

Directors' liability for company's debts in case of compulsory winding up

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Spanish Companies' Act (SCA) requires directors to procure the winding up of a company when they knew or should have known that its net worth fell below fifty percent of its share capital. Failure to do so triggers directors' joint and several liability in regard to company's debts arising after the moment in which the net worth fell below the fifty per cent threshold.

This liability does not require *negligence* on the part of *each and every* director, because it is a *quasi-objective* liability, as a recent judgment of the Catalonian Court of Appeals¹ has reminded.

In the case at hand, one of the directors claimed that he should not be held liable because (i) his role had been limited to the commercial activities of the company, and (ii) he had never acted in bad faith.

The Catalonian Court dismissed these arguments because it is irrelevant whether or not directors:

- have acted in good faith; and
- have effectively performed the general functions of a director.

This is indeed another occasion in which Spanish courts have made it clear that directors' decisions to allocate discrete, limited functions within the business to some of them or the fact that certain directors have not performed, as a matter of fact, the statutory functions that every director has according to the SCA (i.e. overall responsibility for the company's affairs) do not immunize them from personal statutory liability.

¹ Judgment num. 247/2018, 12 April.