

THE LEGAL NATURE OF A CORPORATE ACT PERFORMED BY THE
MANAGEMENT BOARD WITHOUT THE CONSENT
OF ANOTHER ORGAN OF THE COMPANY

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Summary

The subject of this dissertation is the analysis of the legal nature of an act of a company performed by its management board without the required consent of another corporate body. The selection of the topic of the thesis is justified by numerous controversies that appear in doctrine and judicature within the scope of confirmation of actions performed by the management board of a company. The considerations concerning the legal acts of the management board of a company are conducted in this dissertation against the background of a broader analysis concerning the consequences of defective legal acts. The main subject of the research is the interpretation of article 17 of Polish Code of Commercial Companies in the context of controlling legal actions performed by the management board of a company against the background of other provisions of national and international law. The author of the thesis has analysed in detail such issues as: the requirement of approval of a body of a company other than the management board for making a legal transaction; the effects of making a declaration of will by a company in the conditions of lack of approval of a body of a company other than the management board as required by law; the effects of making a declaration of will by a company in the conditions of lack of approval of a body of a company other than the management board as required by a contract; the issues of granting approval and the liability of company bodies for the consequences of a lack of consent.

Doubts in the interpretation of binding legal regulations adversely affect the sphere of relations between entrepreneurs in economic trade. The importance of this subject matter is highly important not only in the external sphere of the company, but also in the sphere of internal relations and relations of management board members with other company bodies.

For the above reasons, it became justifiable to create a study of a comprehensive character, and not so far of a fragmentary nature, including also a comparative analysis of selected model solutions functioning in other legal orders. The hitherto existing studies mainly focus on the presentation of the issue on the basis of national regulations. The national search for an effective normative model of sanctions for defective legal acts (contracts), presented in the dissertation, is inspired not only by European provisions on the invalidity of legal acts, but

also international legislative projects, in particular those arising from the work on the unification of private law in the European Union.

The main objectives of the study are: (1) to prove the thesis that a legal act performed without the required consent of another authority as provided by law should not always result in absolute nullity; (2) to prove the thesis that the lack of consent of another authority to perform a legal act for which there is an obligation to confirm is of significant importance for the person performing the legal act; (3) to prove that resolutions of the governing bodies of a company granting the consent of the company's management board to carry out a legal transaction should not be regarded as resolutions granting third-party consent; (4) to provide an answer as to whether other sanctions are permissible in case of the lack of consent of another authority whose consent is required by statute, contract or (5) expressing *de lege ferenda* postulates on the basis of the analysis carried out in this thesis.

The dissertation is divided into six chapters. To ensure the clarity of the argument, each of them begins with introductory remarks and ends with a summary.

The subject of the analysis carried out within the framework of this dissertation are the views of doctrine and case law relevant to the subject of the discussed work. The doctrinal statements are confronted with the views of the jurisprudence, which not only provides a comprehensive view of the subject matter, but also allows the assessment of specific factual states. The analysis focuses primarily on the regulations contained in the Polish Commercial Companies Code and the Civil Code as regards the possibility of confirming actions taken by the management board of a company.

It should be emphasized that any legislative intervention cannot replace the professional diligence of board members and other bodies in protecting the company's interests responsibly. The duty to act professionally and loyally towards the managed corporation constitutes the essence and sense of entrusting the organ with the company's value in order to manage it properly, which may be expressed by the Latin paremia "*Ius civile vigilantibus scriptum est*".

Keywords: management board, company, legal action, company representation, confirmation of legal action.