

Shareholders' rights to give binding instructions to limited liability company managers

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Introduction

Liability of managers following shareholders' instructions

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According to Article 375(1) of the Code of Commercial Companies, the general meeting and supervisory board of a joint stock company cannot give binding instructions to the management board concerning the management of the company's affairs. This provision makes it absolutely clear that management board members of joint stock companies are not obliged to follow instructions from a supervisory board or general meeting on how to manage the company's affairs.

The Code of Commercial Companies provides that the supervisory board of a limited liability company cannot give such binding instructions regarding the management of the company's affairs to its managers. As there is no similar explicit provision prohibiting a shareholders' meeting from issuing such instructions, the question arises as to whether:

- this was an intentional omission by the legislature; and
- managers of limited liability companies must follow instructions from shareholders.

Liability of managers following shareholders' instructions

The management board of a limited liability company has the exclusive right to represent the company and manage its affairs (Article 203.1 of the Code of Commercial Companies). This means that this exclusive competence is presumed and any limitation of such competence must result from the law. According to Article 207.3 of the code, management board members, in their relationship with the company, are subject to restrictions set out in:

- the code;
- the company's articles of association; and
- shareholders' resolutions, unless the articles of association provide otherwise.

Therefore, Article 207.3 of the Code of Commercial Companies explicitly provides that if the shareholders' power has not been excluded in a company's articles of association, the company's managers are limited by shareholders' resolutions. Thus, they are bound by and must follow the instructions included in these resolutions.

If company managers fail to execute shareholders' instructions, they may be held liable under Article 293.1 of the Code of Commercial Companies for any damage inflicted on the company through their acts or omissions contrary to the law or the company's articles of association, unless no fault is attributable to them. However, managers are not bound by instructions which conflict with:

- the law;
- the company's articles of association; or
- good practice.

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'Not bound' does not mean that managers can risk not executing shareholders' instructions, but the sole fact that the instruction is given by another corporate body does not release them from potential liability for damages caused to the company as a result of the execution of such resolution. However, if managers refuse to execute unlawful shareholders' resolutions, they cannot be held liable for objecting to such instructions (as no fault will be attributable to them).

Further, according to Article 203.1 of the Code of Commercial Companies, management board members may be removed by a shareholders' resolution at any time and for no specific reason. This leads to an obvious conclusion that managers will often find themselves under pressure from shareholders to execute instructions that might be unfavourable to the company or unlawful.

However, managers are not defenceless against shareholders' instructions that may be contrary to the law, the company's articles of associations or interest or good practice. Under Articles 249 and 251 of the Code of Commercial Companies, managers are entitled to file a claim against the company to have such a resolution repealed or declared invalid.

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