

HOW TO FILE A CLAIM OF LIABILITY OF A DIRECTOR IN A LIMITED LIABILITY COMPANY IN ITALY

(A) What are the proceedings?

Most likely a claim of liability of the director of a LLC in Italy will follow the rules of the standard procedure of the Italian code of civil procedure.

In the writ of summons, the claimant sets out the factual and legal grounds and fixes the day of the first hearing.

If the defendant is resident in Italy, at least 120 days must pass between the notification and the first hearing; if the defendant is resident abroad, this term is increased to 150 days.

The defendant is due to file a statement of defence at least 70 days before the first hearing.

Before the first hearing the parties have also the possibility to file further 3 statements in order to contradict the opposing defence arguments and to request the admission of measures of evidence.

After the first hearing the Court will assume the admitted evidence and finally issue its judgment.

(B) Procedural requirements majority

Internal director's liability

Every quota holder can file a claim against a director; no minimum value of the participation in the LLC is required in order to file the claim.

External director's liability

Third parties may also take action against directors in order to obtain compensation for damages that were directly caused by their willful misconduct or negligence.

Creditors of the company may also file a claim against directors in case of failure to fulfil their obligations to preserve the integrity of the company's assets

(C) Competent Court & territorial jurisdiction

Regardless of a few exceptions, the competent court is that of the registered office of the company. The case will be examined by a section of the court specialized in commercial law .

Arbitration is also possible.

(D) Who is legitimized to be the claimant?

Concerning internal director's liability: Every quotaholder independently from the value of his participation is legitimated to be a claimant. Even if it is not expressly provided by law for an LLC, some case law precedents admit a direct claim from the company itself against the directors.

Concerning external director's liability: Any third party is legitimated to act in order to obtain compensation for damages that were caused to him directly by willful misconduct or negligence of the directors. Creditors of the company are legitimated in case of failure to fulfil the obligations to preserve the integrity of the company's assets by the directors.

(E) Can the judgment be challenged?

Yes, the judgement can be challenged before the Court of Appeal.

The judgement of the Court of Appeal can be challenged in Cassation, but only on legal grounds.

PART II: LIQUIDATION

The Italian civil code expressly provides that the liability of liquidators is governed by the same rules that regulate the liability of directors.

PART III: BANKRUPTCY CASES

In case of bankruptcy of the company, the bankruptcy administrator may file a claim of liability against the directors. The bankruptcy administrator may act on his own initiative and does not need any resolution of the quota holders. However, in order to file a claim, an explicit authorization of the judge of the bankruptcy procedure is required.

Claims filed by the bankruptcy administrator could also be based on the failure of the directors to signal duly a financial crisis of the company and to undertake appropriate measures.

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