Chapter I: Criminal Liability of Managers in Case of Criminal Offenses

In addition to the crimes stipulated in the Penal Code, the Commercial Code has also criminalized certain actions committed by company administrators. Examples include:

- Distribution of profits contrary to legal provisions or the company’s bylaws;
- Abuse of company funds;
- Abuse of authority or voting rights.

However, since the criminal liability that may be borne by commercial managers arises from numerous wrongful acts—too many to cover comprehensively in this study—we will focus on a specific category of criminal acts performed by these individuals within the framework of exercising their powers, whether related to management or directorial functions.

Therefore, we shall address:

1. Abuse of Company Funds or Reputation (Abus des biens ou du crédit de la société) in the First Subsection.
2. Abuse of Authority or Voting Rights (Abus de pouvoirs ou du droit de vote) in the Second Subsection.

Section 1: Abuse of Company Funds or Reputation

Company board members are held criminally liable for offenses committed in the course of managing and administering company assets. This liability is outlined in Article 811, paragraph 3 of the Commercial Code, which states:

"**The chairman of a joint-stock company, as well as its administrators or general managers who intentionally use the company's funds or reputation for purposes they know to be contrary to its interests, for personal benefit or to favor another company or institution in which they have direct or indirect interests."**

It is important to note that although this crime may be committed by an individual manager or even the entire administrative body, it cannot be attributed to the company itself, as it is a moral person. The judiciary has not clearly distinguished this offense from breach of trust (*détournement de fonds*), often treating them similarly due to overlapping elements and the lack of detailed regulation in the Commercial Code. The foundational principles regarding the liability of managers for abuse of company funds or reputation were first established in the French Ordinance of August 8, 1935, amended by Law No. 66-537 of July 24, 1966 (Article 467, paragraph 3).

Subsection 1: Elements of the Crime

For the crime of abuse of company funds or reputation to be established, the following elements must be present:

1. Use of Company Funds or Reputation

The legislator has given a very broad scope to the concept of "abuse of company funds or reputation," encompassing not only criminal acts but also the subject matter of those acts, with the aim of providing real protection to the company and its interests.

Indeed, the term “use” includes all legal **transactions,** whether aimed at disposal or mere management, such as leases, advance payments, or gratuitous use (*commodatum*), as well as physical actions taken by managers in the course of their duties.

This element distinguishes the crime of abuse of company funds or reputation from *breach of trust* , which requires misappropriation or embezzlement resulting in the removal of assets from the victim’s estate. In contrast, the former crime exists even if the assets remain within the company's assets.

However, the term has inherent limits. The Commercial Code punishes only the act of using funds (a *delit de commission*). Therefore, non-use or abstention from use falls outside the scope of punishment. These passive behaviors remain unpunished, even if their consequences harm the company’s interests.

Examples include:

- A manager refraining from acting to avoid competition with another entity where he holds personal interests;
- Refusing to pursue payment from a company in which he has significant stakes.

As for "funds," it refers to all components of the company’s balance sheet assets intended to achieve its objectives. This includes both tangible and intangible assets.

Thus, a manager commits the crime if:

- He allocates company property for purposes conflicting with its interests;
- Uses company liquidity to pay fees for legal proceedings targeting him personally;
- Waives a patent while continuing to receive payments related to the invention, despite the company having funded all research and development costs.

Finally, the crime is complete when the company's reputation is abused. Company reputation refers to its ability to borrow money, i.e., its financial standing in dealings with third parties, based on its capital, business success, and guarantees offered to creditors.

Examples:

- Signing promissory notes in the company’s name to secure personal debts;
- Guaranteeing a Loan for a private residence under the corporate entity.

The crime is considered committed even if the manager is financially solvent, making the guarantee merely formal, provided the act endangers the company’s patrimony.

2. Abusive Use of Company Funds or Reputation
Punishment is imposed only if the use of company funds or reputation constitutes abuse. This occurs when the use serves personal purposes or interests conflicting with the company's interest .

1. Use Contrary to the Company’s Interest

Managers are not mere agents of shareholders entrusted solely with managing invested capital; they are organs of the legal person responsible for managing the company as a whole. Thus, the validity of their actions is assessed based on whether they serve the company’s overall interest.

Acts constitute abuse if they deviate from this purpose.

2. Subjective Element: Bad Faith / Intent
The law requires that the misuse be done in bad faith (*de mauvaise foi*) and that the manager knowingly uses the funds or reputation for purposes contrary to the company's interests.

Diverging Doctrinal Views on the Definition of “Company Interest”

There is disagreement among scholars regarding the definition of "company interest," a key element in establishing this crime.

- Shareholder Interest Theory : Some scholars link the company's interest to the interests of investors/shareholders who contributed to its capital. While prevalent in Anglo-Saxon jurisdictions under the theory of *Corporate Governance* , this view is rejected by Algerian Commercial Law, which explicitly states that shareholder approval does not erase criminal liability (Commercial Code, Article 715 bis 25, paragraph 2).
- Majority Interest Theory : Others associate company interest with the majority shareholders' interests. However, this approach is also problematic.
- Dominant View – Economic Project Interest : The prevailing modern doctrine, supported increasingly by courts and legislation, links the company's interest to the economic project or enterprise itself. This is seen as a common interest around which various particular interests revolve.

Example:

- Bribery to obtain contracts may be justified if it benefits the economic project and generates profit. However, if it leads to failure, it constitutes abuse of company funds.

مجلس الإدارة	Board of Directors	Governing body
المسير	Manager/Administrator	Person committing the act
الشخص المعنوي	Legal Person	The company as an entity

ARABIC TERM	ENGLISH EQUIVALENT
التعسف في استعمال أموال الشركة	Abuse of Company Funds
التعسف في استعمال سمعة الشركة	Abuse of Company Reputation
خيانة الأمانة	Breach of Trust / Embezzlement
الركن المادي	Material Element
الركن المعنوي	Moral Element
مصلحة الشركة	Company Interest
شركة المساهمة	Joint-Stock Company

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The Interests Protected by the Company and the Legal Framework

The interest of shareholders and the legal person is a privileged interest protected by law, granting them rights such as a share in the capital, proceeds from liquidation, and a portion of profits in exchange for their contribution to losses.

The interest of workers and employees who effectively realize the company's project must also be considered. In a famous case involving a French company where the majority shareholders were American and management was entrusted to French minority shareholders, the latter signed a contract to supply trucks to China. However, the majority decided to terminate the contract for political reasons. This prompted the intervention of the French judge, who ruled that this act was abusive because it conflicted with the company’s interest, which includes not only the interests of the investor-shareholders but also those of the employees—whose number would lead to layoffs if the project failed.

- The interest of suppliers and creditors, who drive the company forward and enable it to generate profits.
- The interest of the State through tax authorities and social security institutions.

The success of the economic enterprise exploited by the company and the achievement of its interest allow for the distribution of profits among shareholders, provide a favorable price for their shares, pay wages to workers, settle debts on time, supply goods to customers, fulfill tax obligations, and secure financial and personal safety.

Normally, these various interests are complementary, but they may occasionally conflict depending on the economic conditions in which the company operates. In such cases, the judge may exercise his broad discretionary power to prefer one interest over another.

This approach is adopted by Algerian judges based on Article 715 bis 25, paragraph 2 of the Commercial Code. Therefore, it is established that the crime of abuse of company funds or reputation was not enacted solely to protect shareholder interests, but to safeguard the capital of the legal person in the interest of the company itself and third parties.

In this sense, the crime of abuse of company funds or reputation becomes a sort of "gulf" into which any manager might fall. What complicates matters further is that the judge does not merely examine the objectives pursued by the manager, but also evaluates the results achieved.

Thus, the use of company funds or reputation is considered abusive due to its violation of the company's interest primarily when it affects the integrity of its assets. This occurs whenever the manager uses company funds for personal purposes, resulting in material harm. Comparative judicial practice provides numerous examples of such abuses, such as a manager using the company's bank account to pay his personal debts (e.g., telephone, gas, electricity bills, legal fees, and expert fees related to criminal proceedings initiated personally against him).

However, for effective and sufficient protection of the company's interest, scholars and judicial decisions have interpreted the scope of the crime of abuse of company funds or reputation more broadly. According to the prevailing doctrine, abuse includes "all actions that expose the company's capital to unusual risks," even without proof of actual damage.

But what is meant by "unusual risks"? If we accept that the enterprise operates within an economic, social, and political environment where daily challenges require rapid managerial decisions accompanied by certain risks threatening the company’s patrimony, then prohibiting such interventions and forcing managers to wait for board meetings to act would mean killing initiative and depriving the company of many profitable opportunities that may seem uncertain at first but yield significant profits upon execution.

To alleviate concerns raised by experts in business management regarding the broad interpretation of the concept of abuse of company funds or reputation and the constant threat to their professional lives, comparative jurisprudence has determined that the unusual risk is one that should not be borne by the company's estate.

It is worth noting that, even under this interpretation of Article 811/3 or Article 800/3 of the Commercial Code, the scope of the crime remains broad and undefined, creating uncertainty for actors and granting wide discretionary powers to the trial judge, who decides whether a risk is ordinary (borne by the company) or extraordinary (leading to liability).

Criminal liability of administrators for abuse of company funds or reputation arises whenever the legal person bears "risks without adequate consideration or with trivial consideration." Examples include:

- Renting property for a negligible rent;
- Selling company goods at prices below market value or purchasing goods at excessively high prices, forcing the company to sell at a loss;
- Borrowing money for the company at high interest rates while the manager receives a commission;
- Guaranteeing debts for another entity without benefit to the guaranteeing company.

To limit the dangers of such broad interpretations, the legislator added another condition: the manager must have acted with the intent of pursuing personal interests.

2. Use for Personal Interest of the Manager

It is not sufficient for the crime of abuse of company funds or reputation to exist merely because the manager’s action violates the company’s interest. Under Article 800/4 or Article 811/3 of the Commercial Code, the legislator requires that the action be taken for the purpose of serving the manager's personal interests. This reflects the necessity of proving a specific criminal intent, justified by practical needs requiring managers to make quick and decisive decisions. The violation occurs when the manager favors his own interests at the expense of the company’s.

Personal interest, according to the law, can be direct or indirect. It is direct when the manager benefits directly from the abusive act, such as using corporate funds for personal purposes:

- Excessively high salaries set according to turnover rather than profits, especially when the company is experiencing financial difficulties;
- Settling personal debts using company funds.

While such cases are common in large companies or those suffering from poor management or lack of oversight, they represent only the most obvious form of criminal conduct. In today's evolving business environment, perpetrators often resort to sophisticated, indirect, and deceptive methods. Hence, the legislator extended the scope of the offense to include all acts whereby managers favor another company or institution in which they hold direct or indirect interests. In such cases, the personal interest is indirect, as the manager may act through a nominee, such as owning a commercial establishment, being a partner in a company, or acting in the name of a spouse or family member.

Often, the personal interest sought by the manager is material, seeking enrichment at the expense of the legal person or avoiding poverty. However, this interest may also take an immaterial form, such as a manager acting to preserve family honor or achieve political goals.

Third – Bad Faith (Mens Rea)

Before anything else, the existence of bad faith on the part of the manager must be established to constitute the crime of abuse of company funds or reputation. Thus, the legislator requires proof that the manager acted in bad faith in handling company funds.

This bad faith may manifest in the manager's knowledge that his use of company funds or reputation is abusive because it violates the company's interests. According to jurisprudence, this intention is relatively easy to prove, as the harm caused to the company was intended and carried out with awareness. In other words, the perpetrator knows that the funds used belong to the company.

This bad faith does not require substantial evidence, as it is limited to knowledge, as clearly stated in Article 811/3 of the Commercial Code:

"The chairman of a joint-stock company, its administrators, or general managers who intentionally use company funds or reputation for purposes they know to be contrary to its interests, for personal gain or to favor another company or institution in which they have direct or indirect interests."

Knowledge may be presumed of a board member by virtue of his competence and experience in proper management practices. As someone well aware of what is beneficial and harmful to the company, he is expected to act with care and diligence. If he engages in certain transactions without regard to basic principles of sound management, he breaches his obligations and demonstrates negligence and bad faith warranting accountability.

Courts may easily infer this element from the manager's actions, leaving no reasonable doubt. For example, if a manager enters into prohibited transactions such as contracts binding the company with another entity managed by himself—

despite legal prohibitions requiring board approval—the court will deduce the presence of bad faith.

Bad faith may also be proven if the manager neglects to monitor subordinates under his supervision despite knowing that they have committed punishable acts, which he could have prevented.

Subsection II: The Penalty for Abuse of Company Funds or Reputation

We must distinguish here between two types of rules that address the issue of penalties: substantive rules and procedural rules .

I. Substantive Rules

These rules determine who is held liable for committing the offense and specify the penalties imposed on the perpetrator.

1. Persons Identified in Article 811, Paragraph 3

Since criminal punishment is personal, it applies only to the board member who committed the act. It does not extend to other members unless they participated in committing the offense. Furthermore, the company itself—as a legal person—is not subject to criminal liability, as criminal law does not punish moral persons.

1.1 The Principal Offender الفاعل الأصلي

The legislator has correctly intervened by specifying that the principal offender in the offense of abuse of company funds or reputation is the manager or someone acting in his stead; that is, a legal or de facto manager.

As for the legal manager, Article 811 refers to him as the chairman of a joint-stock company—meaning the chairman of the board of directors—and the general manager or administrator of the company. This also includes any permanent representative of the legal person who is a member of the board of directors. Therefore, he bears the same civil and criminal responsibilities as if he were managing the company in his own name, without prejudice to the joint liability of the legal person he represents (Commercial Code, Article 612, paragraph 2).

It is clear from an interpretation of Article 811, paragraph 3, that the legislator specifically referred only to managers of traditional joint-stock companies and did not explicitly mention administrators in companies governed by a board of directors or a supervisory board. Does this rule apply equally to them? In other words, are they criminally liable for abuse of company funds or reputation, as is the case with older forms of companies?

In practice, there is difficulty in applying this provision, and the judge must consider two approaches:

- **Either interpret the text strictly and literally, in which case the provisions on abuse of company funds or reputation would not apply**

to members of the board of directors or supervisory board. Given the clarity of the legal text, no expansive interpretation of the penal provision should be made, in accordance with the principle stated in Article 1 of the Penal Code: "There shall be no crime, penalty, or security measure except by law."

- **Or adopt a broad interpretation of Article 811 to include members of the board of directors who commit such offenses, despite the silence of the law. It is unreasonable to exempt those administrators who have wronged the company and its creditors.**

Therefore, we must lean toward an expansive interpretation of Article 811 to include members of the board of directors, in order to close this legislative gap. While this raises questions regarding the basis of liability, it remains necessary.

What is striking is that the legislator granted the supervisory board the same powers as those assigned to the board of directors. Thus, it may be reasonable to extend the application of the aforementioned article to members of the supervisory board. However, the legislator's silence on this matter should not persist indefinitely, and corrective action is needed to avoid recurring legal ambiguities[26].

As for the second category—the de facto manager—there is no doubt about his criminal liability for the offense of abuse of company funds or reputation, especially if he participated in or actually carried out managerial duties within the company[27]. This follows from the general principle set forth in Article 834 of the Commercial Code, which states that the criminal liability of board members applies regardless of whether they are actual board members or individuals exercising management functions[28]. The article provides:

"The provisions of this chapter relating to the chairman of the company, its administrators, and general managers shall apply to any person who directly or through another person exercises the direction of these companies or introduces them under the premises or place of their legal representative."

1.2 The Accomplice الشريك

Liability may also extend to any member or members who participated in the offense of abuse of company funds or reputation, based on the conditions laid down in general criminal law. If it is proven that the accomplice was aware of the criminal elements of the act and provided assistance or encouragement to the principal offender—for example, by giving instructions or guidance that strengthened the latter's resolve to commit the crime[29]—he shall be punished with the same penalty established for the principal offender[30].

An accomplice in this crime may be a member of the board of directors, the board of directors, the supervisory board, a shareholder, or an employee of the company.

2. The Penalty

According to Article 811, first paragraph, of the Commercial Code, the penalty for the crime of abuse of company funds or reputation is imprisonment for a period of not less than one year and not more than five years.

المصطلح بالعربية	الترجمة الإنجليزية
القواعد الموضوعية	Substantive Rules
القواعد الشكلية	Procedural Rules
العقوبة الشخصية	Personal Penalty
الفاعل الأصلي	Principal Offender
المسير أو من في حكمه	Manager or Person Acting in His Place
مجلس المديرين	Board of Directors
مجلس المراقبة	Supervisory Board
الشريك / المشارك	Accomplice
النية السيئة	Bad Faith
تطبيق واسع للنص	Broad Interpretation of the Text
المادة 42 من قانون العقوبات	Article 42 of the Penal Code
المادة 44 من قانون العقوبات	Article 44 of the Penal Code

رئيس مجلس الإدارة	Chairman of the Board of Directors
المدير العام	General Manager
الشخص المعنوي	Legal Person
الجنحة	Offense / Misdemeanor
المسؤولية الجزائية	Criminal Liability
الحبس	Imprisonment
المادة 811 من القانون التجاري	Article 811 of the Commercial Code

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II. Procedural Rules

We will now discuss two procedural aspects related to the crime:

1. Prescription of the Public Action (Statute of Limitations)
2. Civil Action within Criminal Proceedings

1. Prescription of the Public Action تقادم الدعوى العمومية

Since the crime of abuse of company funds or reputation is classified as a misdemeanor (*délit*), the statute of limitations is governed by general rules applicable to such offenses. According to these rules, the public action prescribes after three years [2].

The starting point of the limitation period is:

- The day the offense was committed, or
- The date of the last investigative or prosecutorial measure taken regarding the case[3].

However, given the complexity of commercial management and the possibility of concealment of such acts by managers, legal scholars agree that the limitation period should begin from the day the victim became aware of the offense or could have reasonably discovered it[4].

This approach reflects the principle that concealment suspends the statute of limitations [5]. Some scholars even argue that the crime of abuse of company funds should be considered non-prescribable (*imprescriptible*) due to its potential long-term impact on stakeholders[6].

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2. Civil Action (Action Civile)

The Algerian Code of Criminal Procedure allows any victim of a felony, misdemeanor, or minor offense to initiate a civil claim alongside the criminal prosecution before the same judicial body. This civil claim is admissible regardless of the nature of the damage suffered—whether material, physical, or moral—as long as it results directly from the facts constituting the criminal offense[7].

A key requirement for admissibility is that the damage must be personal and direct[8].

Thus, only the company itself and its shareholders suffer direct harm from the crime of abuse of company funds or reputation. Consequently, the company may bring a civil claim through its legal representatives to seek compensation. Similarly, a shareholder may also file a personal civil claim if the damage affects him directly due to the commission of the offense[9].

In contrast, creditors of the company are generally not allowed to join the criminal proceedings as civil plaintiffs because the damage they suffer is indirect. For instance, if the company becomes insolvent due to mismanagement, the creditor’s inability to recover his debt is considered an indirect consequence of the crime[10].

However, some scholars criticize this view, arguing that if the crime is the primary cause of the company's failure, the damage to creditors cannot be considered indirect. Thus, they advocate for recognizing creditors’ right to initiate a civil claim in criminal proceedings[11].

المصطلح بالعربية	الترجمة الإنجليزية
المادة 811 من القانون التجاري	Article 811 of the Commercial Code
الحبس	Imprisonment
الغرامة	Fine
التقادم	Statute of Limitations / Prescription
الدعوى العمومية	Public Prosecution / Criminal Action
الدعوى المدنية	Civil Claim
الضرر المباشر	Direct Damage
الضرر غير المباشر	Indirect Damage

Abuse of Authority or Voting Rights التعسف في استعمال السلطة أو الحق في التصويت

The Algerian legislator, influenced by French company law, criminalized the abuse of authority or voting rights by company administrators. Article 811, paragraph 4 of the Commercial Code provides:

"The chairman of a joint-stock company, its administrators, or general managers who intentionally use their powers or voting rights in a manner they know to be contrary to the interests of the company, for personal gain or to favor another company or institution in which they have direct or indirect interests, shall be punished by imprisonment from one to five years and/or a fine from 20,000 to 200,000 Algerian Dinars."

From this provision, it is clear that the legislator addressed two distinct but related offenses :

1. Abuse of managerial authority
2. Abuse of voting rights

These offenses harm the company by placing personal interests above those of the corporation.

There has been debate among scholars regarding the scope and application of this article. Two main interpretations exist:

- First View : Some scholars believe the provision aims to punish the abusive use of blank proxies or similar authorizations granted to administrators to represent shareholders in general meetings[12].
- Second View : Other scholars argue that the term "powers" refers to the legal authority granted to administrators by law or the company's bylaws, not merely proxy powers. Under this interpretation, the crime concerns the misuse of official decision-making powers for personal benefit[13].

The courts have not fully adopted the second interpretation, as it could blur the lines between abuse of power and abuse of company funds. Some scholars argue that abuse of power is simply a form of abuse of company funds, as both involve misuse of entrusted authority[14].

However, despite overlapping elements, abuse of voting rights has its own distinct features and legal framework. It does not necessarily require financial damage to the company, distinguishing it from other forms of abuse[15].

المصطلح بالعربية	الترجمة الإنجليزية
المادة 811 الفقرة الرابعة من القانون التجاري	Article 811, Paragraph 4 of the Commercial Code
التعسف في استعمال السلطة	Abuse of Authority
التعسف في استعمال الحق في التصويت	Abuse of Voting Rights
القائم بالإدارة	Administrator / Company Officer
رئيس شركة المساهمة	Chairman of a Joint-Stock Company
مديرو الشركة العامون	General Managers of the Company
سوء النية	Bad Faith / Mens Rea

CIVIL LIABILITY

If administrators improperly use or neglect their mandates, they become liable for the faults committed toward the company, its shareholders, and third parties. Their patrimony is exposed to civil liability.

The legislator has explicitly stated that administrators may be held jointly and severally liable or individually liable , depending on the circumstances[6].

Subsection I: Scope of Liability

Commercial law provisions outline the contours of this liability. However, the legislator referred to general legal principles regulating civil liability when determining the scope of administrative responsibility.

Article 715 bis 23 of the Commercial Code states:

"Administrators are liable, either individually or jointly and severally, toward the company or third parties, either for breaches affecting legislative or regulatory provisions applicable to joint-stock companies, or for violations of the company's bylaws or faults committed during the course of management."

Upon analyzing this provision, several conditions must be met to establish the liability of administrators:

- There must be a breach of laws or regulations;
- Or a violation of the company's bylaws;
- Or fault committed in the performance of managerial duties.

This article applies regardless of whether the fault was committed intentionally or due to negligence.

الفرع الأول: شروط مسؤولية المسيرين

Conditions of Managerial Liability

The legal text regulating liability clearly indicates that responsibility falls on the member who committed the fault. In order for the plaintiff to obtain compensation, it is necessary to prove:

1. The existence of fault ,
2. The occurrence of damage , and
3. A causal link between the two.

1. Fault

Fault may appear in two forms :

- Proven fault
- Presumed fault

We will first address proven fault, followed by presumed fault.

1.1 Proven Fault

Based on the definition of fault as a violation of a prior obligation, liability can be:

- Contractual fault (*faute contractuelle*), or
- Delictual fault (*faute extra-contractuelle*)

If the injured party is a shareholder or third party, the type of fault determines the applicable legal basis.

It follows that managers are only liable if the plaintiff proves the existence of fault, unless the legislator has established presumed fault, such as in cases of insolvency or failure to pay debts[1].

Accordingly, the civil liability of board members can be divided into:

- Contractual liability
- Delictual liability

1.1.1 Contractual Fault

This form of fault arises from the contractual relationship between the company and its administrators. It gives rise to the company's claim against them. In this context, board members are considered agents of the company and are required to perform their duties with care and diligence.

The fault may consist of deviation from the scope of authority granted to them, or negligence in fulfilling their duties. The burden of proof lies on the injured party to demonstrate:

- The existence of fault,
- The resulting damage, and
- The causal link between them.

Importantly, the law does not require the fault to be serious or fraudulent.

Examples of Fault Leading to Liability:

The legislator has outlined various scenarios in which administrators may become liable. These include:

- Violation of mandatory legislative or regulatory provisions[2].
- Breach of the company's articles of association[3].
- Failure to prevent the invalidity of company contracts due to negligence[4].
- Neglecting the duty of supervision and control by the board of directors[5].
- Frequent absence from board meetings[6].
- Failure to monitor the activities of the chairman or general manager[7].
- Receiving excessive remuneration beyond what is legally allowed[8].
- Granting cash loans contrary to legal provisions[9].
- Failing to record minutes of board meetings[10].

- Not convening the annual general meeting[11] or failing to call specific categories of shareholders as required by Article 816 of the Commercial Code[12].
- Preventing shareholders from exercising their right to access corporate documents[13].
- Violating quorum or majority rules[14].
- Engaging in acts outside the scope of the company’s purpose as defined by law[15].
- Failing to obtain prior approval from the general meeting for transactions requiring such authorization[16].
- Poor management of company affairs, such as:
    - Failing to insure company assets against fire risk;
    - Delaying payment of taxes;
    - Lending company funds to insolvent individuals without adequate guarantees[17].

1.1.2 Delictual Fault (Extracontractual Fault)

This arises from tortious conduct under general civil law principles, particularly Articles 76 and 124 of the Algerian Civil Code[18].

In this case, fault arises independently of any contractual relationship and results from unlawful or harmful acts.

▧ مخالفة أحكام القانون الأساسي

Breach of the Company’s Bylaws

The legislator has established another ground for civil liability of administrators: breach of the company’s bylaws . Shareholders have the freedom to regulate many aspects of the company’s operations in accordance with its nature and interests.

Any violation of these internal regulations constitutes a fault that can lead to civil liability.

الخطأ	Fault
الخطأ التعاقدي	Contractual Fault
الخطأ التقصيري	Delictual Fault / Extracontractual Fault
المسؤولية العقدية	Contractual Liability
المسؤولية التقصيرية	Delictual Liability
الذمة المالية	Financial Estate / Patrimony

المحضر	Minutes
النصاب	Quorum
الأغلبية	Majority
الإذن	Authorization
تصرفات غير مشروعة	Unlawful Acts
الإهمال	Negligence
الضرر	Damage / Harm
علاقة السببية	Causal Link

Breach of the Company's Bylaws and Fault in Management

Since the company’s bylaws constitute a binding agreement, administrators are legally obligated to adhere to its provisions when managing and operating the company. It is useful to mention some examples of faults that occur when administrators exceed or abuse the powers granted to them under the bylaws.

- If the board violates conditions regarding consent or the right of preemption in the sale or transfer of shares (Articles 715 bis 58 and 715 bis 55).

مسؤولية المسيرين عن الخطأ في التسيير

Subsection I: Liability for Fault in Management

In accordance with general principles governing civil liability, administrators may be held liable for negative consequences resulting from certain actions — even if they did not violate laws or contractual terms, misappropriate company funds, or use their powers for personal gain. The concept of fault makes management itself a primary source of personal liability, leading to compensation rulings.

However, the concept of "fault in management" (*faute de gestion*) has not been deeply studied or theorized in legal doctrine compared to general civil liability. Due to its ambiguity, it must be distinguished from similar concepts before determining its scope and method of proof.

1. Distinguishing Fault in Management from Similar Concepts

The concept of fault in management may be confused with excusable error or abusive conduct due to their frequent occurrence in corporate administration. However, these concepts can be distinguished based on their legal consequences.

1.1 Fault in Management vs. Excusable Error

Fault in management differs from minor errors related to ordinary business risks, which the legal person assumes as part of normal operations. These errors are considered excusable and do not lead to liability.

In the commercial and industrial sectors, entrepreneurial risk inherently excludes full protection against losses and makes reasonable mistakes a legitimate part of business activity[1]. However, this requires that managers' expectations were reasonable at the time of action, based on modern scientific methods in management[2]. Examples include:

- Increasing production to achieve higher profits, but market failure leads to losses due to competition;
- Miscalculating taxable turnover figures without proving bad faith or intent to evade tax obligations.

1.2 Fault in Management vs. Abusive Conduct

Fault in management also differs from abusive conduct or bad faith, which is classified as a criminal offense under commercial law. This type of misconduct involves intentional wrongdoing and requires:

- Knowledge that the act is illegal;
- Intent to serve interests outside those of the company[3].

Abuse of management exceeds the boundaries of simple management fault and falls under the rules of criminal liability . This distinction highlights the difference between negligent or incompetent managers and intentionally harmful ones[4].

2. Content and Nature of Fault in Management

Administrators become personally liable when they violate one of the many obligations tied to the exercise of their authority — even if the content of some obligations is defined precisely by law or the company's articles of association.

It is not enough for administrators to simply act within the company's legal framework; they must also strive to achieve the company's objectives with efficiency, care, and good faith[5].

Using vague and undefined concepts to determine the scope of managerial fault makes the process difficult and threatens the stability of administrators, for the following reason:

A broad interpretation of fault could lead to frequent judicial intervention, which would concern business professionals as it threatens their autonomy and discretion. Management relates to appropriateness rather than legality, and should be left to those with the necessary competence and experience to handle complex and evolving fields such as commerce and industry[6].

In this context, we can identify different types of faults committed by administrators during their duties. These can be divided into two categories: positive faults and negative faults .

2.1 Positive Faults *(Faute positive ou par commission)*

Positive fault occurs when administrators act improperly, causing damage to the company, shareholders, or third parties. According to legal scholars, there are three main types of positive faults[7]:

A. Intentional Fault *(Faute intentionnelle)*

This arises when an administrator acts intentionally to harm the interests of others. Civil fault is often linked to criminal fault governed by penal law. Examples include:

- Distributing fictitious profits to falsely represent the company as financially healthy in order to attract new investors or sell shares at favorable prices;
- Using company assets for the benefit of another company in which the manager has personal interests;

- Hiring a public relations officer and paying her excessive wages disproportionate to the actual services provided to the company[8].

B. Fault by Negligence *(Faute par négligence)*

This type of fault occurs without malicious intent, but results from a lack of diligence or prudence expected of someone entrusted with managing company assets. Administrators are personally liable if they fail in this duty. Examples include:

- Establishing a company with insufficient capital[9];
- Issuing speculative financial instruments;
- Guaranteeing debts without consideration;
- Committing expenditures far beyond the company's capacity[10];
- Settling fictitious debts.

المسؤولية المدنية	Civil Liability
الخطأ	Fault
الخطأ التعاقدي	Contractual Fault
الخطأ التقصيري	Delictual Fault
الخطأ في التسيير	Fault in Management
الغلط المعذور	Excusable Error
التصرف التعسفي	Abusive Conduct
سوء النية	Bad Faith

التفويض	Authorization / Mandate
الجمعية العامة	General Meeting
المحضر	Minutes
النصاب	Quorum
الأغلبية	Majority

Types of Fault in Corporate Management – Negative Faults and Presumed Fault

Negative faults (*fautes négatives*) arise from omission or failure to act , particularly due to lack of attention (*imprudence*). These are frequent in companies that do not follow scientific management principles or where administrators are negligent or incompetent.

In many cases brought before the judiciary, administrators have failed to fulfill their general obligation to supervise employees. This duty falls on the chairman or general manager, who must monitor directors, council members entrusted with specific tasks, and all subordinates within the company's administrative hierarchy. Similarly, the board has a duty to oversee the actions of its chairman, even if certain powers have been delegated to him, as he remains accountable for their proper exercise. Therefore, an administrator commits a fault through negligence when:

- The board collectively fails to monitor its chairman, allowing him to use company funds for personal benefit;
- The board of directors fails to exercise due diligence in supervising the chairman;
- The general manager neglects to monitor the company's accountant, enabling embezzlement due to his carelessness[1].

2.1 Delictual Fault (*Faute délictuelle*)

As a general rule, third parties cannot sue administrators personally for acts performed within the scope of their corporate authority, except in very rare circumstances. Normally, administrators act on behalf of the company, and under the general theory of representation, only the legal person is liable for damages resulting from such actions[2].

However, as an exception, personal liability may be imposed on administrators for personal faults unrelated to their representative role . In other words, if the damage caused to a third party results from conduct outside the scope of the company's operations or the manager's mandate, the administrator can be held personally responsible[3].
Some scholars and courts have attempted to apply this principle by analogy to administrative law , which distinguishes between:

- Service-related fault (*faute de service*)
- Personal fault (*faute personnelle*)

Accordingly, the company alone is liable for damages arising from faults committed during the performance of managerial duties, while administrators are personally liable for faults committed outside their representative functions[4].

Examples include:

- A company officer acting in his own name rather than as a representative of the company. For instance, the chairman of a company was held personally liable toward neighboring residents affected by pollution from a factory operated by the company, because he presented himself as an independent contractor and not as a company representative[5].
- A manager abusing the company's legal personality by continuing to operate its bank account after the business premises were lost, thereby dissipating its assets.
- A construction company manager who falsely certifies the completion of work that was never carried out, thus misleading a client into making payments for services not rendered[6].

However, applying this principle in practice is difficult, as the Commercial Code provides that the company itself is generally liable for the acts of its managers, unless it is proven that the third party knew the agent had exceeded his authority[7].

Administrators are also personally liable only if they commit a fault separate from their representative role . It is not necessary for this fault to be classified specifically as a "fault in management"[8].

2. Presumed Fault (*Faute présumée*)

Unlike partnerships, where partners bear unlimited personal liability for company debts[9], the Commercial Code limits the liability of shareholders in limited liability companies (SARL) and joint-stock companies (SPA) to the extent of their capital contributions[10].

This means that in the event of bankruptcy or judicial liquidation, only the legal person's estate is subject to collective enforcement. However, the legal fiction of the corporate veil — which grants individuals a separate legal identity — has often been abused, leading to the collapse of large enterprises and loss of investor and creditor rights[11].

These abuses can be categorized into two types:

1. Abuse of Limited Liability : Administrators have evaded compensation obligations following a bankruptcy ruling by relying on the principle of limited liability, despite being responsible for the company's insolvency.
2. Misuse of the Corporate Veil : Shareholders have used the legal separation of the company to shield themselves from liability, especially in small and medium-sized businesses. They benefited from profits during success but avoided losses during failure at the expense of creditors.

To address these negative consequences, the legislator introduced a mechanism known as piercing the corporate veil , imposing stricter liability on administrators in cases of bankruptcy or judicial liquidation[12].

This includes:

- Holding administrators personally liable for financial shortfalls beyond company assets.
- Allowing the court to declare the administrator bankrupt jointly with the company.

A. Personal Liability of Managers for Financial Shortfall

Article 578, paragraph 2 of the Algerian Commercial Code states:

"In addition to the above, the court may, in case of company bankruptcy resulting in a financial shortfall, order upon request of the judicial administrator that the debts be borne proportionally either by the directors, whether they are shareholders or not, or by the shareholders or some of them, either jointly or separately, provided that the shareholders involved actually participated in the company's management[13]."

It is important to note that while this provision is clear and precise for limited liability companies (SARL), the equivalent provision for joint-stock companies (SPA) lacks clarity. Article 715 bis 27 states:

"In the case of judicial liquidation or bankruptcy, those referred to in the provisions relating to judicial liquidation or bankruptcy may be held personally liable for company debts under the conditions set forth in those provisions[14]."

From these provisions, it appears that the Commercial Code imposes strict civil liability on administrators, based on presumed fault . However, this is considered ordinary liability because the presumption is rebuttable and does not exclude the possibility of proving otherwise[15].

قرينة بسيطة	Simple Presumption (*Présomption simple*)
قرينة قاطعة	Irrefutable Presumption (*Présomption irréfragable*)
رفع حجاب الشخصية المعنوية	Piercing the Corporate Veil
المسؤولية المشددة	Strict Liability
العجز المالي	Financial Shortfall

Nature of the Presumption of Fault by Administrators

Presuming fault on the part of administrators and holding them liable in case of company bankruptcy is a controversial legal principle criticized by scholars. This is because most cases of corporate insolvency are caused not by misconduct, but by external economic conditions in which the company operates — especially in small or medium-sized enterprises that lack financial strength to compete with larger companies.

Other causes include:

- Poor financial management;
- Shareholders' preference for profit distribution over reinvestment;
- Administrative constraints such as price controls, labor regulations, or restrictions on layoffs.

To mitigate this harsh rule, the Algerian Commercial Code considers the presumption to be simple and rebuttable, rather than conclusive. Article 578, paragraph 3 states:
"In order for directors or shareholders involved in management to be exempt from liability, they must prove that they exercised the diligence and care expected of a paid agent (*mandataire rémunéré*) in managing the company's affairs."

This provision shifts the burden of proof to the defendant administrator. Therefore, it is up to the accused to demonstrate that he did not commit any fault during his tenure and that he acted with the required diligence and prudence, similar to a professional agent.

Courts are not required to prove that the manager committed a fault directly linked to the financial shortfall. It suffices that the manager failed to rebut the presumption of fault and causal link between his actions and the company's financial failure.

Judicial Discretion in Evaluating Evidence

Judges have broad discretion in assessing the evidence presented by the administrator to refute the presumption of fault.

However, courts have rejected many justifications commonly used by administrators to escape liability, including:

1. Illness : A manager who becomes physically unable to perform his duties due to illness must resign; otherwise, he remains liable.
2. Unpaid Management : Simply managing the company without receiving compensation does not excuse negligence or poor performance.
3. Internal Objections : Mere opposition or disagreement within the board of directors — even if documented — does not relieve an administrator of responsibility if he continues to participate in management decisions despite increasing losses.
4. Approval by the General Meeting : The approval of administrative acts by the general meeting does not necessarily absolve managers of liability, especially when those acts led to financial failure.

There are rare cases where judges accepted refuting the presumption of fault. For example, one court ruled that the chairman of a company was not liable after proving that he had taken all reasonable measures to detect accounting irregularities and implement corrective policies. However, his efforts were blocked by shareholder resistance, leading him to resign from management[1].

When Can the Presumption Be Refuted?

The presumption of fault can only be overcome if the administrator proves:

- He exercised the necessary diligence and care in managing the company;
- The failure of the enterprise was due to external factors beyond his control.

If this is successfully demonstrated, the court may decide to exempt the administrator from contributing to cover the company's debts. In such cases, the judicial administrator (or liquidator) bears the burden of proving the opposite — namely, that the failure resulted from mismanagement[2].

Legal Nature of the Presumption in Joint-Stock Companies

Despite differences in wording, the same legal principle applies to joint-stock companies under Article 715 bis 27 of the Commercial Code. While the text does not explicitly allow administrators to challenge the presumption, applying strict liability in every case of bankruptcy would be unreasonable and inconsistent with the complex economic, social, and political realities affecting business operations[3].

B. Extending Bankruptcy Procedures to Administrators

The Commercial Code imposes several criminal penalties on persons entrusted with company management if they conceal assets following insolvency or bankruptcy proceedings (Article 380). However, a key question arises: *Can bankruptcy or judicial liquidation procedures be extended to administrators themselves if they fail to cover debts resulting from financial shortfalls?*

Such a sanction would be unusual, as it contradicts two fundamental principles of commercial law:

1. Personal Non-Involvement in Trade : Managers do not conduct independent trade activities under their own name and account.
2. Lack of Trader Status : Administrators generally do not operate as traders, which is a prerequisite for being subject to bankruptcy procedures[4].

It should be noted that extending bankruptcy to individual administrators contradicts Article 215 of the Commercial Code, which requires a person to be recognized as a trader to undergo judicial liquidation or bankruptcy proceedings.

Nevertheless, to strengthen accountability, the legislator granted trader status to members of the board of directors and supervisory boards of commercial companies, based on their role in managing the company's affairs[5]. Accordingly, if a manager fails to settle company debts, and serious debt restructuring proposals are submitted, the court may order his personal judicial reorganization or bankruptcy under Article 338, paragraph 1[6].

Shortcomings of Article 31 of Law No. 90-22

Despite its intent, Article 31 of Law No. 90-22 (as amended by Ordinance 96-07) has been criticized for its limited scope. It grants trader status only to members of the board of directors in new-type joint-stock companies and commandite partnerships appointed through internal governance mechanisms. It does not extend to:

- Managers of limited liability companies (SARL);
- General managers of traditional joint-stock companies;
- Members of the board of directors in new-type joint-stock companies who actually exercise authority over company assets.

This creates a legal gap, preventing courts from ordering personal bankruptcy against these individuals, even when they bear direct responsibility for company insolvency[7].

العجز المالي	Financial Shortfall
تسديد الديون	Repayment of Debts
الإفلاس الشخصي للمدير	Personal Bankruptcy of the Manager
تسوية قضائية شخصية	Personal Judicial Reorganization
وكيل التفليسة	Judicial Administrator / Liquidator
المادة 578 الفقرة الثالثة من القانون التجاري	Article 578, Paragraph 3 of the Commercial
المادة 31 من القانون 22/90	Article 31 of Law No. 90-22
المادة 338 الفقرة الأولى من القانون التجاري	Article 338, Paragraph 1 of the Commercial
الوكيل المأجور	Paid Agent / Mandataire rémunéré
الوكيل المجاني	Unpaid Agent / Mandataire gratuit

3. Assessing and Proving Fault

According to the general principles governing civil liability, the claimant must prove that a fault was committed and that it directly caused the damage suffered[103]. This may be relatively easy when the fault involves violations of legislative or regulatory provisions, or breaches of internal company rules. However, proving fault becomes significantly more complex in cases involving managerial errors or unlawful acts that are not clearly defined.

Indeed, as previously mentioned, managing an enterprise is not merely a matter of legality (*une question de légalité*), but also one of appropriateness (*une question d'opportunité*). The manager must use company assets wisely to achieve agreed-upon objectives. Economic decisions are generally considered acceptable and lawful as long as they do not violate legal norms, regardless of whether they lead to profits or losses. Since management includes both strategic decision-making and operational execution, assessing fault presents two main difficulties:

1. Business Risk and Managerial Decision-Making

The economic activity of a company inherently involves risks. Managers are expected to make choices that may result in gains or losses, which cannot always be foreseen or avoided. These risks are assumed by the legal person unless proven otherwise — such as when the risk was misjudged at the time of decision-making or fell outside the scope of ordinary business risks[105].

Thus, for a claimant seeking personal liability from administrators, he must distinguish between:

- Ordinary economic mistakes;
- Faulty judgment of risk.

This distinction is difficult due to the ever-evolving nature of business environments, where what constitutes a reasonable decision today may appear reckless tomorrow[106].

2. Judicial Evaluation of Fault

Judges often assess managerial decisions long after their implementation. To determine fault, the court must evaluate whether the decision was unreasonable or abnormal at the time it was made, not based on hindsight or post-event outcomes.

It is unrealistic to expect managers to have divine foresight regarding the consequences of their decisions[107]. It suffices that they exercised reasonable caution to avoid unusual or excessive risks at the moment of decision-making[108].

But how should we define "ordinary" business risk in a competitive environment? And what criteria should be used to distinguish it from extraordinary risk?

Furthermore, while judges are tasked with ensuring the legality of managerial decisions, should they also assess their suitability to the company's interests? Do they possess the necessary expertise to judge economic decisions?

In reality, these questions require a clear standard to determine whether a decision was unreasonable or constituted a breach of duty.

Criteria for Assessing Fault

Three possible standards can be applied to assess fault:

1. Highly competent and vigilant manager: Held accountable for even minor negligence.
2. Ordinary competent manager: Not liable for slight errors; fault arises only if the behavior deviates significantly from accepted norms.
3. Negligent and incompetent manager: Liable only in cases of gross fault or serious misconduct.

Legal doctrine and jurisprudence have settled on the second standard — that of the reasonable and average manager. In other words, the conduct of the administrator must be measured against the behavior of a typical professional in similar circumstances[109].

This approach avoids setting excessively high expectations, while also preventing complete immunity for poor decisions. Therefore, different levels of diligence and competence are expected depending on the size and complexity of the company. For example, the required level of care for a family-owned business differs from that expected of a CEO of a publicly traded joint-stock company[110].

Additionally, external conditions surrounding the decision must be taken into account. A decision that appears normal under favorable financial conditions may be deemed abusive or negligent in a struggling company[112].

Role of Experts and Industry Standards

To assist judges in evaluating managerial conduct, expert opinions and industry customs play a crucial role. Courts should rely on established practices and professional standards within the relevant sector when determining whether a decision was reasonable.

Legal Distinction: Social Action vs. Individual Action

In this context, it is important to distinguish between two types of actions:

1. Social Action (*Action Sociale*) : Brought by the company itself to repair damages suffered by its estate due to the fault of one or more administrators.
2. Individual Action (*Action Individuelle*) : Initiated by a shareholder personally affected by administrative misconduct, aiming to compensate individual damages rather than those affecting the company's patrimony.

These two claims serve different purposes and follow separate procedural rules.

السجل التجاري	Trade Register
الشخص المعنوي	Legal Person / Moral Person
رفع حجاب الشخصية المعنوية	Piercing the Corporate Veil
المسؤولية المدنية	Civil Liability
المسؤولية التقصيرية	Delictual Liability

تسديد الديون	Repayment of Debts
الإفلاس الشخصي للمدير	Personal Bankruptcy of the Manager
التسوية القضائية الشخصية	Personal Judicial Reorganization
وكيل التفليسة	Judicial Administrator / Liquidator
القائم بالإدارة	Administrator / Officer
المساهم	Shareholder
الدين	Debt
التفويض	Authorization / Mandate
دعوى الشركة	Social Action / Action Sociale
الدعوى الفردية	Individual Action / Action Individuelle

Bankruptcy / Insolvency	التفليسة
Judicial Reorganization	التسوية القضائية
Insolvency / Bankruptcy	الإفلاس
Financial Estate / Patrimony	الذمة المالية
Trial Judge	القاضي الموضوعي
Appellate Court	القضاء الاستئنافي
Merchant Status	صفة التاجر
Commerçant / Merchant	التاجر
Commercial Activity	العمل التجاري