TRANSACTIONS WITH PROPERTY OF A LIMITED LIABILITY COMPANY AFTER THE RULING OF INTERPRETATIVE DECISION No. 13/2013 under Company Case No.3/2013 of the General Meeting of the Civil Law and Commercial Law Benches of the Supreme Court of Cassation

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In accordance with the imperative provisions of Article 137 of the Commercial Code, the decisions on the acquisition or disposal of real estate and rights in rem thereof fall within the remit of the exclusive competence of the general meeting of the limited liability company. Hence the existence of a transaction of this nature requires a decision made to this effect by the general meeting of the partners. In practice, when a decision is made on the disposal, acquisition or encumbering of property of the company the general meeting typically authorizes the manager of the company to undertake the necessary action in compliance with the decisions made.

The General Meeting of the Civil Law and Commercial Law Benches (GMCLCLB) of the Supreme Court of Cassation has issued its Interpretative Decision No. 3/2013, ruling that transactions carried out by the manager of the company, whereby real estate of the company has been disposed of or encumbered without a decision of the general meeting of the partners, are not null and void due to absence of expression of will. This decision will create difficulties and possible inability of the company to recover the alienated property back to its patrimony in cases in which the manager has acted in bad faith. The only remedy in such cases would be to claim damage from the manager himself, which, in its turn, offers no guarantees for the recovery of damages because it would still be possible for the manager to dispose of property and thus create major obstacles or impede substantially the business activities of the company.

The said interpretative decision further reads that there exist no obstacles and restrictions or a threat to the validity of the transaction in the cases when the manager of two separate companies is the same person and executes a commercial transaction, representing both companies simultaneously.

Given the existence of this mandatory case law as objectified in Interpretative Decision No. 3/2013, it becomes particularly pertinent to make a very thorough assessment of the integrity of the person appointed as a manager and to provide maximum guarantees to protect the corporate interests in case of possible action of the manager in bad faith.

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