the airline.

In order to determine the level of liability of directors and managers of this special type of company, we must begin analyzing the level of liability of those of common companies. The general rule according to Panamanian law is that the directors of a company are not liable for the debts of the company. However, directors may be liable before the shareholders as a group for the following reasons:

- Of the effectiveness of the payments executed by the shareholders;
- Of the real existence agreed dividends;
- Of the good management of the accounting of the company;
- Of the general execution or bad performance of the mandate or the violation of the law, articles of incorporation, statutes or agreements of the company's general assembly of shareholders.

We deem important to analyze the law that regulates companies in Panama, which establishes that if declared or paid any dividend or distribution of assets that reduces the value of the company's goods to less than the amount of its liabilities, including in it the capital stock or if it's the capital stock is reduced, or if its rendered an false statement or a false report at some substantial point, the directors who have consented to such acts, with knowledge that this affects the shared capital, or that the statement or report is false, will be jointly and severally liable to the creditors of the company for the damages caused.

In the same way, we can foresee the responsibility held by the directors of companies on some scenarios in which a company is terminated by expiration of the period of its duration, or by dissolution. In these cases, the directors will act as trustees of the company to conduct the company liquidation process and as trustees the directors shall be jointly and severally liable for the debts of the company, but only up to the amount of the assets and funds whose holding and management they have acquired.

Having determined the basic levels of liability of company directors, under the Panamanian commercial law for common companies, we should now determine the degree of criminal liability to which the directors are subject to.

In order to carry out this task, we must start from the principle of legality, in which it is determined that there will be no criminal penalty of any conduct without its prior legislation within the Panamanian Criminal Law, which means that for directors to be responsible, criminally for their actions as directors or officers of a company, there must be a law that penalizes the conduct described.

Therefore, we must refer ourselves to the Criminal Code the Republic of Panama, which only contemplates a few scenarios in which a director of a corporation, in exercise of his condition of director, may be held criminally liable. Which specifically refer to the illegal withholding of social security payments; crimes related to banking entities, financial companies or others who capture or deals with public financial resources; falsification of financial or accounting records, within which only the last one contemplates the figure of manager or executive.

After clarifying the exposure of liability that the Law of Commerce and the Criminal Law of Panama contemplate for the directors of companies, we must now analyze the aeronautical legislation in order to determine the existence of any special exposure that the directors of this type of companies may have due to their condition as directors of companies who exploit commercial airline services.

After carrying out the review of the legislation that regulates this matter in Panama, we have not found a legal provision that assigns additional or special level of liability to the directors, managers or executives of this type of company due to the condition of their position on airline companies. Therefore, we conclude that their liability is limited only to the scenarios properly established in the Commercial Law and the Criminal Law, previously explained.

Nonetheless we deem important to highlight the fact that although there are no particular civil aviation legal provisions, the scenarios of commercial or criminal exposure are explicit, although we believe that it is indeed possible for a Panamanian Judge to find an airline company director, executive or manager, within criminal cases, under certain special conditions which prove that the conduct of directors, managers or executives, directly violates other provisions of the Criminal Code. However, these are not directly related to their condition of director, manager or executive of a company who renders commercial airline services. We believe that they cannot be held criminally liable for situations indirectly connected to them in the performance of the management of the services provided by the airline.