

# ***NEWSLETTER***

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## **Contractual division of tasks versus the issue of liability of members of the management board for the company's obligations pursuant to Art. 299 Code of Commercial Companies**

We would like to kindly inform you about the Supreme Court's decision, which raised the question of the possible impact of the division of tasks between the members of the management board of limited liability company and the liability of above mentioned for the company's obligations pursuant to Art. 299 of the Commercial Companies Code (hereinafter referred to as 'CCC'), according to which, when execution carried out against the company proves ineffective, members of the management board jointly and severally liable for its obligations.

The members of the management board of limited liability company can be released from liability only if they demonstrate that in due time the application for bankruptcy was submitted or an arrangement procedure was initiated or that failure to submit an application for bankruptcy and the failure to start arrangement procedure was not his fault or that despite no application for bankruptcy was submitted and no arrangement procedure was initiated, creditor was not injured.

In this judgment, the Supreme Court pointed out that **the contract linking the members of the management board as to how to manage the tasks of the company, especially the division of tasks established contractually, does not repeal the liability of the member of the management board.** This kind of contract is only relevant within the organization. The provision of Art. 299 CCC to protect the interests of creditors is mandatory and can not be deprived of the effectiveness of the shareholders agreement (judgment of the Supreme Court-Civil Chamber of May 15, 2014, file no II CSK 446/13).

Thus, it must be held that the fact that the member of the management board in accordance with arrangements made with other members dealt only with matters like marketing or administration, staying without the real impact on the business strategy of the company or financial issues, does not constitute grounds to indicate that the member of the management board in order to release from jointly and severally liability, shall be exempt from the obligation to prove that he was not required, in the event stipulated by law, to submit the application for bankruptcy or initiation of arrangement procedure.

According to the Supreme Court, only the factual situation that actually and objectively makes impossible to participate in management activities of the company, can justify the conclusion

about the existence of circumstances allowing the exclusion of subsidiary liability of members of the management board provided for in Art. 299 CCC.

In conclusion, it should be noted that the member of the management board, irrespective of his duties, in order to avoid incurring subsidiary liability of a limited liability company, should also investigate whether there are suitable grounds for filing an application for bankruptcy or initiating arrangement procedure.

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