

## **THE RELATIONSHIP ARISING FROM A MEMBERSHIP IN THE BOARD OF A LIMITED COMPANY**

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### **ABSTRACT**

The subject of this dissertation is the relationship arising from a membership in the board of a limited company, understood as a legal bond between the company and a member of its board.

The main purpose of this work is analysis of membership in a board as a legal and civil relationship in a shape defined by positive regulation, particularly by Commercial Companies Code and Civil Code. Critical verification of the commonly shared and prevailing in literature conviction about an obligational character of this relationship decided about binding closely the analysis of the investigated relationship with an analysis of the legal character of appointing a member of the board as an act in law being the source of this relationship, and the legal nature of the board member's mandate as the most relevant element of its substance. The dogmatic analysis, complemented with comparative legal and historical-legal remarks, is accompanied by theoretical legal reflection allowing to achieve the secondary goal of this dissertation which is realisation of the postulate of internal integration of jurisprudence. Referring to the rarely applied in the science of private law, but well recognised in the theory of law, constructions of *authorising act in law*, *competence (authority)* and *the relation of competences subordination*, as well as referring to the category of *creating acts*, allowed to propose a coherent conception of the relation of membership in a board, which is based on the consideration of a board member appointment as an authorising and creating deed-poll, a mandate - as a specific power of attorney, and a membership relation – as a relationship of competence type.

The contemplations of this dissertation have been arranged in five chapters, preceded by an introduction and concluded with a summary. The first chapter is dedicated to discussing the idea of membership in a board, to the legitimacy of using this idea in reference to the relationship binding the company with a board member, to the basic qualification of a board membership as a civil law relationship and to approaching its practical significance by emphasising its function. In the second chapter, the appointment of a board member as an act of law being the source of the discussed relationship is treated as a deed-poll of double effect, both authorising and creating, consisting in authorising a member of the board to effective managing of the company's business and representing it, as well as in creating a necessary element of the company's internal structure as an organisational unit, which is the membership in the board. Also in this chapter, a qualification of the board member's

mandate as a particular kind of authorisation, being a specific form of a right, was made. The third chapter, except general characteristics of the board membership relation as relation based on a particular trust, subject to a personal execution, of professional character, permanent and internal, includes its qualification as a relation of competence subordination, whose essence is in performing specified actions, basically conventional ones, by a party equipped in a competence (so called *subject to competence*), with a legal effect in the legal sphere of the other party (so called *addressee of the competence*). The analysed relationship is shown in a wider normative and theoretical context, against the background of the relationships of a board member employment, suspending him from his duties, seconding a supervisory board member to temporary performance of managerial activities, a European Company regulation as well as the theory of bodies and the conception of organisational representation. The fourth chapter comprises the analysis of individual elements of a board membership: its subjective structure (taking in consideration the limitations defined by legal regulations applicable to the board members), the content including the rights and duties of the parties (taking in consideration the board member's mandate and the status of the company binding related to it, the duty to exercise the mandate as a duty to use the authorisation, the question of remuneration for performing the function of a board member) as well as the object (taking in consideration the legal and organisational conditions of exercising the mandate). Contemplations related to the content have been extended by the question of the parties responsibilities in consequence of breaching the duties related to them. The last chapter, dedicated to the cessation of a board membership, comprises an analysis of acts of law resulting in cessation of a board member's mandate. Such approach to the investigated questions permitted to formulate suggestions of resolving numerous doubts arising in practice in connection with a board membership, which causes that the contemplations of this dissertation are not only of theoretical nature.

Despite confining the subject of this dissertation to the problems of a board membership in a limited company, its main theses related to the authorising and creating character of this relationship will remain, *mutatis mutandis*, up-to-date also in reference to relations of membership in elective bodies of other legal entities, potentially making a starting point for research with more extensive scope of subject matter and for formulating on their basis more general conclusions.

