

# FACTS ON THE LIABILITY OF COMMERCIAL UNITS' EUROPEAN MANAGERS

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**Abstract:** *Civil liability (contractual or tort) company manager may be committed, in principle, against third parties as the Law 31/1990 on trading companies limited liability actions against directors of social creditors only if the company bankruptcy, which means that where the company operates under normal conditions, creditors can sue for recovery of their rights only the trading company debt payment. It is that managers, as organs of society, engage directly committed acts or legal acts society. Responsibility manager in each of the three forms, is a direct, this means to act on its own. The legal acts carried out as agent of the company, the manager undertakes civil liability (contractual or tort) of the Company in legal relationships with third parties. So the rule is that the administrator, whether individual or company is not responsible to third parties.*

**Key words:** *Civil liability, commercial units' responsibility, liability management, legal relationships, legal liability.*

Legal liability is a set of legal rules report formed between the author of the infringement of legal rules and state agencies represented by an authority, which may be the courts, state officials or other servants of public power.

The content of the legal relationship is complex, but basically consists of: state law, as representative of the company to apply the sanctions provided for legal persons who violate rules and laws that persons subject to legal sanctions, to restore the rule of law.

The forms of liability: in the area of each branch of law were outlined specific forms of legal liability:

- Criminal liability - is subject to the criminal liability for breaking of the law
- Civil liability - classified in civil law:

. Civil crime liability: this liability has the content required to repair the damage caused civilian of crime. It says a civil penalty of the obligation to repair the damage caused by wrongful act, without dictating the same time and a penalty. For example, the wrongful act causing injury may constitute both a crime and without the combination of the two penalties to lead to the loss of their individuality or to change the legal nature of each of the penalties.

. Contractual liability: liability to have a special character, depart. Unlike civil crime liability the obligation breached is a general legal obligation that is all (to not damage the rights of others by illegal acts), for contractual liability, obligation breached is a specific requirement, established by an existing contract, valid between the harm and breached its contractual obligations.

- Liability offense - is drawn for committing a contravention. Offense is an act which endangers social lower than the offense, which is explicitly provided by law or other legislation and is committed to guilt. The legal regime of contraventions is linked and the activity of the government as the organization of imposing and enforcing laws and other laws require the existence of sanctions they can impose and enforce these organs of executive government in their work. Liability offense should not be confused with administrative responsibility, the penalties for contravention applies both to public authorities and the courts.

- Liability of material - is the obligation to compensate any employee within the limits prescribed by law and caused damage to the unit of fault in connection with his work. Material liability is an institution's own labour law.

- Disciplinary responsibility - consists of a set of legal rules, punish acts of infringement relating to guilt by any person falling, regardless of position or place it occupies, the obligations

assumed by contract. These acts constitute misconduct and may attract disciplinary sanctions such as reprimand, warning, reduced salary, termination of employment.

### **The liability conditions**

For legal liability the following conditions must be met:

- **To be unlawful conduct** unlawful conduct consists of an action or inaction, contrary to legal norms
- **The action** - requires the commission by a person, a concrete action, which violates legal standards
- **Inaction** - may be considered unlawful only when that person had a legal duty to act in a certain way and it did not act as such
- **There is a causal link between unlawful conduct and outcome of product** in all cases where liability is necessary for attracting and producing illicit consequences, should be considered the causal link between the wrongful act and the result produced. Establishing this connection is difficult and requires careful analysis of each case.
- **To be guilty** of the matter that caused the unlawful act is guilty of breaches of legal subjectivity. Any human action or inaction is characterized not only by material characteristics; it is also a manifestation of conscience and will.
- **There are no circumstances or causes which removes the principle liability**, the circumstances or causes which remove the liability provided by law and varies from one industry to another law
- **To have a deleterious result of that unlawful conduct (damage to property, personal health, etc.)**

The result of unlawful conduct, causing damage to society or an individual violates the values protected by law. This result allows in most cases to assess the social danger of illegal acts. The importance of unlawful conduct outcome may be different in different branches of law. Thus:

- In civil law - liability is attracted only when damage or injury occurred.
- Criminal law - are under legal liability case where the result of unlawful conduct did not produce damage, but the danger was created production. In criminal law, from such illegal acts which do not produce concrete results harmful part attempt.

Legal relations between manager and company have a dual nature: the contractual and legal, as relates to liabilities arising from mandates or obligations of the administrator under the law. Double legal liability of managers is evident both from society and to third parties. This liability is a contractual liability, especially when the resulting company to breach the mandate or the articles of association or the law relating to appointments of, and tort, the breach relates to other mandatory provisions of law (especially compared to others).

We acknowledge that our legal system, liability is determined by the source nature of the obligation breached or unfulfilled. In some cases it will be a contractual liability for damage caused in the representation contract and the other will be a tort liability for damage caused by work done as legal representative of the company.

For example, the French legal system administrators consider that the liability is contractual relations tort in society and relationships with third parties.

Practical benefits of establishing the legal nature of the liability of directors residing in the sample and the extent of liability. If tort liability, fault manager is presumed that the contractual liability, but must be established with all other terms of tort liability under the Civil Code and described above. Instead, the contract responsibility system is evidence of presumed fault (the administrator will have to remove the presumption of guilt and to prove innocence). In any case, irrespective of liability under it is fault manager, suspected or, where appropriate, established.

### **Forms of liability manager**

Liability Manager was classified specialist in theory and practice in three categories:

- Liability ordinary (normal) to the company and associates
- exceptional liability to third parties.
- Aggravated liability in case of bankruptcy of the company.

There are however exceptions stipulated by the Law. 31/1990, article 148. 2, comes the assumption of liability and sanction the managers to act another. Thus, the analysis of the regulatory provisions follows that all administrators, and accountable to the Steering Committee to the provisions of company executives or staff framed when the damage would not have occurred if they had exercised supervision duties imposed by their office.

But this special event liability for the tort of another is a liability only to the company and not the face of the partners or against third parties. Also, another exception to this rule is the assumption that the company is in insolvency proceedings when, in cases stipulated by Article exhaustively. 138 of Law no. 85/2006 of insolvency, members of the Company or its management may be forced to pay some of the bankrupt debtor liabilities.

Under the Company Law republished (73), managers are responsible for:

- Reality of payments made by the partners
- real existence of dividends paid
- the existence of records required by law and correct their young
- the exact fulfilment of decisions of general meetings strictly carrying out the duties which the law imposes association.

Jurisprudence has rejected claims which called for training managers with responsibility for factual grounds, for example:

- Failure to submit due diligence to bring assets to the debtor's assets
- failure to register in debt to the budget accounting, mismanagement
- abuse of a further loss-making; not following the collection of their claims
- the exercise of office administrator and other legal person, failure to submit reports to finance public non budgetary claims.

Also, courts have rejected claims in situations which proved that insolvency had other causes:

- The deuce to develop a profitable business;
- Interruption of the production activity of the fault, non-recovery of their claims, failure to pay current debts, the non-value goods exported;
- Reduce market demand and lower prices.

#### **The action on liability managers**

Law 31/1990, republished specifies that liability actions against the founders, managers, directors, members of the directorate and supervisory board, as well as their auditors or statutory auditors, for damages society by violating their duties by them towards the company belongs to the general meeting which will decide by majority vote. The analysis of the regulatory provisions that result in system companies, which constitute the common law liability of directors, but the company may pursue action in injured liability managers.

According to Law no. 85/2006, exercise action responsibility belongs to judicial administrators or managers, as applicable, the liquidator. According to the paragraph (1) of Art. 138, syndic judge may be invested by the judicial manager, liquidator or the creditors committee.<sup>1</sup>

In what concerns the creditors committee, legal empowerment is conditioned by the prior authorization of the syndic judge, and the application for authorization is conditioned, in turn, at least one of the following circumstances:

1. the judicial manager or liquidator failed to indicate in its report on the insolvency cases, persons guilty of insolvency of the debtor's assets juridical person;
2. the judicial manager or liquidator, although indicated for persons guilty, failed to make the action under par. (1) of Art. 138, and in the latter situation, action to establish liability to persons threatened to be prescribed.

The action taken against managers is a social action, representing a prerogative of the general shareholders meeting, according to art. 155 paragraph 1. This conclusion resides in the principle that the general meeting of shareholders is the company itself. Introducing the action taken

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<sup>1</sup> Cărpenaru, S, David S., Predoiu C, Piperea Gh., *Legea societăților comerciale. Comentariu pe articole*, ed. a 3-a, C. H. Beck, București, 2006

is mandatory for the company because it is the only way to determine how the abandonment of the working poor or fraudulent managers.

The decision on introduction of a liability action may be taken, whether or not this issue listed on the agenda, according to art. 155 paragraph 2 of Law no. 31/1990. A solution should be also because the agenda is established, usually by administrators, and they would never on the agenda include the introduction in court of the action taken.

The shareholders will decide on the introduction of the action taken in terms of majority the law provides for the Ordinary General Assembly in the art. 112, even if this vote is required in an extraordinary shareholder meeting.

If the general meeting decides trigger action taken against managers, they are considered removed from office, the General Assembly having to proceed to their replacement, possibly even within the same sessions. (Art. 155 paragraph 4).

The termination of the mandate as directors in terms of art. 155 paragraphs 4 of Law no. 31/1990, has legal nature of a sanction imposed by the General Assembly created the administrators presumed to damage society.<sup>2</sup>

The action exercise responsibility for work managers often practice courts was fragmented in the assessment of cases given the multitude of situations which may be encountered in practice regarding the administration and management of a company by the attorney to fulfil.

Last legislative changes but tend to limit the subjective factor in assessing liability cases drive manager and take into account the dynamics of current activities they carry out companies.

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