

Booklet on directors' responsibilities and liabilities

In 2011 law office “Janković, Popović & Mitić” had one of the lead roles in the preparation of the Booklet that was published in December of that year by publishers Forum Media d.o.o. Belgrade. This Booklet detailed the topic of directors' responsibilities and liabilities in light of the current legislation, the whole project being aimed at directly informing the users of the current regulations through interpretation and practical advising, for the purpose of clarifying the general obligations prescribed for commercial companies. Thus the Booklet was prepared as an informative manual to be used in everyday business.

As the Booklet was prepared on the basis of regulations in force at the time of its publication, it is currently being updated in keeping with the amended legal framework, primarily with regard to the Company Law that is coming into force on February 1, 2012.

The segments on directors' liabilities that were covered by the “Janković, Popović & Mitić” law office include general duties and competences of directors, specific aspects of directors' liabilities (directors' liability for damages suffered by creditors, criminal-law liability, directors' liability for misdemeanors and for commercial offences, liability regarding status and liability under the law on contracts and torts, etc.), tax liabilities, liabilities in the domain of contracting, liabilities for accounting and directors' liabilities in case of bankruptcy.

The review of the general liabilities and competences of a director has been set forth in the context of issues regarding status and the manner of operation of this individual body and in the context of the director's competences, both in a joint-stock company and in a limited liability company.

The specific aspects of directors' liabilities have been set forth through interpretations, primarily of the legal nature of the liability itself, and through specific theoretical and practical issues such as good faith, conflict of interest, professional judgment rule, due diligence, standard of a good businessman, etc. Furthermore, directors' liabilities have been covered through individual issues such as directors' liability for misdemeanors and commercial offences, liability regarding status, liability under the law of contracts and torts, directors' liability for damages suffered by creditors, criminal-law liability (listing the most typical criminal acts for which a director can be held liable),

and also through subject-matter that only indirectly relates to directors' liabilities, and in fact deals with the criminal-law liability of the legal entity in the context of the Law on Liability of Legal Entities for Criminal Acts.

Directors' tax liabilities have been set forth and reasoned in the context of the bases of liabilities regarding the tax procedure, bearing in mind the readers' need for practical advice and clarifications regarding sometimes unclear provisions of the Law on Tax Procedure and Tax Administration and other laws that deal with this subject-matter. Thus one of the more important obligations of a director relating to adequate and timely fulfillment of a legal entity's duties in the tax procedure has been covered.

Obligations in the domain of contracting have been covered in the context of the principles of successful negotiation and closing of business contracts, but also with regard to the fulfillment of contracts and the potential consequences of breach of contract, which is a particularly sensitive sphere of business.

The segment of the Booklet relating to obligations in the domain of accounting covers the general obligations of a director in this area, primarily obligations regarding the organization of accounting, keeping of business ledgers and books, liabilities for preparation of consolidated annual financial statements and audited annual financial statements, directors' liability for auditing of financial statements, obligations regarding holding an account, etc.

Furthermore, part of the Booklet prepared by the "Janković, Popović & Mitić" law office refers to a director's obligations in case of bankruptcy. This section has particularly been covered in light of the obligation of equal treatment of creditors in keeping with the Bankruptcy Law, under which all creditors in a bankruptcy procedure are guaranteed equal treatment and an equal position. Moreover, in the context of directors' liabilities and with the goal of providing adequate instructions for users of the Booklet, specific issues such as contesting legal transactions and legal actions, reports on measures for financial restructuring, reports on the economic and financial standing of a bankruptcy debtor, the reasons that could cause inability to pay, evaluation of property, have been analyzed, and an overview of criminal acts that could arise as a consequence of bankruptcy has been provided.

In keeping with the above, the issue of directors' liabilities has been dealt with in the context of the current legal framework consisting of numerous laws and bylaws, with the goal of interpreting and clarifying, for the most part, the provisions thereof. Given the possibility of different interpretations of directors' liability, we need to stress that a large number of individual laws regulates separate aspects of this institute, but that the Company Law enacted in 2004, as the regulation setting the

foundation for the modern system of organization of commercial companies, served as the umbrella law in preparing this Booklet.

Given the immense significance and complexity of the analyzed subject-matter, the authors strived to cover as many topics as possible so that the various users of this Booklet could, in the interest of legal conducting of business, determine their spheres of interest and turn to the interpretation and studying of specific issues.

In writing about the subject-matter of this Booklet, the authors, apart from the Company Law, particularly touched on the regulations of the Law on Contracts and Torts, the Criminal Code, the Law on Liability of Legal Entities for Criminal Act, the Misdemeanor Act, the Law on corporate Income Tax, the Law on Citizen Income Tax, the Law on Property Tax, the Law on Tax Procedure and Tax Administration, the Law on Accounting and Auditing and numerous other regulations.

The detailed analysis of the institute of director's liability should, according to the intentions of the authors of this Booklet, assist the readers, not only participants in commercial business but other interested parties as well, in harmonizing their, so to speak, commercial conduct with sometimes unclear and ambiguous provisions of the Serbian laws governing this area. The individual categories of this Booklet will give the readers a clearer picture of the multiple aspects of directors' liability and will certainly facilitate the interpretation of regulations, which will aid commercial companies in legal conducting of business and advance the general legal security.

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