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Admissibility and consequences of confirmation of an action undertaken without consent of the company body as required under the articles of association or the statute

SUMMARY

In the article the authors try to analyze the issue of the possibility of breaching the articles of association or the statute by the management board members and the impact of such an infringement on the validity of the undertaken legal action. This issue causes many practical problems, even with regard to the obligation to verify a checklist each time before concluding a contract, when the statutes or the articles of association reserve such a requirement. Good or bad faith of the contractor who is aware of the existence of such a provision for the validity of the legal action does not matter. Quite a different situation is with the management board member for whom obtaining such consent is important due to the breach of the articles of association or the statute of the company, and consequently its liability for damages in order to seek compensation for any damage caused by action or omission. It should be remembered that the existence of liability requires proving the damage. However, given the business conditions, sometimes it is difficult to obtain the consent of the supervisory board or the general meeting of shareholders for such an approval. The question then arises whether it can be obtained *ex post*. The authors of the article have made the analysis and proposed a thesis that it is feasible to obtain follow-up consent for the legal action undertaken without a prior consent. Making *a maiori ad minus argumentum*, according to the authors such an action can be confirmed subsequently and not only in the required two-month period, but even later, which may affect the possible exclusion of liability for breach of the articles of association (statute). The whole discussion closely oscillates around the practical problems arising from the functioning of the company.

KEYWORDS: company, corporate governance, art. 17 Code of Commercial Companies