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To all second-degree managing directors out there: mind your step!

It just got easier for second-degree managing directors of a Dutch company to be held liable. On 17 February 2017, the [Dutch Supreme Court](#) confirmed that a second-degree managing director may be held jointly and severally liable in **all** cases of first-degree director liability. This now explicitly includes liability in tort. It is up to the second-degree managing director to disprove this liability.

What are second-degree managing directors?

A managing director of a Dutch company can be either a natural person or a legal entity. If a company is managed by a legal entity (the first-degree managing director), this legal entity will in turn be managed – whether directly or indirectly – by a natural person. This natural person is also referred to as the second-degree managing director.

How can second-degree managing directors be held liable?

In principle, natural persons cannot be held personally liable for a legal entity's liabilities. However, they should not be able to escape director liability by simply putting forward a legal entity that will act as managing director in their place. Therefore, if a legal entity is a managing director of another entity and is successfully held liable in that capacity, the corporate veil is lifted and the second-degree managing director will automatically become jointly and severally liable. This rule is laid down in article 2:11 of the Dutch Civil Code.

What types of liability apply for second-degree managing directors?

It was already clear that second-degree director liability may apply in any case of director liability under company law. Examples include improper management, unlawful distributions of funds and failure to meet the company's annual accounts obligations. Apart from director liability under company law, a managing director may also be held jointly and severally liable for damages incurred by a tort or breach of contract committed by the company if serious blame can be attributed to the managing director in person. Up to this point, it was unclear if this liability in tort also extended to second-degree managing directors.

What changed after the Supreme Court judgment?

The Supreme Court has now confirmed that article 2:11 applies to all situations in which a legal entity, in its capacity of managing director, is held liable pursuant to a statutory provision. This includes liability in tort. The Supreme Court held that the liability automatically extends to a second-degree managing director, without the need for the claimant to prove that serious blame can be attributed to them in person. The burden of proof lies with the second-degree managing director. This means that in order to avoid liability, the second-degree managing director will need to demonstrate that no serious blame can be attributed to them for the actions on which the liability of the first-degree managing director is based.

What else is there to know about director liability?

If you would like to receive more general information on director liability, or if you have any specific questions on this topic, we are more than happy to assist.



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