

A Legal Analysis to the Principle of Mere Allocation of Company's Executive Organ to the Executive Director (Manager)

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Abstract

Although according to the law, the board of directors determines the scope of the executive director's (manager's) power, but executive powers which are not granted to the manager, despite the usual ambiguous perception, are not executable by the board of directors itself. As a result, this paper proves that in the commercial law, there is an almost hidden principle called the principle of mere allocation of company's executive organ to the manager.

Use of the word "executive" in the title "executive director", compulsory nature of publicizing only the managers' characteristics in the national gazette, compulsory nature of having a manager and the exceptional nature of having the board of directors in companies, manager's discretionary power in a company's executive affairs, required natural personality of the manager and the possibility of standing as manager only for one company, as well as the unlimited nature of the managerial term prove this principle.

In external (company's relation with persons out of it) and internal affairs manager is the sole executive agent of the company. However, a company can have more than one manager and it is possible for the board of directors to introduce other persons as the company's special agents, or as persons compatible to make signature on behalf of the company. In addition, a company may partially grant its powers to other persons.

Only the manager's characteristics should be publicized in the national gazette. This would have different results including that his post gets deemed principally not expired and that the company gets known by him. However, the procedure for introducing a person as a company's executive agent is a relatively long and complex matter. However, it is not impossible for the manager to be appointed by the general assembly rather than the board of directors. In such a case, the general assembly meeting's minute rather than that of the board of directors would be publicized.

Having at least one manager is compulsory for every company but having the board

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of directors is exceptionally compulsory; this is because of the difficulties concerning having board of directors in the companies. However, the Legislature avoids the collective execution of the companies' affairs as well.

Despite managers' discretionary power in executive affairs of the company, there are some points about the governance of the board of directors' views over the manager's views, manager's scope of power, the cases in which manager's restricted power can be relied on against the third parties, and election of the board of directors' head as the manager.

A legal person cannot become a manager in a joint stock company. In other companies, a manager has been deemed as a "person" so it is not impossible for legal persons to become manager of other companies. However, even if the manager is a legal person, at last the managerial affairs of the company would be accomplished by a natural person. However, although the term for the board of directors' membership cannot exceed two years, there is no maximum term for being a manager. This is because s/he is elected as an agent not for the board of directors but for the company. In fact, although principally it is the board of directors which appoints the manager, but it grants the company's rather than its own powers to him/her. In other companies as well no maximum term has been determined for engagement as a manager.

During many decades, no paper had been written about manger which had different reasons. One of the reasons is the extremely scattered situation of related material and the other is the presence of conflict, controversy, and ambiguity among relevant regulations.

As one of its auxiliary results, this study proves that the manager in the companies other than the joint stock and the cooperative is not a director (a member of the board of directors) but an executive director (manager). Hence, in case those companies have more than one manager, those managers would not form a board of directors as it is usual in joint stock and cooperative companies. That would form a board of managers, and decisions making in which would be by unanimous consent rather than majority vote. Besides, as it happens about the joint stock companies' manger of having negative conditions of eligibility, it seems possible to deem as correct the acts and endeavors of other companies' managers in case they have been chosen or acted while having the legally negated conditions of eligibility.

In some cases, matters grounding this principle (principle on mere allocation of company's executive organ to the manager) such as discretionary power's existence for the manager in the company's executive matters, and executive matters' separateness from legislative ones have been proved as well. Under this principle's light, analyzing the different parts of the important issue of possibility or impossibility of reference to the manager's power's restriction against the third parties has become possible and it has become clear that the manager has a place quite independent from the board of directors.

Keywords: Executive director, Company's executive organ, Board of directors, Manager, General assembly

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