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ADVOKATSKA KANCELARIJA
RECHTSANWÄLTE
LAW OFFICE

Guide to

DIRECTOR'S LIABILITY

Serbia



DUTIES AND RESPONSIBILITIES OF THE DIRECTOR IN SERBIA*

1. Duty to Act Within the Limitations of Authority

1.1 Limitation of the Director's Authority

A director is obligated to act in accordance with the limitations provided by: (i) the company's acts or (ii) the decisions of the competent bodies (the general assembly or the supervisory board).

The company cannot assert the director's limitations against third parties. The exceptions are the limitations in the form of joint representation, or the mandatory co-signature, that can be asserted against third parties if they are registered in accordance with the law.

A director is liable for damages caused to the company by exceeding the limitations of his/her/its authority, unless the director acted in accordance with a decision of the competent body, or if the act was subsequently approved by that body.

The director is criminally liable if he/she/it violates the duty to act within the limits of his/her/its authority. The penalties are a monetary fine or imprisonment for up to 1 year, and if the company suffers damages exceeding RSD 10,000,000 (approx. EUR 85,350), the prescribed penalty is imprisonment from 6 months to 5 years and a monetary fine. A ban on holding a position or profession is also possible, in accordance with the Criminal Code.

1.2 Director as a Signatory of a Contract on Behalf of Both Parties

The director cannot, without a special authorization, act as the other contracting party and conclude contracts with the company, in his/her/its own name and his/her/its own account, in his/her/its own name and for the account of another person or in the name and for the account of another person. Authorization for such action is granted by the general assembly, unless otherwise specified in the foundation deed.

2. Special Duties of the Director

A director has special duties towards the company, namely:

2.1 Duty of Care (Business Judgement Rule)

The director is obligated to perform his/her/its duties diligently, with the care of a prudent businessman and in the reasonable belief that he/she/it acts in the best interest of the company.

The standard of care of a prudent businessman that a director is required to meet is the standard of the care that a reasonably prudent person, possessing the knowledge, skills and experience that would reasonably be expected for the performance of that duty in the company would exercise. Furthermore, if a person possesses certain specific knowledge, skills or experience, that knowledge, skills and experience will also be taken into account when assessing the standard of care.

The director may also base his/her/its actions on **information and opinions of the experts whom the director reasonably believes have acted in good faith in that case.**

The company may file a lawsuit against a director for damages caused by a breach of the duty of care in business. If the **director proves** that he/she/it acted with the care of a prudent businessman, in accordance with the abovementioned rules, the director is not liable for damages that arise for the company from his/her/its business activities. **The burden of proof is on the director.**

2.2 Director's Duty to Disclose Personal Interest

The concept of personal interest is defined very broadly. A personal interest is considered to exist in the case of:

1. the conclusion of a legal transaction between the company and the director;
2. the conclusion of a legal transaction between the company and the persons related to the director;
3. legal actions taken in judicial and other proceedings, waivers of rights, etc., that the company takes against the director or against his/her/its related parties;
4. the conclusion of a legal transaction / the taking of a legal act by the company:
 - towards a third party who is in a financial relationship with the director or a related party, and if it can be expected that the existence of that relationship will influence his/her/its conduct, or
 - from which the third party has an economic interest, if that third party is in a financial relationship with the director or a related party, and if it can be expected that this relationship will influence the director's conduct.

The director is obligated to disclose the existence of a personal interest to: (i) the general meeting (if there is only one director) in one-tier system or (ii) the supervisory board in two-tier system (hereinafter: “**competent body**”). Unless otherwise provided in the foundation deed, in a one-tier system, the conclusion of a legal transaction or the performance of a legal act in which a director has a personal interest is approved by an ordinary majority vote of all members of the company who do not have a personal interest, while in two-tier system, the conclusion of such a legal transaction or the undertaking of a legal act in which a director has a personal interest is approved by the supervisory board. If, due to the number of supervisory board members who do not have a personal interest in the matter, a quorum for a vote is not achieved, or if a decision cannot be made because of an equal division of votes among the supervisory board members, the matter is approved by the general assembly with a simple majority vote of all company members who do not have a personal interest in it.

Prior to the approval of concluding a legal transaction or undertaking a legal act, in the event that the value of the subject matter of that transaction or legal act amounts to or more than 10% of the bookkeeping value of the company’s total assets as shown in the most recent annual balance sheet, the company body that received the notice designates a person to perform an appraisal of the fair market value of the property or right that is the subject of the legal transaction or legal act, and to prepare a report which (in addition to the notice of the existence of a personal interest) is an integral part of the decision approving the legal transaction or legal act in which the personal interest exists.

The company is required to publicly post on its website or on the website of the company registry its intention to conclude the legal transaction, or to undertake the legal act for which approval is required, immediately upon adopting the decision approving the legal transaction or legal act in which there is a personal interest, but in any case on the day of the conclusion of that legal transaction or the performance of that legal act, at the latest.

An approval is not required in cases prescribed by the law (for example, when concluding a legal transaction or undertaking a legal act, if the value of the subject matter of that transaction or act is less than 10% of the bookkeeping value

of the company's total assets as shown in its most recent annual balance sheet).

If the approval for the legal transaction or the legal act was not obtained, or if not all facts relevant to making such a decision were presented to the company's competent body when deciding to approve the legal transaction or to undertake the legal act, or if the approval was obtained, but the legal transaction was not concluded or the legal act was not performed at fair value, **the company may file a lawsuit to annul such legal transaction and a lawsuit for damages against the director who had a personal interest in such transaction or legal act**, and the competent court will also impose a temporary measure restricting the right to hold the position of the director for a period of 12 months. Furthermore, it is provided that, when this court decision becomes final, the court forwards it to the Business Registers Agency for entry into the Central Registry of Temporary Restrictions (a publicly available registry maintained by the Business Registers Agency).

If the director violates the above rules regarding the notification of personal interest with the intent to cause harm to the company, **the director will be criminally liable** and punished with a monetary fine or imprisonment of up to 1 year. If the company has suffered damages exceeding RSD 10,000,000 (approx. EUR 85,350), the director will be punished with imprisonment from 6 months to 5 years and a monetary fine. In addition to the prison sentence, the court may impose a ban on holding a position or profession, in accordance with the Criminal Code.

If the director proves (with the burden of proof on the director) that the legal transaction/legal act was in the interest of the company or that there was no personal interest, it will not be considered a breach of this duty.

2.3 Duty to Avoid Conflicts of Interest

A director may not, for his/her/its own benefit or for the benefit of his/her/its related parties, do any of the following:

- **use the company's property;**
- **use information** obtained in his/her/its capacity as a director that is not otherwise publicly available;
- **abuse his/her/its position** in the company;
- **exploit opportunities for transactions** that arise for the company.

A director is **liable for damages if he/she/it breached the duty to avoid conflicts of interest**, and the company may demand the transfer of any benefit obtained by the director or the related party.

The director is **criminally** liable for violating the duty to avoid conflicts of interest with the intent to obtain a property benefit for himself/herself/itself or another person. The prescribed penalties are a monetary fine or imprisonment for up to 1 year, and in the event that the company suffers damages exceeding RSD 10,000,000 (approx. EUR 85,300), a prison sentence of 6 months to 5 years and a monetary fine are prescribed. A ban from holding office or profession is also possible, in accordance with the Criminal Code.

The director can be relieved of his/her/it liability if the director obtains a **prior or subsequent** approval from the company's competent body for his/her/its actions.

2.4 Duty to keep Business Secret Confidential

The director is obligated to keep business secret confidential during and after his/her/its corporate function ends, for a period of 2 years from the date of end of the corporate function. The foundation deed / company's resolution / director's agreement may extend this period for up to 5 years.

A director is liable for **damages** to the company if the director breaches this duty. Filing a lawsuit against a director does not preclude or condition the possibility of terminating the employment relationship.

Note: Disclosing information does not constitute a breach of the duty of confidentiality if it is:

- a legal obligation;
- necessary for the performance of the company's business or the protection of the company's interests;
- disclosed to the competent authorities or the public solely for the purpose of reporting a crime.

2.5 Duty to Respect Non-Compete Prohibition

A director cannot, without the approval of the competent body:

- be a partner, general partner, controlling member/shareholder or a member/shareholder with a significant stake, or hold the position of a director, member of the supervisory board, representative or proc-

urator in another company that has the same or a similar business purpose (hereinafter: “Competing Company”);

- be an entrepreneur with the same or a similar line of business;
- be employed or otherwise engaged by the Competing Company;
- be a member or founder in the Competing Company.

The prohibition may be extended by the foundation deed to apply after the director’s function ends, for a period of up to 2 years.

The director is **liable** for **damages**, and the company may demand the **transfer** of any **benefit** obtained by the director or the Competing Company.

3. Liability for Providing a False Statement

If a director signs a written statement of false content, which is prescribed by the Company Law as (i) a condition for carrying out a specific procedure, with the intent to initiate and/or conduct and/or conclude that procedure or (ii) as a condition for the enforcement or implementation of a company’s decision, the director will be punished with imprisonment from 6 months to 5 years and a monetary fine.

If the company suffers damages exceeding RSD 10,000,000 (approx. EUR 85,300), the prescribed penalty is 1 to 10 years in prison and a monetary fine. In both cases, a ban from holding office or profession is also possible, in accordance with the Criminal Code.

4. Authorized Persons and Deadlines for Initiating Legal Proceedings Against Directors

The company can file a lawsuit against a director for damages caused by a breach of special duties within **6 months of** becoming aware of the breach (subjective deadline), and no later than **5 years from the date of the breach (objective deadline)**.

A member of the company may file a lawsuit for damages caused to it by a director’s breach of his/her/its special duties to the company.

One or more members of the company may file a lawsuit in their own name, but on behalf of the company, if at the time the lawsuit is filed:

- hold shares representing at least 5% of the company's share capital;
- if they have previously requested in writing that the company files a lawsuit (and the request was refused or not acted upon within 30 days).

5. Director's Liability Under Other Regulations

In addition to the civil and criminal liability of the directors under the Company Law and the Criminal Code, the director's duties and responsibilities exist under numerous other laws of the Republic of Serbia.

6. How to Achieve a Balance Between Managerial Freedom in Business Operations and the Limitations Imposed on the Director by the Owner and/or the State?

- Familiarize yourself with the legal framework for director's liability;
- Anticipate events during business operations;
- Identify legal risks and consult the experts.

*The above-mentioned duties and responsibilities of a director are analysed from the perspective of a director of a limited liability company (LLC).

DISCLAIMER:

This text does not represent and cannot be considered the complete list of the director's duties under Serbian law, nor can it substitute for legal advice in each specific legal case.

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