



# Liability of General Directors for losses due to instructions from the management bodies and recommendations of the subordinates

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**T**he current formal approach - which is based on par. 7 of the Resolution of the Plenum of the Higher Commercial Court dated 30.07.2013 No. 62, as confirmed by the Judicial review approved by the Presidium of the Higher Court dated 25.12.2019 - states that approval by the shareholders/board of Directors does not constitute, by itself, a ground for exemption from liability of the General Director. Only in case such approval is combined with other circumstances, it may be deemed as a ground for release from liability. At the same time, neither the Higher Commercial Court nor the Higher Court have elaborated a precise position regarding such additional circumstances.

It should be obvious that approval by 100% of shareholders/members of the Board of Directors shall exempt the General Director from liability for damages, since he/she actually executed the will of all shareholders. However, in practice, even in the presence of these circumstances General Directors are often held liable pursuant to the decisions of the courts.

In rare cases the courts have released the General Director from liability taking into consideration the following aspects:

- the claim against the General Director was actually filed by a person who participated in the approval process;
- long-term inaction by the shareholders who were aware of the transaction/actions performed by the



General Director, which may be qualified as tacit approval.

The situation with regard to recommendations from subordinates (e.g., from the credit committees, committees for transactions, etc.) is nearly the same. Even if a formal approval is given by such committees and the General Director must follow such decisions pursuant to the internal documentation of the company, the courts normally confirm the liability of the General Director. The prevailing approach of the courts is that decisions of the committees as subordinates with respect to the General Director cannot be considered as compulsory to follow. At the same time, it is worthwhile noting that absence of approval by committees and, as a result, violation of internal procedures, is usually regarded by the courts as additional risk for the General Director's liability.

However, it is advisable to take into due consideration the actual scope of the company's activities. Basically, for large companies it is, evidently, more difficult for the General Director to control the entire activity, therefore quite often the General Director is forced to rely on the decisions taken by internal committees. On the other hand, in small companies the General Director must be aware of all activities, particularly major transactions must be under strict scrutiny by the General Director, since these may substantially affect the company's activity. In court practice such circumstances are normally not considered. In most cases the position of the court is the following: the General Director is responsible for all the actions of the employees.

In rare cases the courts have held that the General Director is not competent for all the company's activities as he/she cannot control all the actions. However, even in those decisions that are

favourable for the General Director, there is no analysis as regards the scope of the company's activities. As a result, the decisions of the court may vary quite significantly in each particular case and in situations involving the potential liability of the General Director subjective judgement often plays an important role.

Summarizing the above, we may conclude that neither approval nor the faults of the subordinates that lead to losses of the company may constitute an automatic ground for release of liability of the General Director. However, it is recommended to draw the attention of the court to the following circumstances:

- prior approval by all the shareholders;
- prior approval by a large majority of shareholders (i.e., more than 80%) in the absence of claims from the remaining shareholders as a form of so called tacit approval;
- absence of an obligation on the General Director to fully control the employees (in the event that fault of the employees result in company's losses);
- specialty of the issue and impossibility for the General Director to control all the aspects of the company's activity (e.g., correct accounting, functionality of the equipment, etc.).

Moreover, all the procedures for internal approvals and necessity of such approvals shall be thoroughly regulated in the internal documentation of the company. Prior to completion of the transaction, a number of preparatory actions must be performed (such as economic assessment, receipt of auditor's report, fulfillment of compliance procedures, etc.). These actions may be useful to prove the reasonableness and good faith of the General Director's action that, as a consequence, may lead to release of the liability of the General Director.





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