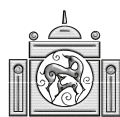




Ivane Javakhishvili Tbilisi State University  
Faculty of Law

# Journal of Law

№1, 2018



უნივერსიტეტის  
ბანოშტელოზა

UDC(ყოფილი) 34(051.2)

ბ-216

Editor-in-Chief

**Irakli Burduli** (Prof.,TSU)

Editorial Board:

**Prof. Dr. Levan Alexidze** - TSU

**Prof. Dr. Lado Chanturia** - TSU

**Prof. Dr. Giorgi Davitashvili** - TSU

**Prof. Dr. Avtandil Demetrashvili** - TSU

**Prof. Dr. Giorgi Khubua** - TSU

**Prof. Dr. Tevdore Ninidze** - TSU

**Prof. Dr. Nugzar Surguladze** - TSU

**Prof. Dr. Besarion Zoidze** - TSU

**Prof. Dr. Paata Turava** - TSU

**Assoc. Prof. Dr. Lela Janashvili** - TSU

**Assoc. Prof. Dr. Natia Chitashvili** - TSU

**Dr. Lasha Bregvadze** - T. Tsereteli Institute of State and Law, Director

**Prof. Dr. Gunther Teubner** - Goethe University Frankfurt

**Prof. Dr. Bernd Schünemann** - Ludwig Maximilian University of Munich

**Prof. Dr. Jan Lieder, LL.M. (Harvard)** - University of Freiburg

**Prof. Dr. José-Antonio Seoane** - University of A Coruña

**Prof. Dr. Carmen Garcimartin** - University of A Coruña

**Prof. Dr. Artak Mkrtichyan** - University of A Coruña

Published by the decision of Ivane Javakhishvili Tbilisi State University Publishing Board

© Ivane Javakhishvili Tbilisi State University Press, 2019

ISSN 2233-3746

**Davit Gvenetadze\***

## **For the Issue of the Company Director's Liability**

*Legal regulation of the Company Director's Responsibility is the concern not only of developed countries but also of less economically advanced states because they are trying to create an effective and stable business environment, successfully lodge on an international market. In this process, the issue of the company manager's liability is very important. There is a rich practice of the US court about this concern, for example, the Supreme Court of Delaware divided the management duties into three parts: diligence, loyalty, and good faith.<sup>1</sup> According to the Principles of Corporate Governance of the American Institute of Law, the director should fulfill the obligations of the corporation in good faith; in the best interests of the corporation and with due diligence.*

*In general, the awareness of a decision has a significant impact on the responsibility of the company director. During decision making, it is important to make a thorough examination of facts, get consultations, hear different opinions, learn the market situation, share the information by the directors and etc.<sup>2</sup>*

*It should be noted that in European countries the overall standards of the director's responsibility are mainly similar. However, diverse trends are identified due to the state's economy, size, and development level of the markets, which requires assessment and legal analysis.*

**Keywords:** *Internal and External Responsibility, Indirect/De facto Director, Straight (So-called Vis-à-vis) Responsibility, Group Damage, Conflict of Interests, Person Influential on the Director, Objective Responsibility, Managerial misconduct, General Supervision, Insurance of the Director's Liability, The Best Corporate Interests, Full Consent, A shareholder with Legitimate Interest.*

### **1. Introduction**

The issue of the Company Director's Liability is especially relevant today due to modern commercial trends, social responsibility of entrepreneurs, and the state, regional or international importance of stable entrepreneurship.

Responsibility is one of the tools of corporate governance. Liabilities of corporation heads are considered, in the context of corporate management, as one of the (but, not the only) means of providing responsible management.<sup>3</sup> It is evident that because of the issue's actuality, it is being constantly researched; new challenges, trends and efficient management measures are being identified. This, in its turn, evolves from the functional role of the enterprise manager; the scope of the latter's competence and

---

\* Master of Laws, Specialist of Secretariat of Education and Culture Commission, Tbilisi City Municipality Assembly.

<sup>1</sup> *Maisuradze D.*, Corporate-legal Defensive Measures During the Reorganization of Capitalist Societies (Comparative-legal Research Preferably on the Example of Delaware State and Georgian Corporate Law), Dissertation Thesis to Earn the Academic Degree of Doctor of Law, Ivane Javakhishvili Tbilisi State University, Faculty of Law, Tbilisi, 2014, 22 (in Georgian).

<sup>2</sup> *Maisuradze D.*, For Explanation of Business Judgment Rule, Journal of Law, №1-2, Tbilisi, 2010, 116, (in Georgian).

<sup>3</sup> *Chanturia L.*, Corporate Management and the Managers' Responsibility in Corporate Law, Tbilisi, 2006, 29, (in Georgian).

the legal-economic consequences produced by the director's decisions. The corporation manager has transferred the entity's property, accordingly, the director's primary and basic obligation is to protect this property and prevent any damage. In different circumstances, discharge of this obligation generates inner-corporative and external responsibilities for the manager. Since the director has a wide range of competencies in the management and representation of the enterprise, it is necessary to observe the duties of good faith and due diligence. At the same time, the director is obliged to carry out management activities in accordance with the interests of society.

The purpose of this work is to analyze one of the important affairs of corporate law, to inform readers about the modern challenges of the director's responsibility and to review individual aspects of liability regulation. To achieve this aim, some issues of the director's responsibility in various countries will be analyzed (by using the legal-comparative methodology), as well as the court practice (important decisions and explanations) and the author's summarized opinions will be represented.

## **2. Issues of the Company Director's Liability in Europe**

In general, corporate management is actively working to ensure the operational stability of the company and increase its profits. In this process, the management often encounters situations in which preliminary identification of probable consequences is impossible. Whereas, exactly risky decisions may often produce additional benefits for the company. In order to ensure adequate independence of the management members (as well as to protect the interest of individuals related to the company), there is a need for effective existing rules and procedures. It is important that the current legislation and judicial practice should make clear explanations for the management and any Company Related Subjects, when and which kind of responsibility arises in different circumstances; (this is especially important towards the director). Generally, the responsibility of the corporate director is accurately defined by the national state laws to a certain extent, however, they cannot regulate all the relationships which originate during entrepreneurship, and on which the director will have to make decisions. Furthermore, this is not the purpose of law itself (hence it is impossible and unreasonable to create a comprehensive legal framework for restricting the director's every activity). Besides, the company director does not know all legal norms and measures regulating the employer company's business. Frequently these regulations and judicial practice have some flaws that bereave the director a chance to make a right and informed decision. In Georgia and in different European countries the standards of the director's responsibility are similar to some extent, however, due to differences in the economic and trading relationships of states, as well as the tendencies and peculiarities of entrepreneurial law, in practice outbreaks various approaches of the director's responsibility and sort of different regulations. In addition, the court explanations, decisions and judicial practice based on them are playing an important role in establishing more or less different standards of responsibility. Consequently, it is important and interesting to review aspects of the company director's responsibility in European states' companies.

## 2.1. Georgia

Georgian corporate law distinguishes two main forms of capital societies: Joint Stock Company and Limited Liability Company. Forms of entrepreneurial societies such as an Additional Liability Company or General Partnership combined with Joint Stock Company are unfamiliar to Georgian law.<sup>4</sup> In Georgian law, the rules governing the managerial responsibility of capitalist societies are given in the law On Entrepreneurs. The central norm is given in article 9.6 of the law, which states that the members of the Supervisory Board shall conduct the company's business in good faith. In particular, they shall take care as an ordinary person of sound mind in a similar capacity and under similar circumstances would care (acting in the faith that their action is in the best interests of the company). The regulations governing the responsibility of the director and supervisory board members of the Joint Stock Company is also included in article 56.4 of the Law on Entrepreneurs, which together with the Institute for Reversing the Burden of Proof, also envisages the right to lodge a complaint against the director of the entity. The provisions of article 49 of the Law further strengthen the norms of the director's liability.<sup>5</sup> It can be said that the responsibility of the company director in Georgia is largely regulated at the legislative level, but for more determination of the director's liability in Georgian companies, in the first place, it is crucial to delineate ownership and control rights, which is unfortunately misunderstood in the Georgian reality. This is reflected in the lack of balance; Company incorporators always have the leverage to coerce the manager, make decisions they desire (and not within the company's interests). The management and control functions of the enterprise should also be separated sharply. The supervisory board shall have effective control over the enterprise's management body and the control should not be formal by nature. At the same time, the control should not take any forms that will obstruct the enterprise activities. The powers that are organically administered to a particular body of management must not be allowed to be transmitted. It is significant that without the sharp separation of powers among management bodies, it is very difficult to talk about the responsibility of their members.<sup>6</sup> Besides, it is crucial that the Georgian judicial practice (towards the director's responsibility) is very poor, which negatively affects the implementation of the director's liability standards in practice. Unfortunately, the Supreme Court had to discuss only a few cases about this issue; the 2015 decision is one of the important judgments from them.<sup>7</sup> In particular, the court discussed the matter whether the company director and partners had direct responsibility (with all their personal assets) for the company's tax liabilities when it was proved that the company could not fulfill its obligation. The Supreme Court has examined whether or not (and by which legal grounds) could the Revenue Service request reimbursement of tax liabilities

---

<sup>4</sup> *Chanturia L.*, Corporate Management and the Managers' Responsibility in Corporate Law, Tbilisi, 2006, 103, (in Georgian).

<sup>5</sup> *Ibid.*, 193, 195.

<sup>6</sup> *Kiria U.*, Management Bodies of Capital Societies and the Managers' Responsibility in Georgia, Ilia State University, Law Clinic, Tbilisi, 2017, <<http://legalclinic.iliauni.edu.ge/kapitaluri-sazogadoebebis-marthvis-ogranoebi-da-khelmdzghvaneltha-pasukhismgeblobis-problemebi-saqarthveloshi/>> [03.01.2018], (In Georgian).

<sup>7</sup> The decision of the Chamber of Civil Cases of the Supreme Court of Georgia №11-1158-1104-2014, 6 May 2015, (in Georgian).

from the company's partners and the director. Regarding the director's liability of the LLC, the court noted that according to article 9, paragraph 6 of the Law of Georgia on Entrepreneurs, the company director has special obligations towards the company under which the director is obliged to lead the society's activities in good faith; Duty of such care also implies maximized reduction of the company's tax liabilities. The court explained that when the enterprise has a tax liability and it is not capable to pay off this obligation and when the remuneration is necessary to meet the state as a creditor, the company is obliged to claim compensation directly from the director. The court noted that the company partners and the director are responsible for both, the main amount of the unpaid tax, and the fines provided by the tax code. Their responsibility (on company obligations) to the state is subsidiary and solidary towards each other.

Obviously, by this decision, the court emphasized the identical aims of Georgian legislation and the court, which serve to protect creditors. It is clear that the direct claim to the company director, together with other advantages, guarantees implementation of the court proceedings (such as applying to carry out cautionary judgment procedure, according to article 198 of the Civil Procedure Code of Georgia). The creditor would not have made such a petition towards the director, if he or she had claimed against the company, because he/she would have been separated from the dispute, and until the company requests the director for compensation, the latter would freely sell the property within the law, which would exclude or complicate the compensation. The key issue of this decision was also the determination of the amount of monetary liability of the defendants when the court had to discourse on the civil and fiscal sanctions, define their relation, necessity or inadmissibility of their joint use. Finally, the court imposed the company director to pay the main debt and part of the penalty, which consistently points to the high-standard responsibility of the director.

Here it should be noted that the Georgian Law on Entrepreneurs has been operating for 24 years and despite this, the Supreme Court had to discuss only some cases about the company director's liability in recent years, which indicates to the passive interest in this issue by relevant subjects. Naturally, such a tendency is unfavorable, but the abovementioned decision of the Supreme Court lays the foundation of the director's responsibility, and this is a really good experience. Supposedly, looking through these decisions, entrepreneurs (acting in Georgia) should be more interested in the importance of the director's responsibility, and its consequences. Of course, this will be beneficial for the entrepreneurial relations and its more transparency. To sum up, this will ensure the stability of the Georgian market.

## **2.2. Estonia**

Corporate regulations of Estonia are interesting for discussion, as the legal system and entrepreneurial sector of this country are very young, which causes flaws of its legislation and judicial practice. Consistently, this is a threat to entrepreneurs and to their managerial bodies. Estonia chose German variant for the director's responsibility and tries to follow this model,<sup>8</sup> i.e. the state efforts to

---

<sup>8</sup> *Madisson K., Duties and Liabilities of Company Directors under German and Estonian Law: a Comparative Analysis, RGSL Research Papers, № 7, Riga, 2012, 4.*

develop similar norms, standards, and approaches, however, the problem of **Interest Conflict** still remains, as Estonian civil law does not include so-called **Self-Dealing Rule**.<sup>9</sup> Acting legislation does not oblige the company director to inform the shareholders or supervisory board during completing usual transactions. (Here is considered the company's purchases within market prices and etc., or in other words, all daily transactions which do not require additional confirmation).

Regulation of the corporate director's responsibility in Estonia is not limited to civil legislation, which means that the director may be subject to administrative and criminal liability also. In this state, the sources of law determining the director's responsibility are: Commercial Code,<sup>10</sup> which has been in force since 1995; General rules of corporate governance are also included in the General Part of the Civil Code Act<sup>11</sup> and in Law of Obligations Act of Estonia.<sup>12</sup> Members of the company's executive body which violate obligations will be responsible for the loss of the entity.<sup>13</sup> Besides it should be noted that the Estonian legislation, in contrast to a German one, does not provide the definitions of the **Real Director** and **De facto Director**, accordingly there is no relevant legal practice in the state. But since 2006, like in Germany, a **Person Influencing the Director** may be imposed responsibility as a De facto Director if it is not proved that he or she was fulfilling own duties with diligence.<sup>14</sup> The decision № 3-2-1-41-05; 11.05.2005<sup>15</sup> of the Supreme Court of Estonia is important, in which the court explains that a violation of the obligations towards the company (undertaken by the management body or by the director) is considered as a breach of a contractual obligation and not as a result of non-contractual relations. As for external responsibility, the director's liability in Estonia targets to protect the interests of the company, while the board members are mainly responsible for the company.

It becomes obvious that according to established practice, the director's responsibility in Estonia is considered to be a violation of the contractual obligations and not a non-contractual relationship; i.e. in determining the prerequisites, form or scope of their liability, the court shall be guided by the imperative norms of the law and the Director's Service Contract. It can be said that via this approach, the problem of

---

<sup>9</sup> A Transaction with oneself (Self-Dealing) is a violation of loyalty, which implies the director's actions for personal gain and not for the benefit of the company. For example, to use the company's monetary fund as a personal loan, purchase of the company's stock by using "insider" information and so on. See, Self-dealing (Definition), Legal Information Institute (LII), Cornell Law School, <<https://www.law.cornell.edu/wex/self-dealing>> [05.10.2017].

<sup>10</sup> Commercial Code of Estonia, Passed 15.02.1995, Entry into force 01.09.1995, Type: Act, Issuer: Riigikogu, (consolidated text of August 1, 2016), 26-28, 355, <[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=42-4794](http://www.wipo.int/wipolex/en/text.jsp?file_id=42-4794)> [04.10.2017].

<sup>11</sup> General Part of the Civil Code Act of Estonia, Passed 27.03.2002, Entry into force 01.07.2002, Type: Act, Issuer: Riigikogu, 35, 216, <<https://www.riigiteataja.ee/en/eli/530102013019/consolide>> [04.10.2017].

<sup>12</sup> Law of Obligations Act of Estonia, Passed 26.09.2011, Entry into force 01.07.2002, Type: Act, Issuer: Riigikogu, 81, 487, <<https://www.riigiteataja.ee/en/eli/506112013011/consolide>> [05.10.2017].

<sup>13</sup> General Part of the Civil Code Act of Estonia, Passed 27.03.2002, Entry into force 01.07.2002, Type: Act, Issuer: Riigikogu, § 37(1), <<https://www.riigiteataja.ee/en/eli/530102013019/consolide>> [06.10.2017].

<sup>14</sup> Commercial Code of Estonia, Passed 15.02.1995, Entry into force 01.09.1995, Type: Act, Issuer: Riigikogu, (consolidated text of August 1, 2016), § 1671 and § 2892, <[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=424794](http://www.wipo.int/wipolex/en/text.jsp?file_id=424794)> [06.10.2017].

<sup>15</sup> Walko v. Kalle Pilt, 3-2-1-41-05 Judgment of the Civil Chamber of the Supreme Court of Estonia of 11 May 2005, RT III 2005, 17, 181, <<https://www.riigiteataja.ee/akt/899418>> [06.10.2017].

interpretation and usage of legal norms has been largely solved, but the impact of "Rough Legislative Framework" towards the responsibility still remains. Uniformly, the imperative rules of the law and the director's service contract cannot simply consider the whole basis, which evolves the company director's liability. So it is advisable for the legislator and the court to focus more on Tortious Relationships.

### 2.3. Germany

As for Germany, here legislative norms of corporate governance are spread in different normative acts, from which most notable are: Civil Code of Germany,<sup>16</sup> Commercial Code of Germany,<sup>17</sup> Private Limited Companies Act of Germany<sup>18</sup> and Stock Corporation Act of Germany.<sup>19</sup> It should be mentioned that unlike corporation law in the United States, in Germany a uniform corporation law does exist. The norms regulating the manager responsibility of the capitalist society are mainly collected in normative acts on Joint Stock Companies and Limited Liability Companies.<sup>20</sup>

The director may be personally liable for any damages and breach of own obligations. These liabilities may arise from the contract (the Charter, the Director's Service Contract) or from the law (Civil, Commercial, Criminal and Bankruptcy legislation). Also, special preconditions for the restriction of the director's responsibility exist, when the director is not deemed liable. One of these prerequisites was discussed by the German Federal Supreme Court on June 18, 2014, on the case I ZR 242/12. The court actually changed the early practice of the director's responsibility. Prior to this decision, the director was always personally liable for the violations carried out by the company on the basis of the Act of Unfair Competition, which resulted from the Principles of the Director's Common Liability for Business Operations. The Federal Court pointed to the present case that the director's responsibility should always depend on whether he/she was involved in an offense defined by the Unlawful Competition Act or had the director avoided such an offense or not. According to the court, the company director will be responsible under the new legislation, if the latter directly creates the kind of business model that will violate the Act of Unfair Competition.<sup>21</sup>

---

<sup>16</sup> Civil Code of Germany (BGB), Promulgated on 2 January 2002 (Federal Law Gazette [Bundesgesetzblatt] I page 42, 2909; 2003 I page 738),

<[https://www.gesetze-im-internet.de/englisch\\_bgb/englisch\\_bgb.pdf](https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf)> [07.10.2017].

<sup>17</sup> Commercial Code of Germany (HGB), Commercial Code in the revised version published in the Bundesgesetzblatt (BGBl, Federal Law Gazette),

<[http://www.gesetze-im-internet.de/englisch\\_hgb/englisch\\_hgb.pdf](http://www.gesetze-im-internet.de/englisch_hgb/englisch_hgb.pdf)> [07.10.2017].

<sup>18</sup> Private Limited Companies Act of Germany (GmbHG), Act on Limited Liability Companies, as consolidated and published in the Federal Law Gazette III, Index No. 4123-1,

<[https://www.gesetze-im-internet.de/englisch\\_gmbhg/englisch\\_gmbhg.pdf](https://www.gesetze-im-internet.de/englisch_gmbhg/englisch_gmbhg.pdf)> [07.10.2017].

<sup>19</sup> Stock Corporation Act of Germany (AktG), Published on 6 September 1965 (Federal Law Gazette I, p. 1089),

<[https://www.gesetze-im-internet.de/englisch\\_aktg/englisch\\_aktg.pdf](https://www.gesetze-im-internet.de/englisch_aktg/englisch_aktg.pdf)> [07.10.2017].

<sup>20</sup> *Chanturia L.*, Corporate Management and the Managers' Responsibility in Corporate Law, Tbilisi, 2006, 181-182, (in Georgian).

<sup>21</sup> German Federal Supreme Court limits the personal liability of company directors for violations of the Unfair Competition Act, Unfair Competition Law 8, September 2014, Decision of 18 June 2014 (Case ref: I



Violation of loyalty obligations is the most frequent in practice (failure to perform a service contract during directorate or after it; also to get an unauthorized gain).<sup>22</sup> The German legislation distinguishes the director's responsibility towards the company (Internal Liability) and against third parties (External Liability). In addition to that, the director may be subject to administrative and criminal liability. **Internal Liability** includes a violation of inner-corporate obligations. It is important that in Germany, **the Director, Shadow Director and De facto Director** (which is not appointed at the manager's position by documents) have the same responsibility as **De Jure Director**. At the case of 5 StR 407/12, in 2012 the Federal Court of Germany examined the issue of reviewing the de facto director as an addressee of fiduciary duty.

The court concluded that "de facto director" is subject to the same norms of responsibility, which diffuse to the ordinary director. Thus, the person's indication of not being appointed according to formal procedures does not free him or her from fiduciary duty.<sup>23</sup>

**External liability** means responsibility towards any subject, other than the company. It is noteworthy that external responsibility is rare, because third parties usually claim directly to the company and not to its manager; then the company straightly argues with the director.<sup>24</sup> There are many other obligations of the acting director, which are aimed to protect the interests of the company creditors, shareholders, contractors, customers, and the state (e.g. interests of Tax and Social Security Agencies).<sup>25</sup> It is important that in recent years, the director's responsibility towards third parties has become more decisive.<sup>26</sup> According to the Fiscal Code of Germany,<sup>27</sup> the managing director may be personally responsible during payment of company taxes; third parties may file a claim if the amount (paid to the shareholders) was transferred by a violation of Capital Management Rules. In this case, the manager may be obliged to pay the full sum and compensation (evolved from it).<sup>28</sup>

---

ZR 242/12) of the Federal Supreme Court of Germany, <<http://bcl-ip.com/en/german-federal-supreme-court-limits-the-personal-liability-of-company-directors-for-violations-of-the-unfair-competition-act/>> [26.12.2017].

<sup>22</sup> *Sieg O.* (Consulting ed.), *Smerdon E.*, *Directors' Liability and Indemnification: A Global Guide*, Third Edition, Published by Globe Law and business Limited, London, 2016, 119.

<sup>23</sup> *Ünsal D., Christopher J. Wright*, *Legal Update Corporate, German Federal Supreme Court Revisits Managing Director Fiduciary Duties*, GÖRG Partnerschaft von Rechtsanwälten, Berlin, 2013, 2.

<sup>24</sup> *Ibid*, 124.

<sup>25</sup> *Huber P., Trenkwalder J., Guyot C., Goffin J. F., Butts D., Famira G., Baček R., Rodwell H., Isnard J., Schepke J., Ormai G., Cavasola P., Montijn R., Greszta D., Robinson T., Fitzpatrick J., Cranfield D., Petrikic R., Parker I., Szabo S., Lunder A., Kraljic B., Peña C., Albers M., Wille H., Comboeuf A., Knaul A., Mendelssohn M., Hearnden B.*, *Duties and Responsibilities of Directors in Europe*, CMS Legal Services EEIG, Frankfurt, 2008, 30.

<sup>26</sup> *Baums T.*, *Personal Liabilities of Company Directors in German Law*, Speech at the Stratford-upon-Avon Conference of the British-German Jurists' Association, Düsseldorf, April 21, 1996, 14.

<sup>27</sup> The Fiscal Code of Germany, Promulgated on 1 October 2002 (Federal Law Gazette [Bundesgesetzblatt] I p, § 69, <[https://www.gesetze-im-internet.de/englisch\\_ao/englisch\\_ao.pdf](https://www.gesetze-im-internet.de/englisch_ao/englisch_ao.pdf)> [28.12.2017].

<sup>28</sup> Private Limited Companies Act of Germany (GmbHG), Published in the Federal Law Gazette III, Index No. 4123-1, §§ 30, 43, <[https://www.gesetze-im-internet.de/englisch\\_gmbhg/englisch\\_gmbhg.pdf](https://www.gesetze-im-internet.de/englisch_gmbhg/englisch_gmbhg.pdf)> [28.12.2017], Stock Corporation Act of Germany (AktG), Published on 6 September 1965 (Federal Law Gazette I, p. 1089), §§ 57, 93, <[https://www.gesetze-im-internet.de/englisch\\_aktg/englisch\\_aktg.pdf](https://www.gesetze-im-internet.de/englisch_aktg/englisch_aktg.pdf)> [07.10.2017].

As far as it turned out, German legislation is quite strict against the company director and gives less chance of maneuver, but it is important that the Supreme Court of Germany has neutralized this strict legislative regulation in some way, and the responsibility of director has been softened to some extent, by which it provides the director's stable activities, even creates the possibility of making risky decisions, which must be appreciated positively. It is generally known that in business instant and risky decisions are made by the director. If the manager is stuck in a strict legislative regulation, he/she will lose managerial independence, which negatively affects the business success.

## 2.4. Austria

According to the Austrian legislation, generally, the director and members of the Supervisory Board are not liable to any third party. The manager does not have any legal relations with third parties, and therefore the responsibility of diligence exists only towards the corporation. However, there are a number of exceptions from this general rule, when **Immediate** (so-called „vis-à-vis“) **Liability** to third parties can be held. This can happen for example by submitting derivative action against the director by third parties.<sup>29</sup> In Austria Private Limited Liability Companies<sup>30</sup> are governed by all the board directors, hence for breach of a duty of care, they are fully responsible to the company (not against the shareholders). In the case of bankruptcy proceedings, or failure to perform bankruptcy procedures, the director may be straightly obligated to the creditors. In Austria, the director's responsibility for private limited liability companies cannot be ruled out by the agreement. According to the general practice of the Austrian Supreme Court, it is prohibited between the director and the third party to agree on the exclusion of the right to claim compensation for misconduct. Limitation of liability on the basis of agreement between the company and the manager is considered illegal too.<sup>31</sup> It is also important that the private limited liability company can purchase **Insurance of Responsibility** in favor of the director.<sup>32</sup> The Austrian Supreme Court's position on the personal responsibility of the director should also be mentioned. In particular, in the judgment of January 30, 2017, Ob-84 /16w, the court discussed whether which form of the director's responsibility should be used during the offense of another employee. From the case facts, it turned out that the company ordered its subsidiary enterprise to evaluate and sell own real estate. The director of the management company was sued by a subsidiary company on the basis that he had sold the property of the company at an inappropriate low price. According to the director, one of

---

<sup>29</sup> *Martin K. S.*, Directors' and Officers' (D & O) Liability, Austrian Report, Johannes Kepler University Linz, Vienna, 28.03.2017, 6.

<sup>30</sup> European Model Company Act (EMCA), Austria, School of Business and Social Sciences, Aarhus University, 22.02.2018, <<http://law.au.dk/en/research/projects/european-model-company-act-emca/national-companies-acts-of-eu-member-states/austria/>> [06.10.2017].

<sup>31</sup> *Unanyants-Jackson E., Wilson S. (ed.)*, Directors' Liability Discharge Proposals: The Implications for Shareholders, Manifest Information Services Ltd, Witham (UK), 2008, 12.

<sup>32</sup> *Huber P., Trenkwalder J., Guyot C., Goffin J. F., Salihovic-Whalen n., Rhodes R., Savov V., Bangachev A., Glück U., Famira G., Rodwell H., Isnard J., Schepke j., Kircsi A., Cavasola P., Leclère J., Lorente E., Tarlavski R., Ali Hyder A., Ewing B., Allbless E., Greszta D., Caldeira J., Popescu H., Engel I., Agayan E., Petrikic R., Gerrard F., Starkova P., Lunder A., Peña C., Albers M., Jenny D., Cagienard M., Fitzpatrick J., Yalçın D., Conlon G., O'Connor J., Hearnden B., Mendelssohn M.*, Duties & Responsibilities of Directors, CMS Legal Services EEIG, Third Edition, Frankfurt, 2015, 7, 8.

the employees of the company made mistakes (while assessing real estate) and the director should not be responsible for his mistakes; Besides, the main company employees were unable to detect and prevent this problem. However, during hearing the case the court denied both allegations. According to the court, the managing director was responsible for the effective supervision of the staff. The director should not be liable for the misconduct of staff members only if he/she receives all reasonable measures to reveal and supervise such employees. Though in this particular case, the managing director was a real estate expert, who personally acquainted with the property assessment process and could easily identify the erroneous mistake (namely, not considering the Lease Income Report). According to the court comment, when the director leads the company's audit process and has a full opportunity to reveal the mistake of the employees, the director is personally responsible for the consequences of this error, despite the fact of not completing the audit individually.<sup>33</sup>

It appears from the court's decision that it is attempted in Austria to widely establish more or less new institution for this country (so-called, **Business Judgment Rule**), which on the one hand, provides the manager's protection during entrepreneurial decision making (the director is separated from the liability), but on the other hand, business judgment rule sets the director's responsibility, while being aware of a particular field and having effective levers to control or change the company employees' actions, but does not act so. At this time, the manager is personally responsible towards the company for the breach of service contract obligations, which caused the damage. Hence the conclusion is derived that the court's judicial practice predominantly increases the standard of the director's responsibility, which is of course in the interest of creditors and market stability.

## 2.5. Belgium

The regulatory norms of the company director's responsibility in Belgium are found in the articles 527, 528, and 530 of the Companies Act of Belgium, according to which the director is responsible for: violation of managerial liability (527); violation of the company's charter (528); such a breach, which led the company to bankruptcy (530). Under the current legislation, the director is jointly and fully responsible through the company or third parties.<sup>34</sup> However, it should be said that article 527 of the Companies Act must not be interpreted as a general responsibility. On the contrary, from the essence of this norm it seems that the manager's responsibility is individual, i.e. the director shall be liable only for the misconduct committed by him/her; namely for own actions in group misconduct (when identifying the scope of the director's action is possible). To the individual responsibility also indicates the fact that, pursuant to article 527 of the Companies Act, the company has the right to bring a claim directly against the director.<sup>35</sup>

---

<sup>33</sup> *Hanschitz K.*, Liability of Managing Directors of a GmbH Reduced by Contributory Negligence of Staff?, Knoetzl, 2017, <<http://www.knoetzl.com/news/liability-managing-directors-gmbh-reduced-contributory-negligence-staff/>> [06.10.2017].

<sup>34</sup> *Pierre Demolin P., Materne J., De Sart D.*, The Directors' Liability under Belgian Company Law and Financial Law, 19.07.2012, <<http://www.dbblaw.eu/en/news/the-directors-liability-under-belgian-company-law-and-financ>> [06.10.2017].

<sup>35</sup> *Balfroid C.*, Liabilities of the Members of the Board of Directors of Capital Companies Under Turkish and Belgian Laws, ADMD Law Office, 2012, <<http://www.admdlaw.com/liabilities-of-the-members-of-the-board-of-directors-of-capital-companies/#.W2IEfdIzaHs>> [12.12.2017].

Generally, three main grounds for civil responsibility against the company director are allocated: 1. misconduct, 2. existing damage, 3. casual link between them. Besides, according to the acting legislation, it is permissible to disclose the corporation director's identification data, unlike the shareholder's data (whose disclosure is lawful only during annual report or drafting different notary documents).<sup>36</sup> Revealing the director's identification info, especially at a time when the company faces financial and managerial problems as a result of his/her actions, normally creates grounds for the director's liability. Data declaration has a preventive effect on the manager's decisions and actions; namely, the director is forced to strictly protect the fiduciary duty. Unless at least his or her weakened reputation will be known to the business sector, reliance and interest towards the director will be reduced (including, from present and future employers), that is connected to negative financial outcomes. As regards the court's dependence on the company director's responsibility, here the decision of the Belgian Supreme Court (*Axtron Group NV v. Tax Administration of Belgium C.12.0445.N*) is important, which shares the approach of the Belgian legislation in relation to the director's responsibilities. According to case circumstances, one of the Belgian company „Axtron Group NV“ bankrupted in 2006, and its directors failed to pay the company's accumulated taxes during 30 months, despite the fact that the company continued its activities and provided salaries for the staff. The Belgian Tax Authority suited against the director based on article 530.§1 of the Companies Act. In 2012 the Belgian Court of Appeal satisfied the suit of the tax authority, which the company applied to the Belgian Supreme Court, but the Supreme Court has affirmed this decision. Following the respondent (the company directors' explanation), the claim of the tax authority should not be submitted directly against them (personally) but against the company. According to them, the tax authority tried to get the debt during the company's bankruptcy process, though it had to wait until all the company's assets and debt were identified. The directors explained that the tax authority could reimburse only after ending the company's bankruptcy proceedings. The Supreme Court rejected all the arguments of the directors and ordered them to pay the company's current debt to the tax authority. In regard to the directors' first argument, the court explained that the directors' constant denial caused an individual damage to the tax authority and, as far as creditor's **group damage** did not exist, the tax authority (as an individual creditor) was granted the right to appeal to the court against the directors.<sup>37</sup>

Consequently, it becomes clear that the appellate and supreme courts' such position strengthens a concrete approach in Belgium; which means that the director of limited liability company is personally and fully responsible for all the company's unpaid tax arrears, and at the same time, debt towards the tax authority may be paid even during the bankruptcy procedure.

---

<sup>36</sup> Guide to Going Global Corporate, Full handbook, DLA Piper, Belgium, 2017, 64, <[www.dlapiperintelligence.com/goingglobal](http://www.dlapiperintelligence.com/goingglobal)> [12.12.2017].

<sup>37</sup> *Bonne M., Swinnen T.*, Piercing Corporate Veil: Directors Personally and Fully Liable For Unpaid Corporate Withholding Taxes While Bankruptcy Procedures Not Yet Final, LexGo Network, 25/11/2013, <<https://www.lexgo.be/en/papers/commercial-company-law/corporate-law/piercing-corporate-veil-directors-personally-and-fully-liable-for-unpaid-corporate-withholding-taxes-while-bankruptcy-procedures-not-yet-final,83398.html>> [12.12.2017].

## 2.6. The Czech Republic

The company director in the Czech Republic has exclusive competences on the company's business decisions. As a rule, the director is responsible to the company straightly, but in some cases, the manager is also liable towards creditors and investors. In the Czech Republic acting regulation is similar to German legislation, according to which the shadow director, i.e. person who has a substantial effect on the company (based on the agreement, on separate interests or other grounds), is responsible with the same volume as the company director.<sup>38</sup> The manager is liable to creditors in cases when the registered capital of the company changes (for example, for misconducts made during the changing of the company's organizational-legal form or during company merger).<sup>39</sup> The regulatory legislation on the corporate director's responsibility in the Czech Republic has modified significantly since January 1, 2014, when the Act on Entrepreneurial Corporations came into effect. This transformation, along with others, has affected the internal structure of corporations, also the rights and duties of the board members (including the director's duties). The manager's obligations are, as well, defined by a number of statutory acts, according to which the director should act in accordance with the company's best interests, and in case of breach of the obligation, should bear the burden of proof (that he or she has acted in favor of the company). The director is responsible for the breach of contractual obligations, which is called an **Objective Responsibility**. Under the Czech tax legislation, the company head is responsible for timely registration of the company taxes, completing and accurately submitting the declaration.<sup>40</sup> Generally, the company manager is not required to be an expert in all fields, but the director's **duty of care** also means to identify the problem quickly and determine which specialist is needed to settle this problem. The Supreme Court of the Czech Republic shared this standpoint during one of the cases. The court explained that a member of the board of the joint stock company is not required to own a variety of technical education, but members must have a fundamental knowledge to predict the expected threat and exclude its impact on the company. According to the court, the obligation of **diligence** also includes the board member's duty to reveal when is necessary to obtain technical assistance from the qualified person and use this assistance.<sup>41</sup>

Obviously, after substantial changes of corporate law in the Czech Republic in 2014, regulations on the director's responsibility has further expanded, refined and even toughened, which could partly be

---

<sup>38</sup> *Allen & Overy*, Corporate Governance in Central and Eastern Europe, Allen & Overy LLP, Bratislava., 2010, 28, <<http://www.allenoverly.com/SiteCollectionDocuments/Corporate%20governance%20in%20CEE.pdf>> [14.12.2017].

<sup>39</sup> *Ibid* 29.

<sup>40</sup> *Huber P., Trenkwalder J., Guyot C., Goffin J. F., Salihovic-Whalen n., Rhodes R., Savov V., Bangachev A., Glück U., Famira G., Rodwell H., Isnard J., Schepke j., Kircsi A., Cavasola P., Leclère J., Lorente E., Tarlavski R., Ali Hyder A., Ewing B., Allbless E., Greszta D., Caldeira J., Popescu H., Engel I., Agayan E., Petrikic R., Gerrard F., Starkova P., Lunder A., Peña C., Albers M., Jenny D., Cagienard M., Fitzpatrick J., Yalçın D., Conlon G., O'Connor J., Hearnden B., Mendelssohn M.*, Duties & Responsibilities of Directors, CMS Legal Services EEIG, 3<sup>rd</sup> Edition, Frankfurt, 2015, 38.

<sup>41</sup> R. N. against the Judgment of the High Court in Prague dated 29 June 2006, 4 To 41/2006, Decision of the Supreme Court of the CR, Tdo 1224/2006, <<http://kraken.slv.cz/5Tdo1224/2006>> [29.12.2017].

linked to the court's decision taken eight years before the reform. I.e. it can be said that this decision is one of the preconditions of the mentioned reform. Herewith it should be noted that today in determining the director's responsibility, dispositive norms are still important, which are essential for effective business decisions.

## 2.7. Great Britain

In Europe, together with regulatory severity, another trend has also spread, which implies increased international cooperation of supervisory institutions. For many companies and their directors, **Foreign Regulations** are risky, i.e. defining their liability standards not by intra-national norms, but by international rules, that are actively used on the market.<sup>42</sup> It is obvious that such an approach of the companies is a part of their defensive activities, which in relation to the foreign regulation, gives preference to national legislative norms (to legislation better known). Many legal systems, including English one, recognize so-called **Blue Sky Defense**, which means specifying the director's responsibility. In particular, if the director believes (and asserts) that he/she has acted in favor of the company interests, which has enabled him or her to increase earnings, the director may not be liable even in case of some damages. The responsibility will occur only if the director knew clearly that the company was insolvent, which resulted in its liquidation. In 2013, the Department for Business, Innovation & Skills (BIS) developed recommendations for more transparency of British companies, but these recommendations were abolished in 2014, as they provided to increase the director's personal responsibility. Hereby it is also noteworthy that the director has an obligation of loyalty towards the company only and not to the shareholders.

In Britain, such an approach has been widely promoted by the Supreme Court's decision in the case of *Percival vs. Wright*, [1902] 2C 421. According to the case circumstances, Mr. Percival owned a £ 10 value of shares that were not transferred to the stock market and could be sold only with the consent of the company director. He offered the company shareholders to buy shares for 12 Euros (the price determined by an independent expert). The company director-Mr. Wright together with two other directors, bought the shares at the same price, after which Mr. Percival learned that the new owners of the shares were negotiating with others and intended to sell the shares of the company at price higher than 12 Euros. Because of this, Mr. Percival (who was arguing of breaching the fiduciary duty) filed a lawsuit in the court. According to the court, in this case, there was no unfair deal, as the shareholder addressed the director and offered to buy the share at the desired price, which was in fact implemented. The fiduciary duty was not violated, and at the same time, the director was obliged directly to the company and not towards the individual shareholders. The judge also did not accept the plaintiff's position (as if the transaction had an additional negative impact on the company in a relationship with third parties).<sup>43</sup> This decision later had its

---

<sup>42</sup> *Barker R., Barlow N., Ben Salah H., Durand-Barthez P., Goutière P., Hebblethwaite R., Mattsson L., Merrill G., Pryce M., Richez-Baum B.*, Guide to Directors' Duties and Liabilities, The European Voice of Directors (ECODA), AIG, Brussels, 2015, 13.

<sup>43</sup> *Percival v. Wright*, [1902] 2 Ch 401, Directors' Duties in the United Kingdom, High Court of Justice Cases, United Kingdom Company Case Law, World Heritage Encyclopedia, <[http://www.worldlibrary.org/articles/eng/percival\\_v\\_wright](http://www.worldlibrary.org/articles/eng/percival_v_wright)> [04.12.2017].

own expression in English legislation, namely, in article 170 of the Companies Act of 2006, where the special term was recorded<sup>44</sup> (which has confirmed the court's decision).

Hence, it is understood that in the determination of the director's responsibility, the British Corporate Law has been cautious and keeps prudence. On the one hand, it tries to protect the interests of the company creditors and create effective means to support them, while on the other hand, (when determining the director's responsibility), the Law denies rigid approach and prefers more special adjustment. Surely, the court's abovementioned decision is a good example of this trend.

## 2.8. France

In France, the company director should act in the best interests of the company. While discussing the manager's responsibility in the French courts, it is usually acclaimed that the director should lead the company's activities properly, with due diligence, also the head must follow the norms of conflict of interest. Like the UK, Austria, Estonia and the Czech Republic, the corporate director in France is liable forward the company (and not to individual shareholders), except some minor cases. In the event of violations of liabilities, the director shall carry the civil liability within the scope of the damage. All members of the board in Joint Stock Company jointly and severally bear the responsibility for damages. The responsibility of the director may be raised by the company's representatives (on behalf of the company); in special cases, by the shareholder (who has suffered a personal loss), and by the third persons too, who were directly damaged by the manager's actions. In the case of setting collective liability, the responsibility of a particular director may be excluded when proving that he/she opposed to a joint decision. This position was reflected in the decision of the Supreme Court of France in 2010, where the court summarized the director's responsibility and noted that the decision made jointly by the board of the Public Limited Company, is essentially an individual misdemeanor of the director, who straightly participated in decision making. At this time, all members of the board are responsible, if any of them does not prove that he/she was acting in a cautious manner and opposed to such a decision.<sup>45</sup> It is also noteworthy that under the current legislation, the French companies are entitled to ensure the director's responsibility towards third parties for the actions performed during official activities.<sup>46</sup> Ordinarily, in France, the director's personal liability is a common practice.<sup>47</sup>

The French corporate legislation and court approach towards the joint liability of the director are progressive, as the manager will not immediately be responsible for the board's joint decision (i.e. for the decision of others). The company head has an opportunity to prove, that he/she was distanced from and

---

<sup>44</sup> Companies Act 2006 of the United Kingdom, (C.46), Part 10, Chapter 2, Section 170, The National Archives, <<https://www.legislation.gov.uk/ukpga/2006/46/section/170>> [04.12.2017].

<sup>45</sup> The Deposit Guarantee Fund (FGD) v. Caribbean Society of Consulting and Auditing, Judgment № 405 of 30 March 2010 (08-17.841), Court of Cassation of France, Commercial, Financial and Economic Chamber, 304.

<sup>46</sup> A Cross-border Guide for Group Company Directors, Linklaters, 2017, 17, 18, <<https://www.linklaters.com/en/insights/publications/2017/may/cross-border-guide-for-group-company-directors>> [04.12.2017].

<sup>47</sup> Barker R., Barlow N., Ben Salah H., Durand-Barthez P., Goutière P., Hebblethwaite R., Mattsson L., Merrill G., Pryce M., Richez-Baum B., Guide to Directors' Duties and Liabilities, The European Voice of Directors (ECODA), AIG, Brussels, 2015, 20.

opposed the decision, which led to the company's damage. It should be specified, that a term "Dissociate" includes both passive and active actions (for example, providing the audit committee of the company with proper information, addressing the tax authorities, initiating the general meeting, etc; in other words, taking all the measures which could suspend or exclude the director's decision damaging the company). Of course, this standard does not provide the director with a chance to escape from the responsibility, if not proving suitably that he or she has really separated from such decision.

## 2.9. Italy

In Italy, a general standard is also established, by which the company chief should act diligently in the best interests of the company. Here according to the widespread norm, if the board exists, one of the directors cannot make independent decisions and needs the **Full Consent** from the board. The manager's obligations are differed according to addresses, which means, that the Italian legislation separately regulates the director's duties towards the company creditors, individual shareholders, and third parties. Like the French model, the managers in Italy are jointly responsible for the obligations. The director's responsibility shall arise only during the violation of the legislation and the statute if it causes specific damage.<sup>48</sup> The public companies do not have the right to restrict the director's responsibility when this latter is the personal recipient of this responsibility; also the minority shareholders' veto cannot be used to solve this question (in accordance with article 2392 of the Civil Code of Italy).<sup>49</sup> By the article 1891 of the Civil Code, the company may pay an insurance premium to cover the risk of violation of the director's fiduciary duty; although in practice insurance is rarely used when suing the company. Insurance of the manager's liability is more commonly used when creditors or individual shareholders sue straight against the director.<sup>50</sup> The companies can have funds for the director's responsibility insurance. After satisfying third parties, the fund must be supplemented by the head, whose guilt has been proved to be damaging.<sup>51</sup>

In 2016 the Supreme Court of Italy discussed the basis of the director's responsibility and explained that according to Corporative Reform of 2003, and from the articles 2381 and 2932 of the Civil Code of Italy, the manager (without special executive authority) cannot indicate on liability restriction, if he or she had limited competence. Following to the Court, when the director has no special education in a specific field and makes managerial decisions according to information given by other specialists or hired outsources, the director should check the accuracy, quality, and reliability of the provided information. If the manager does not behave this way, his/her action is considered to be a breach of fiduciary duty and leads to responsibility. This concrete case concerned the dispute between a

---

<sup>48</sup> Civil Code of Italy, (approved by Royal Decree of March 16, 1942, No. 262, and as amended by Decree No. 7 December 2016, No. 291), Articles 2381, 2392, <[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=-430550](http://www.wipo.int/wipolex/en/text.jsp?file_id=-430550)> [04.12.2017].

<sup>49</sup> *Tina A.*, The exoneration of the responsibility of the administrators of S.P.A., Giuffrè, University of Milan, Faculty of Law, Studies of private law, Milan, 2008, 87.

<sup>50</sup> *Gerner-Beurele C., Peach P., Philipp Schuster E.*, Study on Directors' Duties and Liability, Prepared for the European Commission DG Market, (Department of Law, The London School of Economics and Political Science), London, 2014, 475.

<sup>51</sup> A Cross-border Guide for Group Company Directors, Linklaters, 2017, 37-38, <<https://www.linklaters.com/en/insights/publications/2017/may/cross-border-guide-for-group-company-directors>> [04.12.2017].



bankrupt company and its directors. The entity considered that its bankruptcy has been caused by a transaction related to stock capital, which contravened the economic value of the shares and which was a consequence of the directors' decision. JSC's heads argued that the entity's full management was delegated to the chairman of the board and, despite own supervisory activities, they failed to stop the transaction because they had no delegated powers. The decisions of the first and the appellate courts were made in favor of the entity; the court considered the defensive discussion of the directors as "Acknowledging the Offense." The court examined that they acted together with the Chairman of the board. The court slightly reduced the compensation amount required by the company and imposed it on the directors. The Italian Supreme Court shared the directors' position on re-examining the case and abolished the decision of the Appellate Court. The Supreme Court has pointed out that the non-executive director's responsibility cannot be based on the general violation of the supervision duties and can not be considered as an objective responsibility. The court relied its decision on 2381.§6 and 2932.§2 of the Civil Code of Italy, according to which the non-executive director is responsible for the unlawful actions of another manager (namely, the Acting Director) only if he/she knew the fact, which needed intervention and would allow the non-executive director to make an informed decision. According to the court, by setting a different approach, the general obligation of supervision would have been carried out, which had already been annulled by the 2003 reform. In other words, it would contradict to current legislation.<sup>52</sup>

This decision of the court relates to the Corporation Reform of 2003, after which the standards of the director's liability have significantly changed. Before the reform, according to article 2932.§2 of the Civil Code of Italy, all heads (including a director with no delegated powers) were obliged to exercise general supervision (by which they were jointly responsible for the company damage, caused by unsuccessful control). After the reform of 2003, these directors have imposed only the duty of making informed decisions. Although this reform can be considered as partially weakening the director's responsibility, it should still be noted that according to the new edition of the 2381<sup>st</sup> article of the Civil Code of Italy, the manager should personally get the necessary information, as well as wait for appropriate data from the third parties. The main essence of the 2003 reform through the non-executive director is to alleviate his/her liability, but not exclude it. Finally, it turns out that due to acting legislation the director does not remain passive.

## 2.10. Luxembourg

The company director in Luxembourg must implement full and efficient control of the enterprise through a daily examination of its activities. The head within its competence is responsible for the company's long-term strategy, its implementation, and supervision, also for informing the shareholders. The manager has a duty of care, which means that he/she must have sufficient knowledge and experience of management, should take into account the consequences of own decisions and the **Best Corporate**

---

<sup>52</sup> *Lombardini L.*, Italy: The Liability of Non-Executive Directors, Nctm Studio Legale, Last Updated 26.01.2018, <http://www.mondaq.com/italy/x/657412/Directors+Officers/The+Liability+Of+NonExecutive+Directors> [03.01.2018].

**Interests** of the company. However, it is noteworthy that the legislation of Luxembourg is silent and does not specify what can be considered as the best corporate interests.<sup>53</sup> This legislative vacuum has been partially filled by the Regional Court of Luxembourg by a decision of 2015 when the court discussed this concern and clarified that the best corporate interest is a variable concept; its exact definition depends on the nature and activities of the particular company. For some companies, the best corporate interest coincides with the shareholders' interests of the same company; while for other entities this notion includes the interest of the juridical person, also the interests of the shareholders, even the interests of the employers and creditors.<sup>54</sup> So it seems that this concept is individually defined each time. It is also important that the manager of the companies (operating on the Luxembourg Stock Exchange), are bound by specific restrictions of **Act on Transparency, Act on Prohibition of Market Power Abuse**, as well as on the basis of the **Stock Exchange Regulations and Principles of Luxembourg**. According to the second principle of the Stock Exchange, the **Listing Company's** board is bound to a fiduciary duty towards the company shareholders and should act on their best interests.<sup>55</sup> In Luxembourg, as well as in other countries, the directors jointly and severally bear the responsibility for the damage and **Managerial Misconduct**. The head may be subjected to civil, as well as to criminal liability. Like French and Italian legislation, corporate legislation of Luxembourg also provides insurance of the director's liability.<sup>56</sup> The Company just like third parties (including a **Shareholder with Legitimate Interest** and the creditor) can file a suit against the director. It should be considered that in the legislation of Luxembourg the preconditions of minority shareholders' suits against the director have increased recently.

It is evident that the best corporate interest is often connected to the company director; and broad, narrow or other irrelevant explanation of this concept puts the manager's responsibility on the agenda. It should be mentioned that the court's approach to the need for individual explanation of the term is timely and right, but it would be more appropriate to clarify this concept in the legislation as far as possible, thus avoiding quick appeals to the court (because as it seems arguing parties are satisfied only with the court's definition of this notion). Appeal to the court (even through **Indisputable Trial**, demanding only the interpretation of the term itself) is usually associated with additional costs, time and sometimes damages the company director because the company head is baselessly deprived of confidence, thus humiliating reputation; surely, this can actually cause a separate dispute. Considering this, it should be underlined that the legislator must maximally reduce the preconditions of the dispute based on abstract definitions, especially towards the director's responsibility in the company.

---

<sup>53</sup> *Calkoen W. J. L.*, The Corporate Governance Review, Seventh Edition, The Law Reviews, Law Business Research Ltd, London, 2017, 257.

<sup>54</sup> *Hellas Telecommunications (Luxembourg) II S.C.A. v. Hellas Telecommunications s.à r.l.*, Commercial Ruling XV №1648 / 2015, The Fifteenth Division of The District Court Of Luxembourg, 34.

<sup>55</sup> *Calkoen W. J. L.*, The Corporate Governance Review, 7<sup>th</sup> Edition, The Law Reviews, Law Business Research Ltd, London, 2017, 259.

<sup>56</sup> A Cross-border Guide for Group Company Directors, Linklaters, 2017, 45, 56, <<https://www.linklaters.com/en/insights/publications/2017/may/cross-border-guide-for-group-company-directors>> [04.12.2017].

### 3. Conclusion

Again must be said that the company director's responsibility is a fundamental element of enterprise management that ensures not only their successful operation in different spheres but also favors the economic strengths of the states. To illustrate this standpoint, some indicators of the above-discussed countries can be brought in various international research and ratings. In particular, according to **2015 data of the World Economic Forum**, Germany, Great Britain and Luxembourg were among the states with the most competitive economies in Europe that year.<sup>57</sup> The leadership of Germany, along with many other preconditions, has been caused by the strict liability of the director and relatively "Soft" judicial practice, which balance each other and contribute to the development of entrepreneurship.

One of the conditions for the economic success of the UK is, of course, a flexible corporate law that restricts entrepreneurs to a lesser extent, but maintains effective standards of the company manager's responsibility. The economic strength of Luxembourg is directly connected to "Rational Arrangement" of the director's liability which gives them greater freedom of acting and taking risks. (Here is implied, the general norms of corporate legislation of Luxembourg towards the director's liability, which leave a wide area for interpretation). However, it must be said that the uniform practice of the court should be a strong regulatory framework for soft legislative adjustment, which directly reflects the stability of entrepreneurship.

According to the **2017 data of the Economic Freedom Index**, firmness and stability of the French economy are caused by strengthening entrepreneurial activity, protection of property rights and effective regulations. Import-Export of France accounts for 61% of GDP of the country.<sup>58</sup> For such results, the French economy is also grateful to corporate legislation. In its turn, the court's role in determining the manager's liability is very important, for example, a decision of the Supreme Court of France of 2010 which set the basis for the responsibility dismissal, defined preconditions for the reasoning of "Rightness" and strengthened the positions of the director.

By the **Official Report of the EU Commission for Estonia of 2017**, the economic growth of this state stopped by 1.4 % in 2015 and by 1.1% in 2016, although Estonia had some progress in implementing the strategy of entrepreneurship growth. According to the financial soundness indicators, the banking sector of Estonia is stable; the state's capital market has a significant potential for development; despite a little potential of external financing of small and medium enterprises,<sup>59</sup> access to

---

<sup>57</sup> Galvan C., The Top 10 Most Competitive Economies in Europe, World Economic Forum, 30.09.2015, <<https://www.weforum.org/agenda/2015/09/the-top-10-most-competitive-economies-in-europe/>> [05.01.2018].

<sup>58</sup> Miller T., Kim A. B., 2017 Index of Economic Freedom, Institute for Economic Freedom, The Heritage Foundation, Washington DC, 2017, 232, 233.

<sup>59</sup> According to the official definition of the Euro Commission, **Small and Medium-sized Enterprises (SMEs)** are the main part of the EU business. See, Internal Market, Industry, Entrepreneurship and SMEs, European Commission, <[http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition\\_en](http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en)> [05.01.2018].

finance is still good in the state.<sup>60</sup> As it was said earlier, entrepreneurial sector of Estonia is developing and the German version of the director's responsibility is being adopted, but gaps of corporate norms (related to the liability) are still problematic in a transitional period. Accordingly, this problem needs a consistent solution (by making legislative amendments and by implementing proper judicial practice), which is a matter of time.

According to the **2017 World Entrepreneur Index**, Italy successfully manufactures innovative products, in which it outruns one of the leading countries (Sweden); However, Italy has some difficulties in Human Resources and Manufacturing Growth indicators. For example, in the Global Entrepreneurship Index of 2008, rating score of Italy has decreased by 20 units.<sup>61</sup> As it was previously mentioned, in Italy regulating norms of the director's liability has weakened by the corporate law reform of 2003. This caused individual risks against the stability of the companies. It is good that the court practice balances this legislative deficiency, though only when the dispute is heard by the court. Sadly, this is not enough, as if arbitrator discusses the dispute, frailty of the manager's liability may be approved by procedural norms and negative practice may start. This is quite realistic, because in the arbitration, parties choose which law to apply, and they may use inconsistent corporative rules for dispute resolution. Such agreement of the parties shall be bounding for the arbitrator, which shall determine the form of the head's responsibility based on the defective law.

Respectively to **the Overview of Austria by the Organization for Economic Cooperation and Development (OECD) in 2017**, this state has a stable and rich economy, which is resulted from the 2016 Tax Reform. Nevertheless, it is desirable to rationalize the financial sector.<sup>62</sup> Such condition of the economy is, of course, resulted from the renewal of corporate legislation, within which the business judgment rule was introduced and it gave the company director a wide range of actions; also, the manager was freed from the extra-legal framework, which hindered the profit of the company.

Following to **2017 data of Eurostat**, France has the highest value index in a microenterprise; the Netherlands has the same indicator-in small enterprise, while Belgium owns this mark in middle and large enterprises together.<sup>63</sup> **According to OECD information** of the same year, 9 members of this organization were observed in the growing trend of incorporation, including Belgium.<sup>64</sup> The success of Belgium in these indicators is closely linked to the stability of the Companies Act and tax legislation, as well as to the improvement of the director's liability standard.

---

<sup>60</sup> Country Report: Estonia 2017, European Commission, Commission Staff Working Document, 2017 European Semester: Assessment of Progress on Structural Reforms, Prevention, and Correction of Macroeconomic Imbalances, and Results of In-depth Reviews under Regulation (EU) No 1176/2011, Brussels, 2017, 6, 16-17.

<sup>61</sup> *Ács Z. J., Szerb L., Autio E., Lloyd A.*, The Global Entrepreneurship Index 2017, The Global Entrepreneurship and Development Institute (GEDI), Washington DC, 2017, 132, 142.

<sup>62</sup> OECD Economic Surveys, Austria, Overview, The Survey is published on the responsibility of the Economic and Development Review Committee (EDRC) of the OECD, Vienna, 2017, 1, 23.

<sup>63</sup> Entrepreneurship - statistical indicators, Eurostat, Data extracted in June 2017, <[http://ec.europa.eu/eurostat/statistics-explained/index.php/Entrepreneurship\\_-\\_statistical\\_indicators](http://ec.europa.eu/eurostat/statistics-explained/index.php/Entrepreneurship_-_statistical_indicators)> [08.01.2018].

<sup>64</sup> OECD Data show a pick-up in Entrepreneurial Activity, OECD, <<http://www.oecd.org/newsroom/oecd-data-show-pick-up-in-entrepreneurial-activity.htm>> [08.01.2018]

By the **data of Economic Freedom Index in 2017**, rationalization of Business Start-ups and various reforms in the Czech Republic have contributed to the growth of entrepreneurship, the openness of the state to the international market, attraction of investments and better international trade. The financial sector is stable, banks have a good capitalization.<sup>65</sup> It is necessary to note that the Corporate Law Reform of the Czech Republic in 2014, also improvement of the company manager's responsibility, has developed the economy and as far as it seems, these efforts are most successful in the banking and financial sectors.

According to **official data of the National Statistics Office of Georgia (Geostat)**, in the third quarter of 2017, the Direct Foreign Investments in Georgia amounted to 594 million US dollars, which is second highest indicator since 2005 (as in 2014 foreign investments compiled top amount-729.4 million dollars).<sup>66</sup> At first glance, an increase of investments should indicate entrepreneurial stability of the Georgian business environment, and confidence towards it, but here it is essential to clarify, how proportionally are these investments divided between large, medium and small enterprises. Unfortunately, the benefits of some large investments<sup>67</sup> in Georgia have not spread to small and medium-sized businesses and such enterprises are mostly using national financial aids (though, with limitations). As for the connection of the director's liability to this process, it is obvious by itself. In Georgia practical standards of the manager selection, appointment, activities, and supervision in large companies are significantly higher, than in small-sized companies. Of course, large enterprises also have difficulties with the manager's responsibility, but as some of them are well known on the market, they try to establish effective management standards, or at least to hide managerial flaws. While in small companies, the director is often in conflicts of interest with the entity, gets wide competences, which arises his/her personal responsibility; although the cases of appealing to court are very few.

Consequently, in order to improve the director's responsibility in Georgian companies, it is necessary for these firms to focus more on the managerial activities. Of course, the Law on Entrepreneurs also needs improvement, (its new project has already been drafted and must be passed to the parliamentary discussion). However, it is obvious, that the legislative amendments are the role of the parliament, which cannot be enough to fully improve the director's responsibility standard and to implement it in practice. In order to achieve this goal, there is a need for more activity of entrepreneurs and other interested persons, without which judicial practice will not develop.

---

<sup>65</sup> Miller T., Kim A. B., 2017 Index of Economic Freedom, Institute for Economic Freedom, The Heritage Foundation, Washington DC, 2017, 224, 225.

<sup>66</sup> Direct Foreign Investments In 2005-2017, National Statistics Office of Georgia (Geostat), <[http://www.geostat.ge/?action=page&p\\_id=2230&lang=geo](http://www.geostat.ge/?action=page&p_id=2230&lang=geo)> [08.01.2018].

<sup>67</sup> This is confirmed by the 2017 statistics of the National Statistics Office of Georgia regarding Direct Foreign Investments. From the data it becomes clear that the main recipients of these investments are large-scale enterprises, which are well known on the Georgian market (In particular, Joint Stock Companies: Energo Pro Georgia, Nenskra Hydro, BJO Group, Metro Avrasia Georgia; Limited Liability Companies: Geocell, Magticom, Silknet, Caucasus Online, IDS Borjomi Georgia, Alma, RMG Gold, Georgian Manganese, Toyota Caucasus and others.),  
See, Top 50 Companies in 2017 According to the Direct Foreign Investments, National Statistics Office of Georgia (Geostat), <[http://geostat.ge/cms/site\\_images/\\_files/georgian/top%2050%20companies%20by%20FDI.pdf](http://geostat.ge/cms/site_images/_files/georgian/top%2050%20companies%20by%20FDI.pdf)> [10.08.2018].

## Bibliography

1. Civil Code of Germany (BGB), Promulgated on 2 January 2002 (Federal Law Gazette [Bundesgesetzblatt] I page 42, 2909; 2003 I page 738), <[https://www.gesetze-im-internet.de/englisch\\_bgb/englisch\\_bgb.pdf](https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf)> [07.10.2017].
2. Civil Code of Italy, (approved by Royal Decree of March 16, 1942, No. 262, and as amended by Decree No. 7 December 2016, No. 291), Articles 2381, 2392, <[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=430550](http://www.wipo.int/wipolex/en/text.jsp?file_id=430550)> [04.12.2017].
3. Commercial Code of Germany (HGB), Commercial Code in the revised version published in the Bundesgesetzblatt (BGBl., Federal Law Gazette), <[http://www.gesetze-im-internet.de/englisch\\_hgb/englisch\\_hgb.pdf](http://www.gesetze-im-internet.de/englisch_hgb/englisch_hgb.pdf)> [07.10.2017].
4. Commercial Code of Estonia, Passed 15.02.1995, Entry into force 01.09.1995, Type: Act, Issuer: Riigikogu, (consolidated text of August 1, 2016), 26-28, 355, § 1671 and § 2892, <[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=424794](http://www.wipo.int/wipolex/en/text.jsp?file_id=424794)> [04.10.2017], [06.10.2017].
5. Companies Act 2006 of the United Kingdom, (C.46), Part 10, Chapter 2, Section 170, The National Archives, <<https://www.legislation.gov.uk/ukpga/2006/46/section/170>> [04.12.2017].
6. General Part of the Civil Code Act of Estonia, Passed 27.03.2002, Entry into force 01.07.2002, Type: Act, Issuer: Riigikogu, 35, § 37(1), 216, <<https://www.riigiteataja.ee/en/eli/530102013019/consolide>> [04.10.2017], [06.10.2017].
7. Law of Obligations Act of Estonia, Passed 26.09.2011, Entry into force 01.07.2002, Type: Act, Issuer: Riigikogu, 81, 487, <<https://www.riigiteataja.ee/en/eli/506112013011/consolide>> [05.10.2017].
8. Private Limited Companies Act of Germany (GmbHG), Act on Limited Liability Companies, as consolidated and published in the Federal Law Gazette III, Index No. 4123-1, §§ 30, 43., <[https://www.gesetze-im-internet.de/englisch\\_gmbhg/englisch\\_gmbhg.pdf](https://www.gesetze-im-internet.de/englisch_gmbhg/englisch_gmbhg.pdf)> [07.10.2017].
9. Stock Corporation Act of Germany (AktG), Published on 6 September 1965 (Federal Law Gazette I, p. 1089), §§57, 93, <[https://www.gesetze-im-internet.de/englisch\\_aktg/englisch\\_aktg.pdf](https://www.gesetze-im-internet.de/englisch_aktg/englisch_aktg.pdf)> [07.10.2017].
10. The Fiscal Code of Germany, Promulgated on 1 October 2002 (Federal Law Gazette [Bundesgesetzblatt] I p, § 69, <[https://www.gesetze-im-internet.de/englisch\\_ao/englisch\\_ao.pdf](https://www.gesetze-im-internet.de/englisch_ao/englisch_ao.pdf)> [28.12.2017].
11. *Maisuradze D.*, Corporate-legal Defensive Measures During the Reorganization of Capitalist Societies (Comparative-legal Research Preferably on the Example of Delaware State and Georgian Corporate Law), Dissertation Thesis to Earn the Academic Degree of Doctor of Law, Ivane Javakhishvili Tbilisi State University, Faculty of Law, Tbilisi, 2014, 22, (in Georgian).
12. *Maisuradze D.*, For Explanation of Business Judgment Rule, Journal of Law №1-2, Tbilisi, 2010, 116, (in Georgian).
13. *Chanturia L.*, Corporate Management and the Managers' Responsibility in Corporate Law, Tbilisi, 2006, 29, 103, 193, 195, (in Georgian).
14. *Kiria U.*, Management Bodies of Capital Societies and the Managers' Responsibility in Georgia, Ilia State University, Law Clinic, Tbilisi, 2017, <<http://legalclinic.iliauni.edu.ge/kapitaluri-sazogadoebebis-marthvis-ogranoebi-da-khelmdzghvaneltha-pasukhismgeblobis-problemebi-saqarthveloshi/>> [03.01.2018], (in Georgian).
15. <[http://www.geostat.ge/?action=page&p\\_id=2230&lang=geo](http://www.geostat.ge/?action=page&p_id=2230&lang=geo)> [08.01.2018], (in Georgian).
16. Top 50 Companies in 2017 According to Direct Foreign Investments, National Statistics Office of Georgia (Geostat), <[http://geostat.ge/cms/site\\_images/\\_files/georgian/top%2050%20companies%20by%20FDI.pdf](http://geostat.ge/cms/site_images/_files/georgian/top%2050%20companies%20by%20FDI.pdf)> [10.08.2018].
17. The decision of the Chamber of Civil Cases of the Supreme Court of Georgia №11-1158-1104-2014, 6 May 2015, (in Georgian).

18. *Ács Z. J., Szerb L., Autio E., Lloyd A.*, The Global Entrepreneurship Index 2017, The Global Entrepreneurship and Development Institute (GED), Washington DC, 2017, 132, 142.
19. *Baums T.*, Personal Liabilities of Company Directors in German Law, Speech at the Stratford-upon-Avon Conference of the British-German Jurists' Association, Düsseldorf, April 21, 1996, 14.
20. *Barker R., Barlow N., Ben Salah H., Durand-Barthez P., Goutière P., Hebblethwaite R., Mattsson L., Merrill G., Pryce M., Richez-Baum B.*, Guide to Directors' Duties and Liabilities, The European Voice of Directors (ECODA), AIG, Brussels, 2015, 13, 20.
21. *Calkoen W. J. L.*, The Corporate Governance Review, Seventh Edition, The Law Reviews, Law Business Research Ltd, London, 2017, 257, 259.
22. Country Report Estonia 2017, European Commission, Commission Staff Working Document, 2017 European Semester: Assessment of Progress on Structural Reforms, Prevention, and Correction of Macroeconomic Imbalances, and Results of In-depth Reviews under Regulation (EU) No 1176/2011, Brussels, 2017, 6, 16, 17.
23. *Gerner-Beurele C., Peach P., Philipp Schuster E.*, Study on Directors' Duties and Liability, Prepared for the European Commission DG Market, (Department of Law, The London School of Economics and Political Science), London, 2014, 475.
24. *Huber P., Trenkwalder J., Guyot C., Goffin J. F., Butts D., Famira G., Baček R., Rodwell H., Isnard J., Schepke J., Ormai G., Cavasola P., Montijn R., Greszta D., Robinson T., Fitzpatrick J., Cranfield D., Petrikic R., Parker I., Szabo S., Lunder A., Kraljic B., Peña C., Albers M., Wille H., Comboeuf A., Knaul A., Mendelssohn M., Hearnden B.*, Duties and Responsibilities of Directors in Europe, CMS Legal Services EEIG, Frankfurt, 2008, 7, 8, 30, 38.
25. *Martin K. S.*, Directors' and Officers' (D & O) Liability, Austrian Report, Johannes Kepler University Linz, Vienna, 28.03.2017, 6.
26. *Madisson K.*, Duties and Liabilities of Company Directors under German and Estonian Law: a Comparative Analysis, RGSL Research Papers, № 7, Riga, 2012, 4.
27. *Miller T., Kim A. B.*, 2017 Index of Economic Freedom, Institute for Economic Freedom, The Heritage Foundation, Washington DC, 2017, 224, 225, 232, 233.
28. *Sieg O.*, (Consulting Ed.) *Smerdon E.*, Directors' Liability and Indemnification: A Global Guide, Third Edition, Published by Globe Law and business Limited, London, 2016, 119.
29. *Tina A.*, The exoneration of the responsibility of the administrators of S.P.A., Giuffrè, University of Milan, Faculty of Law, Studies of private law, Milan, 2008, 87.
30. *Unanyants-Jackson E.*, Wilson S. (ed.), Directors' Liability Discharge Proposals: The Implications for Shareholders, Manifest Information Services Ltd, Witham (UK), 2008, 12.
31. *Ünsal D., Christopher J. Wright*, Legal Update Corporate, German Federal Supreme Court Revisits Managing Director Fiduciary Duties, GÖRG Partnerschaft von Rechtsanwälten, Berlin, 2013, 2, 124.
32. A Cross-border Guide for Group Company Directors, Linklaters, 2017, 17, 18, 37, 38, 45, 56, <<https://www.linklaters.com/en/insights/publications/2017/may/cross-border-guide-for-group-company-directors>> [04.12.2017].
33. *Allen & Overy*, Corporate Governance in Central and Eastern Europe, Allen & Overy LLP, Bratislava, 2010, 28, 29, <<http://www.allenoverly.com/SiteCollectionDocuments/Corporate%20governance%20in%20CEE.pdf>> [14.12.2017].
34. *Balfroid C.*, Liabilities of the Members of the Board of Directors of Capital Companies Under Turkish and Belgian Laws, ADMD Law Office, 2012., <<http://www.admdlaw.com/liabilities-of-the-members-of-the-board-of-directors-of-capital-companies/#.W2IEfdIzaHs>> [12.12.2017].
35. *Bonne M., Swinnen T.*, Piercing Corporate Veil: Directors Personally and Fully Liable For Unpaid Corporate Withholding Taxes While Bankruptcy Procedures Not Yet Final, LexGo Network, 25/11/2013, <<https://www.lexgo.be/en/papers/commercial-company-law/corporate-law/piercing-corporate-veil-directors->

- personally-and-fully-liable-for-unpaid-corporate-withholding-taxes-while-bankruptcy-procedures-not-yet-final,83398.html> [12.12.2017].
36. Entrepreneurship - statistical indicators, Eurostat, Data extracted in June 2017., <[http://ec.europa.eu/eurostat/statistics-explained/index.php/Entrepreneurship\\_-\\_statistical\\_indicators](http://ec.europa.eu/eurostat/statistics-explained/index.php/Entrepreneurship_-_statistical_indicators)> [08.01.2018].
  37. European Model Company Act (EMCA), Austria, School of Business and Social Sciences, Aarhus University, 22.02.2018, <<http://law.au.dk/en/research/projects/european-model-company-act-emca/national-companies-acts-of-eu-member-states/austria/>> [06.10.2017].
  38. Galvan C., The top 10 most competitive economies in Europe, World Economic Forum, 30.09.2015, <<https://www.weforum.org/agenda/2015/09/the-top-10-most-competitive-economies-in-europe/>> [05.01.2018].
  39. Guide to Going Global Corporate, Full handbook, DLA Piper, Belgium, 2017, 64, <[www.dlapiperintelligence.com/goingglobal](http://www.dlapiperintelligence.com/goingglobal)> [12.12.2017].
  40. Hanschitz K., Liability of Managing Directors of a GmbH Reduced by Contributory Negligence of Staff?, Knoetzl, 2017, <<http://www.knoetzl.com/news/liability-managing-directors-gmbh-reduced-contributory-negligence-staff/>> [06.10.2017].
  41. Internal Market, Industry, Entrepreneurship and SMEs, European Commission, <[http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition\\_en](http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en)> [05.01.2018].
  42. Lombardini L., Italy: The Liability of Non-Executive Directors, Nctm Studio Legale, Last Updated 26.01.2018, <<http://www.mondaq.com/italy/x/657412/Directors+Officers/The+Liability+Of+NonExecutive+Directors>> [03.01.2018].
  43. OECD Data show a pick-up in Entrepreneurial Activity, OECD, <<http://www.oecd.org/newsroom/oecd-data-show-pick-up-in-entrepreneurial-activity.htm>> [08.01.2018].
  44. Pierre Demolin P., Materne J., De Sart D., The Directors' liability under Belgian Company Law and Financial Law, 19.07.2012, <<http://www.dbblaw.eu/en/news/the-directors-liability-under-belgian-company-law-and-finance>> [06.10.2017].
  45. Self-dealing (Definition), Legal Information Institute (LII), Cornell Law School, <<https://www.law.cornell.edu/wex/self-dealing>> [05.10.2017].
  46. R. N. against the Judgment of the High Court in Prague dated 29 June 2006, 4 To 41/2006, Decision of the Supreme Court of the CR, Tdo 1224/2006, <<http://kraken.slv.cz/5Tdo1224/2006>> [29.12.2017].
  47. Percival v. Wright, [1902] 2 Ch 401, Directors' Duties in the United Kingdom, High Court of Justice Cases, United Kingdom Company Case Law, World Heritage Encyclopedia, <[http://www.worldlibrary.org/articles/eng/percival\\_v\\_wright](http://www.worldlibrary.org/articles/eng/percival_v_wright)> [04.12.2017].
  48. The Deposit Guarantee Fund (FGD) v. Caribbean Society of Consulting and Auditing, Judgment № 405 of 30 March 2010 (08-17.841), Court of Cassation of France, Commercial, Financial and Economic Chamber, 304.
  49. Walko v. Kalle Pilt, 3-2-1-41-05 Judgment of the Civil Chamber of the Supreme Court of Estonia of 11 May 2005, RT III 2005, 17, 181, <<https://www.riigiteataja.ee/akt/899418>> [06.10.2017].
  50. Hellas Telecommunications (Luxembourg) II S.C.A. v. Hellas Telecommunications s.à r.l, Commercial Ruling XV №1648 / 2015, The Fifteenth Division Of The District Court Of Luxembourg, 34.
  51. German Federal Supreme Court limits the personal liability of company directors for violations of the Unfair Competition Act, Unfair Competition Law 8, September 2014, Decision of 18 June 2014 (Case ref: I ZR 242/12) of the Federal Supreme Court of Germany, <<http://bcl-ip.com/en/german-federal-supreme-court-limits-the-personal-liability-of-company-directors-for-violations-of-the-unfair-competition-act/>> [26.12.2017].