

## **The abstract of doctoral dissertation**

### **“Freedom of Determination of the Contents of Articles of Association of Limited Liability Company (“spółka z o.o.”)”**

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The research focus of the present doctoral dissertation is an issue falling within the scope of companies law, that is the freedom of determination of the contents of articles of association of spółka z o.o. In order to establish the breadth of autonomy enjoyed by shareholders in shaping the contents of articles of association of spółka z o.o., it was first necessary to determine which interpretative directives apply to spółka z o.o., that is how the binding power of legal norms is to be interpreted, as well as to determine the admissibility of introducing provisions different from the ones stipulated by the relevant act and additional provisions in the articles of association of a company. Secondly, it was indispensable to properly determine how the criteria delimiting freedom of contract are understood.

The dissertation has been divided into three parts. The first part is dedicated to the analysis of general issues, setting the direction for further exploration of the freedom of determination of the contents of articles of association of spółka z o.o. Considerations made in this part of the work lead to the conclusion that spółka z o.o. is governed by freedom of contract as expressed in Art. 353<sup>1</sup> of the Civil Code. It has been established that spółka z o.o. genetically originates from the law of obligations, as it constitutes a special type of obligation relationship. This observation points toward the desired direction of seeking the manner of establishing the relations between the principle of freedom of contract and the necessity of its limitation. The obligatory character of spółka z o.o. supports the fullest possible application of interpretative directives following from Art. 353<sup>1</sup> of the Civil Code to this type of companies. The special features that the relationship under spółka z.o.o has as compared to the 'classic' relationship of obligation do not justify a more strict approach to interpretative directives resulting from Art. 353<sup>1</sup> of the Civil Code as regards spółka z o.o. These features may give rise to the need to expand protection of broadly understood security of transactions. They justify the introduction of *numerus clausus* of commercial companies and a greater number of imperative norms regarding spółka z o.o. than in law of obligations. This work expresses the view that such protection of threatened values seems to be sufficient. It has also been indicated that the construction differences between spółka z o.o. and joint-stock companies validate a broader autonomy of shareholders than of stockholders in a joint-stock company.

Moreover, the work orders and evaluates various views on the scope of application of the principle of freedom of contract to articles of association of spółka z o.o. as presented in literature. It also offers an original proposal of a model of interpretation and application of provisions concerning spółka z o.o., with precise indication of the interpretative directives that should be employed in evaluation of admissibility of provisions contained in articles of association of spółka z o.o. The analysis of the legal nature of spółka z o.o. brings the conclusion that, in companies of this type, by analogy to the case of law of obligations, the recommendable course of action is to presume freedom to determine contents of the articles of association in

cases where the legislator clearly points to a possibility of a contractual regulation diverging from the statutory one, or to the option of introducing additional provisions in the articles of association. Moreover, there are no grounds to presume an exhaustive regulation of spółka z o.o., hence admissibility of determining provisions of spółka z o.o.'s articles of association should be presumed in issues regulated by the Code of Commercial Companies, even if the legislator does not directly stipulate the autonomy of shareholders' will within this scope. It has been established, however, that as regards regulations pertaining to spółka z o.o., the governing interpretative directive is more strict than the presumption of dispositivity of legal norms applied to law of obligations - in the case of spółka z o.o., it is expedient to presume imperativity of norms. This is backed by the wording of provisions pertaining to spółka z o.o. and axiology which may be deduced from the entire body of regulations concerning spółka z o.o. The presumption consists in that in cases where the contents of a provision do not directly stipulate the binding power of a legal norm, it should be assumed that it is of a mandatory nature. In this work, it has been concluded that in such a case, determination of a norm's dispositivity is possible by way of an exception, i.e. where this is justified by special axiological, systemic or functional arguments.

In the evaluation of the existing regulation of spółka z o.o., the presented opinion is that in some cases this regulation does not satisfy the requirement of proportionality in reducing autonomy of will – in introducing imperative norms, the legislator at times acts solely on the need of standardization of company relations, without strong axiological motives for doing so. In such events, the recommendable course of action would rather be to support standardization of spółka z o.o. with the aid of dispositive norms. Shareholders should have the freedom to choose solutions that are most effective for them, as long as the important values of the legal system are not breached.

The second part of the work analyzes the role of principles of community life, nature of the spółka z o.o. relationship and of the relevant acts in limiting the freedom of determination of the contents of articles of association of spółka z o.o. It has been assumed that the establishment of the concept of limitations of freedom should be attempted with account for the constitutional principle of proportionality. This does not mean, however, that in certain cases, doubts as to the proper understanding of the role of criteria delimiting the autonomy of individuals should not be resolved for the benefit of security of transactions.

The third part of the dissertation explores eleven detailed issues in the context of theoretical theses put forward in the work. This has made it possible to illustrate how the presented general conclusions concerning the scope of application of the freedom of contract principle to spółka z o.o. influence in practice the evaluation of admissibility of introducing specific provisions in the articles of association of spółka z o.o. The analysis of selected provisions taken from the articles of association of spółka z o.o. revealed that the doctrine frequently leans toward an excessively rigorous interpretation of legal norms regarding the contents of articles of association of spółka z o.o. The dissertation also presents views of the German doctrine expressed based on the provisions of the German Act on Limited Liability Companies (GmbH), analogous to the Polish regulations. The choice of the German system was dictated by the similarities between the Polish and German law of commercial companies. The legal-comparative analysis has revealed that, based on nearly identical provisions of law, the German

doctrine allows for a broader autonomy of GmbH shareholders than Polish doctrine as regards spółka z o.o. This should serve as a contribution to discussion over the correct interpretation of provisions of the Code of Commercial Companies pertaining to spółka z o.o.

The work employs mainly the dogmatic method and, to a certain extent, the legal-comparative method. Research has been based primarily on the provisions of the Civil Code and of the Code of Commercial Companies. The most important utterances of the Polish and German doctrine within the scope of civil law and companies law have been accounted for. Case law, especially of the Supreme Court, has been analyzed.

The work has been written with account for the legal state as at 13<sup>th</sup> March 2017.