

Liability of management board members for debts of a Polish Limited Liability Company



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Board members of Polish Limited Liability Companies (Sp. z o.o. or S.A.), should from time to time make sure that their internal control and reporting mechanisms are working properly, as they can be held personally liable for their actions as a board member. This liability can be based on civil law or criminal law.

Civil liability

Management board members can be personally liable for their actions both to the company and in case of bankruptcy directly to its creditors. In the first case, management board members can be sued by the company for damages caused by willful omission or action undertaken against the law or the articles of association. They can further be liable to the company's creditors for its obligations, jointly and severally with the company, where execution proceedings against the company have proven ineffective (this does not apply to the S.A.), i.e. the company does not have sufficient assets to satisfy creditors.

A management board member can avoid such liability by proving (i) that a motion to declare the company's insolvency has been filed in time (i.e. within two weeks from the date of insolvency), (ii) that the failure to notify was not his fault, or (iii) that the creditor has suffered no damage as a result of such failure. A company shall be deemed insolvent if it fails to fulfil its due financial obligations against its creditors. It is of no importance whether a company does not fulfil all or only part of its obligations. The amount of unfulfilled obligations is also unimportant. It should be noted that a company cannot be deemed insolvent if financial obligations are not due or a creditor consents to delay in the performance of obligations. In case of a Limited Liability Company, a company shall also be deemed insolvent if its obligations exceed the value of its assets, even if it is not behind in the performance of its immediate obligations.

Criminal liability

Criminal liability can arise based on violation of tax laws as well as accounting laws (!), and in case a board member does not file a motion for insolvency when due. In addition it is a criminal offence to act to the detriment of a company, e.g. as a result of breach of the board's basic duties. The crime is prosecuted ex officio, i.e. neither the company nor the shareholder has to file a complaint.

Conclusion

Fulfilling the function of statutory board member should not be treated lightly, one should have their internal controls in order, and liability insurance and/or an indemnification from the foreign parent company may be justified under certain circumstances, e.g. when the real decision making power lies with the shareholder.

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