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**LEGAL EFFECTS OF GRANTING DISCHARGE FOR THE MEMBERS OF THE  
MANAGEMENT BOARD OF THE LIMITED LIABILITY COMPANY**  
*(pol. spółka z ograniczoną odpowiedzialnością)*

The doctoral dissertation prepared by Marcin Tomasz Śledzikowski


**ABSTRACT**

The subject of this dissertation is the analysis of the legal effects of granting discharge for the members of the management board of the limited liability company (*pol. spółka z ograniczoną odpowiedzialnością*) and the importance of this institution. Undertaking of the research on the issue of the discharge in the context of the liability of the officers towards the company is justified and indicated due to the pending, in the Polish company law doctrine, discussion concerning legal character of such institution and the submitted remarks that, discharge does not meet the expectation of the executives. The critical opinion of the dominant view in doctrine, according to which, discharge is a form of release of the member of the management board from the liability towards the company, which constitutes release of claims by the company, results in reflection on the social and praxiological rationality of the legislature.

The conclusion of the dogmatic analysis provisions of the Commercial Companies Code, supplemented by historical and comparative comments, is thesis that the discharge establishes challengeable presumption that the performance – by the members of the management board his / her duties – has been done in accordance with the terms of the relationship between the officers and the company. This thesis is the starting point for looking for the other "mechanisms" that would provide adequate protection for managers and would avoid using the discharge as a "corporate games".

The doctoral dissertation consists of five chapters preceded by the introduction and ended by the summary. Each of the chapter, additionally ended synthetic summary, presenting the most important conclusions of the analysis in that respect.

First chapter includes presentation of the concept of the discharge. For the extension of the spectrum of the analysis, has been reach to the other legal acts (Constitution of the Republic of Poland, local governments law, cooperative law), which allowed to find some






common features of the commented institution. Subsequent, deliberations were aimed at the key provisions of the Commercial Companies Code and the Commercial Code. By defining the scope of the concept of discharge, the legislation of other countries was also analyzed insofar as they use the discharge authority or other similar legal mechanisms to evaluate the company's managers and then attempted to "position" discharge among the corporate governance elements granted to the shareholders of the limited liability company (pol. *spółka z ograniczoną odpowiedzialnością*).

Second chapter discusses the construction of the discharge resolution. In that respect discharge was describes as an individual and evaluate act. The subject of the analysis was also the problem of negative discharge resolutions (resolutions on refusal of discharge) and *non-existence* resolutions. Detailed considerations have been aimed at the possibility of granting discharge *en block* (all managers jointly), despite the individual nature of the commented institution. As a part of the analysis of the issue of voting on the granting of discharge, was described the potentially new problem, i.e. the possibility of adopting such resolution by the shareholders *per facta concludentia*.

Third chapter starts with the deliberation concerning objective and subjective scope of the discharge. There is no doubt, that this evaluation will be multi-layered – made, at least on few levels. As part of the analysis, it was pointed out that only purely organizational aspects, i.e. good representation and management of the company's affairs, were not affected by the discharge, but also non-legal aspects, particularly the economic sphere and the financial results achieved by the company. It is also important to identify the subjective scope of the discharge, bearing in mind that, in principle, the institution concerned is of historical character (past evaluation). The members of the management board are highly interested in granting of discharge, chapter three ended the assessment of the relationship of the commented institution to the personal interests of the managers.

Fourth chapter begins with the partial remarks to determine the legal character of the discharge and its effect on the liability of the executives towards the company, its shareholders and creditors. In order to prepare the foundation for proper analysis, in this regard first was presented positions of the doctrine. Subsequently, on the basis of the partial conclusions, an attempt was made to formulate own position of the legal nature of the discharge, with compiling such position with those already expressed in doctrine. Legal aspect of the discharge was the basis to analysis of the impact of the discharge on the liability of the members of the management board or other legal relationships between the officer and

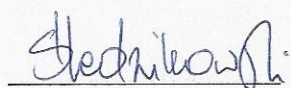




the company. The chapter ends *de lege ferenda* postulates, referring to the legal nature of the institution of discharge.

Last chapter, describes possibility of appealing of the discharge resolution on the court proceeding. Firstly, the basic assumption of the construction of the actions concerning nullity and revoking of the discharge resolution held by the shareholders. Subsequently, the analysis was addressed to the circle of persons which are entitled to vindicatory actions, paying particular attention to the problem of the legitimacy of former members of the management board. The basic defects of the discharge resolutions in the jurisprudence of the common courts and the Supreme Court are also presented.

The dissertation concludes with a brief summary of research results with *de lege ferenda* proposals.

A handwritten signature in blue ink, which appears to read 'Śledzikowski', is written over a horizontal line.

**Marcin T. Śledzikowski**

