9. The Understanding of the Company's Interest in Lithuania and its Receptiveness to Sustainability Imperatives

Lina Mikaloniene

A. Introduction

After the restoration of Lithuania's independence on 11 March 1990, the country developed a new civil law system to reflect the new political and economic circumstances. This transformation of the Lithuanian civil law system was inevitable, as during the nearly 50-years that Lithuania was occupied and annexed by the Soviet Union, civil law was based on socialist ideology, which essentially denied private ownership and freedom of economic activity and initiative.[1] In the Soviet era, the main emphasis was on legal persons that belonged to the state; these legal persons, as institutions, were used to carry out functions set by the Soviet authorities, and for-profit legal persons were ignored.[2] In its legal reform, Lithuania had to validate the freedom of economic activity of natural and legal persons; accordingly, reforming the institution of a corporate personality was as important as restoring the institution of private ownership.[3]

In 1990, Lithuania adopted the Law on Undertakings, which provided a general framework for business organizations to operate as undertakings and listed the types of business undertakings (*inter alia,* stock companies – a public limited liability company and a private limited liability company) that were to be regulated by specific laws.[4] The law also provided a guarantee that undertakings would be autonomous and would not be bound to perform tasks assigned by state authorities (Art 14(1)). This law served as the foundation for the further development of the legal framework for

1 Sagatys/Pakalniškis, p. 13 (14, 16); Sinkevičius/Jakulevičienė/Drukteinienė/Jurkevičius, p. 280.

2 Sinkevičius/Jakulevičienė/Bitė, p. 311 (318, 320–322, 338); an important group of legal entities consisted of agricultural and fishermen collective farms and cooperatives.

3 Mesonis/Pakalniškis/Tikniūtė, p. 575 (577).

4 Law on Undertakings of the Republic of Lithuania No. I-196, Lietuvos aidas, 1990, No. 3–0, which came into force on 1 July 1990.

companies.[5] Soon after, the law governing stock companies was adopted: the 1990 Law on Stock Companies governed both public limited liability companies and private limited liability companies.[6]

After transitioning to a market economy, the Lithuanian Law on Stock Companies, which set out a legal framework for public limited liability companies (*akcinė bendrovė, AB,* "public company") and private limited liability companies (*uždaroji akcinė bendrovė, UAB,* "private company") (hereafter both together referred as "companies" or "company") was reworked three times, in 1990, 1994,[7] and 2000,[8] with each iteration being further amended and supplemented.[9] The new Civil Code ("CC") of 2000[10] established a general framework for legal persons, but it did not codify different types of undertakings; thus, companies continued to be governed by the Law on Stock Companies.

All three versions of the Law on Stock Companies (1990, 1994, 2000) defined a company as both an undertaking and a legal entity. However, a hard law rule on whose interests a company should pursue,[11] for whom the company is managed,[12] or who the ultimate beneficiaries of corporate activities should be[13] (hereafter "company's interest") – as it currently stands in the Law on Stock Companies, was not adopted from the start.

5 Mesonis/Pakalniškis/Tikniūtė, p. 575 (578); Birštonas/Žilys, p.13 (52–57).

6 Law on Stock Companies of the Republic of Lithuania No. I-425, Lietuvos aidas, 1990, No. 57–0, which came into force on 1 August 1990.

7 Law on Stock Companies of the Republic of Lithuania No. I-528, VZ, 1994, 55–1046, which came into force on 20 July 1994.

8 Law on Stock Companies of the Republic of Lithuania No. VIII-1835, VZ, 2000, 64–1914, which came into force on 1 July 2001 (with further amendments and supplements) ("LSC").

9 For a historical evolution of the Law on Stock Companies since 1990: Birštonas/Bitė, p. 150 (150–180); Sinkevičius/Jakulevičienė/Bitė, p. 311 (322–338).

10 Civil Code of the Republic of Lithuania No. VIII-1864, VZ, 2000, No. 74–2262, which came into force on 1 July 2001, safe to certain exceptions (with further amendments and supplements).

11 Ferrarini, Corporate Purpose and Sustainability, 2020, https://ssrn.com/abstract=3753594, p. 6.

12 Hopt, Corporate Purpose and Stakeholder Value – Historical, Economic and Comparative Law Remarks on the Current Debate, Legislative Options and Enforcement Problems, 2023, https://ssrn.com/abstract=4390119, p. 2, 41; Rock, For Whom is the Corporation Managed in 2020?: The Debate over Corporate Purpose, 2020, https://ssrn.com/abstract=3589951, p. 7–16.

13 Kershaw/Schuster, The Purposive Transformation of Corporate Law, 2019, https://ssrn.com/abstract=3363267, p. 1, 54. For different meanings of a corporate purpose also see: Fleischer, Corporate Purpose: A Management Concept and its Implications

The normative terms "*objectives of the activities of the legal person*" and "*objectives of the legal person*" must be considered to understand a company's interest. In a narrow sense, these terms reflect the company's types of business activities, while in a broader sense, they encompass the general characteristics of the particular class of a legal person.

The first version of the Law on Stock Companies (1990) required that the articles of association of a company list commercial activities (types of products, works and services), but it did not contain an obligation to include broader objectives of the company in the articles of association, nor did it deal with a company's interest in a direct and specific manner.

The second version of the Law on Stock Companies (1994) required that the articles of association of a company include both the objectives of the company's activities and the types of business activities the company performs (Art. 7(2)-3).[14] In addition, it imposed a duty on corporate management bodies to act in accordance with the objectives of the company's activities as set out in the articles of association. According to Article 18(6):

> *[t]he management bodies of the company shall not be entitled to take any decisions or perform other actions that are in breaches of the company's articles of association or contrary to the objectives of the company's activities as set out in the articles of association, that are manifestly in excess of the normal production-business risks, that are manifestly loss-making (purchase of goods, services or works at prices higher than, or sale below market prices, wasting of the company's assets), or that are manifestly not economically viable.*

It was proposed that, rather than having a complicated regulation that listed possible abuses that could be committed by a company's management, an all-inclusive general norm that places a duty on management bodies to "act solely in the interests of the company" should be used. Specifically, Article 18(6) of the Law on Stock Companies (1994) could be amended as follows:

> *[t]he company's supervisory council, board and administration shall not be entitled to take any decisions or take any other actions that are in breaches of the articles of association of the company or that are contrary to the*

for Company Law, 2021, https://ssrn.com/abstract=3770656; EMCA, 2017, https://ssrn.com/abstract=2929348, p. 34–36, 50–51, 257–258.

14 Law amending and supplementing Law on Stock Companies of the Republic of Lithuania No. VIII-666, VZ, 1998, No. 36–961, which came into force on 17 April 1998.

objectives of the company's activities as set out in the articles of association, and shall be obliged to act solely in the interests of the company.[15]

However, this proposed amendment to the Law on Stock Companies (1994) was not adopted.

According to the third version of the Law on Stock Companies (2000), articles of association of a company must specify the objectives of the company's activities, as well as the nature of its business activities (Art. 5(2)-3). Since 2004, aiming to harmonize the legislation with the EU *acquis communautaire,* the Law on Stock Companies has been amended, requiring the articles of association of a company to include "*objectives of the company's activities, indicating the object of a company's activities*" (Art. 4(2)-4).[16]

Unlike the first two versions of the Law on Stock Companies that did not deal with a company's interest in a direct and specific way, the third version of the Law on Stock Companies (2000) required corporate management bodies to act for the benefit of the company and its shareholders, as follows:

- Between 1 July 2001 until 31 December 2003, Article 22(8) of the Law on Stock Companies stated the following : *[t]he management bodies of the company must act solely for the benefit of the company and its shareholders. The management bodies of the company shall not be entitled to take any decisions or perform other actions that are in breaches of the company's articles of association or contrary to the objectives of the company's activities set out in the articles of association, that are manifestly in excess of the normal production-business risks, that are manifestly loss-making (purchase of goods, services or works at prices higher than, or sale below market prices, wasting of the company's assets), or that are manifestly not economically viable.*

15 Explanatory Note No. P-1498 of 14 December 1998 regarding draft Law amending and supplementing Law on Stock Companies.

16 According to Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law ((codification) (Text with EEA relevance), OJ L 169, 30.6.2017, p. 46–127, ELI: http://data.europa.eu/eli/dir/2017/1132/2022-08-12), the statutes or the instrument of incorporation of a public company have to state its objects (Art. 3(b)). Further, for both a public and private company, its objects play a vital role in addressing the *ultra vires* doctrine (Art. 9) as well as in applying the company's nullity (Art. 11). In the Lithuanian version of Arts. 3(b), 9 and 11 of the directive (EU) 2017/1132 the term "*the objects of the company*" is translated as "*bendrovės veiklos objektas*" which, read literally, could be understood as "*the object of the company's activities*".

- From 1 January 2004[17]until the present, Article 19(8) of the Law on Stock Companies sets forth the following: *[t]he management bodies of the company must act for the benefit of the company and its shareholders, comply with laws and other legal acts and follow the company's articles of association.*

The first version of the Law on Stock Companies (1990)[18] introduced mandatory rules on employee co-determination, however, subsequently the other versions of the Law on Stock Companies (1994, 2000) did not retain such rules.

Therefore, since 1990, the concept of a company has been linked to that of an undertaking and an entity, and it was not until the third version of the Law on Stock Companies (2000) ("LSC") that a specific rule as to the company's interest was introduced. On 1 July 2001, the hard law rule on a company's interest came into force, along with the new CC which, *inter alia,* laid out a binary classification of legal persons based on the difference in founding interests between legal persons pursuing social goals and those pursuing private interests.

A company's interest as the central concept in corporate governance attracted considerable attention from foreign scholars. In short, there are two prevailing theories that are established either as a hard law rule or as a social norm as to how a company's interest is defined, where boundaries are designed for corporate management bodies in their direction and control of the companies.[19] First is the shareholder primacy theory, which aims to promote shareholder value. The enlightened shareholder value approach when other stakeholder interests are considered while maintaining the interest of shareholders will become the shareholder primacy theory. Second is the stakeholder theory, which focuses on a pluralistic governance

17 A new wording of the Law on Stock Companies of the Republic of Lithuania No. IX-1889, VZ, 2003, No. 123–5574.

18 1/3 of members of the supervisory council had to be elected by an employees' meeting of the company, however, save to private companies with 200 or less employees (Arts. 17 and 23(2)).

19 E.g. Hopt, Corporate Purpose and Stakeholder Value – Historical, Economic and Comparative Law Remarks on the Current Debate, Legislative Options and Enforcement Problems, 2023, https://ssrn.com/abstract=4390119; Fleischer, Corporate Purpose: A Management Concept and its Implications for Company Law, 2021, https://ssrn.com/abstract=3770656; Ferrarini, Corporate Purpose and Sustainability, 2020, https://ssrn.com/abstract=3753594. Bebchuk/Tallarita, Will Corporations Deliver Value to All Stakeholders? 2021, https://ssrn.com/abstract=3899421.

model. In both theories, the company's interest helps to define what duties the company management has.

Corporate strategies and business models, as well as the decisions and practices of companies that integrate economic, social, and environmental issues (all three together being dimensions of sustainability) are essential in achieving more sustainable development. One could argue that a company's interest as a core concept of corporate governance should be broad, encompassing various stakeholders' interests (pluralistic governance model).[20] A broad concept of stakeholders' interests would help define the sustainability-related duties of a company's management.

Lithuanian scholars share different doctrinal views as to which theory of defining company's interest is actually embedded in the national legal framework and thus, which definition is applicable. Unlike in the international arena, where sustainable corporate governance has recently been a heated topic of debate among legal scholars, in Lithuanian legal doctrine, the research on the relationship between sustainable corporate governance and company's interest did not attract much attention.

Lithuanian case law shows that courts have typically examined the correlation between company's interest and the behaviour of corporate actors (corporate management bodies and shareholders of the company) when there is an internal dispute (a company-management dispute, a company-shareholder dispute, or a shareholders' dispute) or when interests of the creditors of the company are at stake. However, case law provides little guidance in interpreting what the company's interest is for sustainability matters.

20 Sjåfjell, Sustainable Value Creation Within Planetary Boundaries – Reforming Corporate Purpose and Duties of the Corporate Board, 2020, https://ssrn.com/abstract=3666952; Petrin, Beyond Shareholder Value: Exploring Justifications for a Broader Corporate Purpose, 2020, https://ssrn.com/abstract=3722836; Sjåfjell/Mähönen, 2023, p. 315-322.

This chapter explores the concept of company's interest[21] for both public and private companies[22] from the perspective of Lithuanian company law.[23] It also examines whether a definition of company's interest is open to the sustainability imperatives in light of societal developments that focus on fostering a better transition to sustainable corporate governance.

B. Conceptual features of a company

To determine a company's interest, it is first necessary to examine how a company is defined under the binary classification of legal persons by considering the concept of a company as a commercial enterprise and the relevance of the status of a legal person.

I. Conventional understanding of a company

Principally, legal persons are classified in two fundamentally different groups based on which interests are pursued by the entity: private interests or public interests (Art. 2.34 of the CC).[24] Private legal persons aimed at

21 The article neither addresses issues for a company to become a social enterprise, nor other peculiarities in terms of, e.g. specific business sectors, regulated activities, group of companies, insolvency, etc.

22 Statistics Lithuania, Official Statistics Portal – Number of enterprises in operation a by legal form and personnel group at the beginning of the year, 2025 https://osp.stat.gov.lt/statistiniu-rodikliu-analize?hash=4c919020-9559-4fcd-a7ab-8f6e68e1cd9e#/; Number of undertakings in operation at the beginning of the year https://osp.stat.gov.lt/statistiniu-rodikliu-analize?hash=47d2396f-9242-4cb7-937c-defd27cc1504#/; Number of small and medium undertakings in operation at the beginning of the year https://osp.stat.gov.lt/statistiniu-rodikliu-analize?hash=47d2396f-9242-4cb7-937c-defd27cc1504#/; At the beginning of 2024, there were 119,944 SMEs and a total of 120,412 undertakings in operation. At the beginning of 2025, there were more than 82,5 thous. private companies and 237 public companies (those can be listed or non-listed) in operation in Lithuania. There was only one operating European Company, hence a SE is not included into the scope of the analysis.

23 The chapter analysis the concept of the company's interest under Lithuanian law of 1 January 2025.

24 The legal underpinning in terms of classification of legal entities into two fundamentally different groups and application of the related rules is not, however, always certain. For example, the Constitutional Court concluded that Art. 2.34(5) of the CC, in so far as it excludes public establishments, as public legal persons, from the application of Chapter IX of Book II of the CC, is not contrary to Art. 23 and

pursuing private interests possess general legal capacity; while public legal persons that pursue public interests and seek benefit for the society act on the basis of the *ultra vires* doctrine.[25] Both a public company and a private company are considered private legal persons.

The objective of a company, as a business undertaking, is to engage in commercial activities and make profit (Art. 2(1) of the LSC; Art. 1.110(1) and 2.33 of the CC)[26].[27] A company, as a private for-profit legal entity, pursues private interests (Art. 2(1),(2) of the LSC, Art. 2.34 (3) of the CC). A public legal person is an entity established by a state or municipality, their institutions, or others who do not seek personal benefits from such entity and pursue public interests (state and municipal undertakings, statutory and municipal institutions, public establishments, religious communities, etc.). Unlike in case of public legal persons, the CC does not disclose the addressees of the private interests that have to be pursued by a private legal person. Nevertheless, from the opposite interpretation of Art. 2.34 (2),(3) of the CC, it can be deduced that founders (members) of the private legal person are such addressees and they may seek personal benefits out of the incorporation of a legal person.

The doctrine which analyses the conceptual understanding of a private legal entity describes the private interests by linking them to the material benefits of the founders (members) of the legal entity through the distribu-

---

Art. 46(3) of the Constitution and the constitutional principle of the rule of law. Chapter IX lays down legal regulations for a forced sale of the membership of those members whose actions are contrary to the objectives of the legal person and where it is not reasonable to assume that those actions will change in the future. The Supreme Court has interpreted the ruling of the Constitutional Court as permitting Art. 2.34(5) of the CC to be applied *mutatis mutandis* to public establishments (Constitutional Court 13.12.2022 – KT149-N15/2022, TAR, 2022, No. 25400, para. 2.3, 5.2, 11; Supreme Court 06.04.2023 – e3K-3–158–403/2023, para. 50; 22.12.2021 – e3K-3–260–403/2021).

25 Mesonis/ Pakalniškis/Tikniūtė p. 575 (586–588).

26 Art. 1.110(1) of the CC: an undertaking, as a complex of assets, property, and non-property rights as well as debts and other duties, belonging to the person who is engaged in business (seeking profit), may be the object of civil rights. The Law on Undertakings in force between 1 July 1990 and 1 January 2004 has listed the types of undertakings permitted to engage in regular commercial activities seeking to make profits, and it has included among them private limited liability companies and public limited liability companies (Art. 1, Art. 6(4), Art. 10).

27 A concept of an undertaking encompasses the triple meaning – as an object of civil rights, a subject of civil relations, and a legal business form (Sagatys/Jakutytė-Sungailienė, p. 129 (132–133); Mikelėnas, in: Abramavičius/Mikelėnas, p. 256–258.

tion of the entity's profits, earned capital gains, increasing services, and opportunities.[28] To note, the LSC sets forth a list of shareholder's standard financial rights, which includes, *inter alia,* a right to receive dividends during the course of the company's operations and a right to receive net assets when a company is liquidated (Art. 15(1)). Shareholders, as owners of the shares, can derive private benefits from disposal of their shares.

It follows from the jurisprudence of the Constitutional Court of the Republic of Lithuania ("Constitutional Court") that members of a private legal person generally seek material benefits from the activities of the legal person for themselves and other members, and that a private legal person has the objective of serving the private interests of their members.[29]

A conventional understanding of a company is also underlined in the jurisprudence of the Supreme Court of Lithuania ("Supreme Court"). The Supreme Court has stated that although the specific objectives of the company's activities are set out in the articles of association of a company, the general objective of private legal persons is to satisfy private interests, and pursuit of profit is one of the ways of satisfying private interests.[30] The Supreme Court also held that a decision of the corporate body is considered unlawful if it is, *inter alia*, contrary to the objectives of the company's activities as stated in the company's articles of association – in the case in question, to achieve economic benefits – and this objective has to be pursued by both the shareholders and the management of the company.[31] The Supreme Court also emphasised that by contributing capital to the company, shareholders seek both to preserve their investments and to benefit from the investments (receive profit); in this way, the objective of the shareholders becomes the objective of the legal person.[32]

In conclusion, a conventional understanding of the company, as a commercial enterprise and a private for-profit legal entity, encompasses two aspects: (i) doing business to earn a profit by a company and (ii) generating economic benefits for shareholders of the company.

This concept of a company as a commercial vehicle for doing business must be further explored, in conjunction with the concept of corporate

28 Bartkus, in: Mikelėnas/Bartkus/Mizaras/Keserauskas, p. 98–99, 119. Kiršienė, in: Kiršienė/Pakalniškis/Ruškytė/Vitkevičius, p. 208–209.

29 Constitutional Court 13.12.2022 – KT149-N15/2022, TAR, 2022, No. 25400.

30 Supreme Court 16.12.2011 – 3K-3–511/2011.

31 Supreme Court 14.07.2008 – 3K-3–287/2008.

32 Supreme Court 06.09.2021- e3K-3–215–378/2021, para. 41, 51; 01.07.2020 – e3K-3–214–219/2020, para. 26, 27.

personality of the company, to identify whether the legal form of corporate personality is relevant such that a company that serves the private interests of its shareholders may nevertheless have its own interest.

II. Corporate personality of a company

In the context of the analysis, a separate corporate personality for a company has the following important consequences –

First, a legal person acts in its own name: it assumes rights and duties in its own name, and also may act as a plaintiff and a defendant in court (Art. 2.33(1) of the CC). There must be at least two corporate bodies within a private company – a general shareholders' meeting and a company manager who is a single-member management body of the company. Public companies must have these two corporate bodies as well, but in addition must have at least one additional collective corporate body – a supervisory council or board (Art. 19(1)(2) of the LSC). The company manager is responsible for organising the company's activities and implementation of the company's objectives (Art. 37(12)-1 of the LSC). *Second*, unless modified in the company's articles of association, the default rule is that a company is established for an indefinite period of time, which in turn indicates that there is long-term perspective for the company as a legal entity (Art. 4(2)-14 of the LSC). *Third*, it follows from the wording of Article 19(8) of the LSC, which obliges both single-member and collective corporate management bodies to act for the benefit of the company and its shareholders, that priority is given to the interests of the company over the interests of the company's shareholders.

The Supreme Court held that a private company, as one of the forms of organisation for business activities, has a corporate personality guaranteed by law that is employed through special organisational structures – a management body (collegial, single) and a members' meeting. The company's management bodies have to act solely in the company's interest, i.e. to ensure its stable, efficient, and competitive operations as a market player.[33]

The Supreme Court has emphasised the role of corporate governance for a going-concern company, as a legal entity, and for the company's long-term concerns. For example, when assessing if the shareholders have

33 Supreme Court 14.02.2019 – 3K-3–35–469/2019, para. 39; 25.11.2016 – 3K-3–485–421/2016, para. 36; 19.04.2013 – 3K-3–234/2013.

acted contrary to the company's interest in the situation of a shareholder deadlock in a private company, the Court stressed that the company is an employer and a tax payer and therefore, in the event of a corporate governance crisis, public interest also requires that the generation of profits by the company's members is reconciled with the prospect of long-term operation and development of the company.[34]

Legal doctrine recognises that a company, as a legal entity, has an autonomous will which is separate from the will of its shareholders or other stakeholders,[35] and that the interests of a private legal person, as an autonomous person, and its members diverge.[36]

Similarly, both in civil proceedings involving protection of interests of creditors of the company and in the course of internal corporate disputes, the courts have stressed that the interests of members of a legal person do not always have to coincide with the interests of the legal person itself.[37] Over the last years, courts have consistently ruled that a company's manager has a duty to the company itself as an autonomous legal entity[38] and also must act *ex officio* and exclusively in the company's interest.[39]

Furthermore, the legislative goal to consider the company's interest on its own is implied by legal regulations that provide for shareholders' remedies and are primarily aimed at protecting the interest of the company as a separate going-concern legal entity. Such remedies only have a derivative effect on the shareholder of the company who makes use of the remedy (e.g. initiating corporate inquiry proceedings concerning investigation into corporate governance issues and the company's activities, challenging

34 Supreme Court 23.12.2013 – 3K-3–681/2013; In addition, the criterion of the protection of the public interest was strengthen, taking into account of the status of the company as a social enterprise for the employment of the disabled persons which has obtained subsidies for its activities.
Court of Appeal of Lithuania ("Court of Appeal") 30.12.2019- e2A-620–781/2019, para. 28.

35 Kiršienė, in: Kiršienė/Pakalniškis/Ruškytė/Vitkevičius, p. 220.

36 Bartkus, in: Mikelėnas/Bartkus/Mizaras/Keserauskas, p. 98, 119.

37 Supreme Court 25.11.2016 – 3K-3–485–421/2016, para. 50; 11.12.2015 – 3K-3–665–969/2015; 23.12.2013 – 3K-3–681/2013.

38 Supreme Court 21.09.2018 – 3K-3-326-1075/2018, para. 46; 16.10.2017 – 3K-7–177–701/2017, para. 27.

39 Supreme Court 26.05.2021 – e3K-7-30-969/2021, para. 47; 20.11.2009 – 3K-7–444/2009.

a company's *ultra vires* transaction, pursuing a derivative damage claim against the company's management).[40]

In cases where a company's interest is at stake, it is not unusual for courts to assess whether a behaviour of the corporate actors – members of the management bodies or shareholders of the company – contradicts interests of the company as a legal entity as such.[41] For example, the Supreme Court held in a civil litigation claim concerning a shareholder deadlock that a specific shareholder's behaviour was contrary to the interests of the company and breached the principles of reasonableness and good faith.[42] The Supreme Court reasoned that the shareholder's behaviour was exclusively aimed at personal gain and thus neglected the common objective of the members of the legal person: improving the performance of the company in order to ensure the satisfaction of the private interest of each shareholder.[43] A shareholder's pursuit of dividends must be balanced as far as possible with the company's long-term commercial interests.[44]

In conclusion, the corporate personality of a company plays a special role in determining a going-concern company's own interest, separate and distinct from the interests of the company's shareholders.

C. Concept of the interest of a company as such

Now that it is clear that a company as a legal entity has its own interest, what that interest *is* must be determined in legal terms by identifying for whom the company should be managed.

I. Scholars on a company's interest

In Lithuania, scholars have differing views as to the theory that underpins the company's interest.

Given that the function of a legal entity is to align collective interests, some scholars opine that the stakeholder theory should prevail, even

40 Mikalonienė, p. 70–81.
41 Supreme Court 06.09.2021 – e3K-3–215–378/2021, para. 51, 53; 20.11.2013 – 3K-3–548/2013; 23.12.2013 – 3K-3–681/2013.
42 Supreme Court 01.07.2020 – e3K-3–214–219/2020, para. 33.
43 Ibid.
44 Ibid, para. 37.

though there is no clear endorsement of this particular theory as the definition for a private legal entity's interest by the national legislature.[45] A company manager does not express the shareholders' will, but must act in the interests of all stakeholders of a legal entity – shareholders, employees, and even creditors.[46]

Some scholars support the shareholder primacy theory, stating that a private legal person is established to pursue private interests, and this is its main and exclusive purpose of such a company, even though a private legal person must take into account the legitimate expectations of various stakeholders (creditors, employees, clients, local society, etc.) and comply with the standards of justice, reasonableness, and good faith.[47] Through systemic interpretation of the legal framework, others conclude that a company's interest is increasing shareholder ownership or seeking profits, and thus, that the legal framework can be considered as more restrictive to or not encouraging the voluntary implementation of corporate social responsibility principles by a company's management bodies.[48] Some scholars argue that decisions taken by members of management bodies of the company should be assessed by considering whether these decisions are consistent with the objective of maximising shareholder benefit (company value).[49] Accordingly, as the company's interest is to create value for the shareholders as a whole, business decisions taken by the company manager must be consistent with the interests of the company and its shareholders, i.e. be profit-oriented, and that management bodies will satisfy the interests of all interest groups (including creditors) by acting in the best interests of the company.[50] Others argue that there is no established prevailing theory on the definition of a company's interest in either doctrine or case law, and thus endorse the enlightened shareholder value approach. These scholars propose that the long-term interests of the company's shareholders should prevail and be considered as an ultimate and the main purpose of the company, and the short-term interests of the shareholders should be weighed less than the interests of other stakeholders of the company, all while ensuring that the activities of the company are successful and that the

45 Mizaras/Bosaitė/Butov, p. 222–223; Greičius, p. 83–84.
46 Sagatys/Tikniūtė/ Jurkevičius, p. 359 (390–391).
47 Bartkus, in: Mikelėnas/Bartkus/Mizaras/Keserauskas, p. 119, 180, 193.
48 Lauraitytė, p. 115, 132–133, 201.
49 Jakuntavičiūtė, p. 10, 111–113.
50 Ibid.

long-term interests of the shareholders are secure.[51] There are also scholars who emphasise that the company and the company manager acting in the interests of the shareholders must also comply with the mandatory restrictions for the company's activities that prevent from overriding the interests of the shareholders or placing them at odds with the interests of the society as a whole.[52]

Finally, according to some authors, a unity of the interests of various groups of stakeholders (shareholders, employees, clients, etc.) should be considered as the interest of the legal person, and priorities among the interests should be set *ad hoc*.[53]

II. A company's interest in case law

In a number of cases that compared the interests of a solvent company with those of an insolvent company, the Supreme Court stressed that when a company is going-concern, the company manager's primary duty is to serve the interests of the equity providers, i.e. its shareholders. Further, the Supreme Court specified that the company manager's fiduciary duties that are to take into account also the interests of creditors (the interests of the company's providers of debt capital) in making decisions relating to the company's business, only arises when the company's financial situation deteriorates; in the event that the company becomes insolvent, the interests of the creditors then take precedence.[54]

In earlier jurisprudence, the Supreme Court highlighted profit-maximisation for shareholders, and lower courts of general jurisdiction have followed a similar path in recent decisions as well. Regarding civil liability of members of management bodies for a private for-profit legal person, the case law emphasised that such a legal person is established to implement a particular business model and to obtain economic benefits, i.e. making a

51 Miliauskas, in: Mikalonienė/Mikelėnas/Miliauskas/Mitkevičius/Tikniūtė, p. 138–139, 247.

52 Mikelėnas, in: Abramavičius/Mikelėnas, p. 259–261.

53 Kiršienė, in: Kiršienė/Pakalniškis/Ruškytė/Vitkevičius, p. 162.

54 Supreme Court 12.12.2023 – e3K-3–315–421/2023, para. 23; 04.05.2022 – e3K-3–107–403/2022, para. 32; 11.04.2022 – e3K-3–79–469/2022, para. 36; 03.12.2021 – e3K-3–307–421/2021, para. 65, 68; 14.02.2019 – 3K-3–35–469/2019, para. 40; 21.12.2018 – e3K-3–526–219/2018, para. 29; 08.02.2018 – e3K-3–105–421/2018, para. 51; 29.05.2015 – 3K-3–331–695/2015; 01.02.2012 – 3K-3–19/2012.

profit for the members of the legal person. Accordingly, the management bodies' have to ensure that the legal person derives the greatest possible economic benefit from its business activities, and the management bodies must not cause harm to the entity.[55]

The Supreme Court held that appropriate legal tools to ensure good corporate governance may be applied as long as corporate transactions are not manifestly loss-making, but this behaviour may be considered uneconomic or inefficient if the actions of the management body are favourable to a single shareholder rather than the company itself, and provided that such activities of the management body are, or are likely to be, detrimental to the company and thus jeopardise the shareholders' proprietary interest in obtaining the best possible return on their investments.[56] Lower courts stressed that as long as the company does not face solvency problems, the management bodies are considered to have acted in the interests of the shareholders, and thus also serving the interests of creditors and employees of the company.[57]

The Supreme Court has also stated that a company manager must adhere to laws, the company's articles of association, and internal rules. This includes balancing the interests of all stakeholders of the legal person (shareholders, employees, and also creditors, when the company faces insolvency).[58] There is established case law regarding the distinction between the interests of two groups of company stakeholders – shareholders and creditors. However, there is no clear consensus in legal rulings on how the interests of employees should be considered or balanced with those of other stakeholders by the company's management.

In managing a conflict between the interests of the employees-creditors and the company's other creditors, normal commercial risk, business failure, and continuation of the company's activities are considered when solvency of the company is at stake. For example, in one Supreme Court

55 Supreme Court 19.04.2013 – 3K-3–234/2013; Court of Appeal 14.06.2023 – e2A-380–330/2023, para. 30; Vilnius Regional Court 03.10.2022 – e2–1060–661/2022, para. 49 and 30.06.2020 – e2A-1375–933/2020, para. 25.

56 Supreme Court 11.02.2008 – 3K-3–73/2008.

57 Vilnius Regional Court 03.10.2022 – e2–1060–661/2022, para. 49 and 30.06.2020 – e2A-1375–933/2020, para. 25.

58 Supreme Court 03.12.2021 – e3K-3–307–421/2021, para. 63; 23.09.2020 – e3K-3–235–421/2020, para. 26; 05.07.2019 – e3K-3–247–684/2019, para. 42; 22.09.2015 – 3K-3–470–969/2015; 12.09.2014 – 3K-3–389/2014.

case,[59] the State Tax Inspection, a creditor of the company involved in the dispute, pursued a direct claim against the former company manager of the private company. The claimant asked for damages for a breach of the order of creditor payments; specifically, undue preference was given to other lower-ranking creditors of the company, leaving the company with no funds to pay the outstanding taxes. The court found no basis for the company manager's civil liability since the company manager gave preference to other creditors – suppliers, landlords, and employees – because the company's future activity was dependent on these creditors. Further, the company manager had not committed any criminal actions, the company was not fraudulently bankrupt, and the company manager's dishonest acts were not directed at the claimant-creditor. In another case,[60] employees of a private company had not been paid on time, as the employer paid out less than their full salaries, declaring that this was a rational decision for the company since the company lacked funds to settle with its employees, and if employees were dismissed under the collective agreement the company would have had to pay much larger amounts than the calculated late payment interest. The court ruled against the company manager, taking into consideration that the company manager violated mandatory preference rules to settle with the employees when making payments to other creditors and did not address the employees' dismissal in due time despite the company being unable to provide employees with work, and it also rejected the argument regarding the collective agreement as unfounded. The company's bankruptcy was declared fraudulent, and it was established that the company manager's failure to ensure the timely payment of remuneration to the employees was not related to normal commercial risks, business failure, or the like.

Case law in civil proceedings regarding assessment of the performance of the company manager's duties in the ordinary course of business suggests that reconciliation between the employees' and shareholders' interests is set *ad hoc*.[61]

Some scholars argue that, despite a small number of cases dealing with the interests of the company's employees that make it difficult to reach

59 Supreme Court 30.09.2020 – e3K-3–241–421/2020.

60 Supreme Court 21.09.2018 – 3K-3–326–1075/2018; Court of Appeal 26.11.2019 – 2A-368–790/2019.

61 Supreme Court 14.03.2019 – e3K-3–98–684/2019; 09.01.2014 – 3K-7–124/2014; 28.05.2012 – 3K-3–252/2012.

the overall conclusions, case law nonetheless imposes a duty to reconcile interests of shareholders and employees of the company on the company manager; however, the interests of the company's employees are not on equal footing with the interests of shareholders and creditors of the company.[62]

There is also case law where the Supreme Court has referred to an indefinite group of stakeholders of the company; the Supreme Court has stated that the company must take into account interests of all relevant stakeholders, including creditors, and the company's manager has a duty to reconcile and balance these interests.[63] Further, in civil proceedings concerning civil liability of the company manager in both solvent and insolvent companies, the Supreme Court stressed that both the company and corporate management bodies must comply with the laws governing companies, and the company's interest cannot be put at odds with the interest of the society.[64]

Jurisprudence stating that interests of all relevant stakeholders of the company must be considered may suggest that the interests of all stakeholders should be placed on equal footing when determining the company's interest. The Supreme Court's position that members of the management bodies may not put the company's interest at odds with the interest of society may indicate for a broader interpretation of the company's interest.[65] Having said that it has to be noted that case law has viewed this position as either directed at the specific groups of stakeholders – mainly the company's creditors but on some occasions employees of the company – or mentioned more generally in the abstract. Legal doctrine states that courts have applied the theory to determining a company's interest without any methodological underpinning and in some cases, referral to the stakeholders' theory was theoretical and not substantiated by the factual circumstances of the case.[66] Some scholars contend that, given the specific circumstances of individual cases, the management body's duty to balance

62 Lauraityte, 153–161.

63 Supreme Court 28.11.2013 – 3K-3–624/2013; 20.11.2013 – 3K-3–581/2013; 01.02.2012 – 3K-3–19/2012.

64 Supreme Court 11.05.2018 – 3K-3–177–248/2018, para. 39; 28.11.2013 – 3K-3–624/2013; 20.11.2013 – 3K-3–581/2013; 01.03.2013 – 3K-3–64/2013; 16.11.2012 – 3K-3–493/2012; 01.02.2012 – 3K-3–19/2012; 25.03.2011 – 3K-3–130/2011; 12.06.2006 – 3K-3–298/2006; 25.05.2006 – 3K-7–266/2006.

65 Lauraitytė/Miliauskas, p. 14, 19.

66 Miliauskas, in: Mikalonienė/Mikelėnas/Miliauskas/Mitkevičius/Tikniūtė, p. 134.

the interests of various stakeholders should be interpreted narrowly – as a duty to consider and not prejudice the interests of the company's creditors – rather than as a mandate to pursue broader social objectives or to account for public interest concerns.[67]

In the aforementioned case law that supposes a broader audience, where the court observed a duty of the company manager to balance the interest of all concerned stakeholders, the interests of stakeholders as opposed to shareholders, creditors, or employees of the company was not clarified, and therefore those observations are not necessarily *obiter dictum*. Lithuanian case law thus provides little guidance in interpreting the company's interest for sustainability-related matters.

III. A company's interest and the regulatory framework

Given that Lithuanian scholars have different views as to which theory for defining a company's interest is actually embedded in the national legal framework and there is no sufficient guidance in case law on how interests of all of the company's stakeholders should be taken into account (except for a demarcation between interests of two groups of stakeholders of the company – shareholders and creditors), in light of societal developments it is necessary to re-visit the concept of the company's interest within the current regulatory framework.

A linguistic interpretation of Article 19(8) of the LSC, which requires management bodies of both a public and a private company to act for the benefit of the company and its shareholders and thus highlights a single group's (shareholders') interests, suggests that Article 19(8) LSC is consistent with the shareholder primacy theory, i.e. promoting shareholder value. In 1998, a proposed amendment to the LSC provided that the management bodies must "act solely in the interests of the company", which would suggest a pluralistic approach, placing interests of all stakeholders of the company on equal footing. However, this amendment was not adopted.

The view that the LSC is worded to reflect the shareholder primacy theory is systematically supported by Article 2.87 of the CC, which sets out the key duties of the members of the management body of a legal person. A member of the management body has a duty of loyalty to the legal person.

67 Lauraitytė, p. 145–146, 154–161.

While a duty to act in good faith and reasonably is imposed on a member of the management body not only towards the legal person itself, but also to other members of bodies of the legal person (and a general shareholders' meeting is a corporate body of the company). Further, it is at the discretion of the general shareholders' meeting, a corporate body which appointed the company manager, to remove the company manager from the term without regard to the manager's fault or any other conditions.[68]

Considering that Article 19(8) of the LSC sets forth a priority of interests of a single group of stakeholders (the company's shareholders over those of the other stakeholders of the company), it is important to note that, in contrast to the version that was in force from 1 July 2001 until 31 December 2003, the current wording does not contain the requirement for the management bodies to act "solely" for the benefit of the company and its shareholders. The LSC imposes a duty on the company's management bodies to comply with laws and follow the company's articles of association. Those other provisions of the LSC limit the shareholders' primacy theory to some degree.

Regarding internal corporate governance, there are certain statutory tools that safeguard a group of interests broader than just shareholders' interests or give a preference to the interests of other stakeholders rather than the shareholders of the company. Some examples of these safeguards are as follows:

- When there are outstanding taxes not paid in due course, the company cannot pay out dividends to the shareholders or bonuses to employees (Art. 59(8) of the LSC).
- The doctrine on legal capital limits distributions of corporate assets to shareholders at the expense of creditors of the company (Art. 59(6)-3 of the LSC).
- To defend the public interest, a prosecutor may initiate a corporate investigation through the civil judicial proceedings when activities of the legal entity, its corporate management bodies or their members are in contradiction with the public interest (Art. 2.125(2) of the CC).
- A prejudiced creditor of the company has a right to challenge the decision of corporate organ (Art. 2.82(4) of the CC, Art. 19(10) of the LSC).
- There is a mechanism for employee participation in the company's share capital (Arts. 43, $45^{2,}$ and 47^{1} of the LSC).

68 Supreme Court 06.01.2021 – 3K-3–169–248/2021, para. 26; 28.05.2012 – 3K-3–252/2012.

- A statutory distribution of functions and competencies between the corporate bodies set up limits for the shareholders', as members, participation in the day-to-day company's management (Art. 19(3)–(5) and 20(2) of the LSC).

Although these types of rules somewhat dilute the shareholder primacy theory, they do not modify the existing hard law rule embedded in Article 19(8) of the LSC regarding the company's interest, nor do they establish a general proactive duty of a management body to promote interests of other stakeholders of the company over shareholders; the interests of the other relevant stakeholders just are not on an equal footing with the interests of the company's shareholders.

Further, the shareholders' primacy theory is watered-down by specific laws aimed at regulating activities of the companies that impose statutory duties on companies. These laws specify that management bodies must have regard the interests of other stakeholders in a particular way (in tax law, labour law, environmental law, antitrust law, anti-money laundering law, insolvency law, etc.). This regulatory approach must be seen in the context of the Constitutional Court's jurisprudence concerning constitutional protection of private ownership, freedom of economic activity, and the regulation of economic activity by the state. The Constitutional Court[69] has repeatedly stated that the state, when regulating economic activity, must balance the interests of the private person (the subject of the economic activity) with the interests of society and strive not for the welfare of the particular persons, but rather for the general welfare of the nation as a whole. The Constitutional Court stated that the interests of society must not be opposed to the legitimate interests of the entity which activity is subject to the regulation, or to the persons who established or manage that economic entity; and that the content of the concept of "general welfare of the nation" is defined on a case-by-case basis, taking into account economic, social, and other important factors.

Finally, all companies must follow the general standards of justice, reasonableness, and good faith (Arts. 1.5(1) and 1.137 of the CC), standards that change in light of societal developments.

Given these principles, along with the fact that (1) the LSC has established a priority for the interests of the company as a going-concern legal entity over those of its shareholders, and (2) that the legal framework

69 Constitutional Court 13.12.2022 – KT149-N15/2022, TAR, 2022, No. 254, para. 10.3 with further references to its jurisprudence.

reduces the shareholder primacy theory in order to account for various interests, – when acting in the company's interest, management bodies of the company must act for the benefit of the shareholders as a whole, while at the same time taking into account interests of the other relevant stakeholders of the company.

For listed companies, it seems that the Corporate Governance Code for the companies listed on Nasdaq Vilnius of 2019,[70] which is applicable under the "comply and explain" approach,[71] has taken a similar path. The principle that "*the overriding objective of a company should be to operate in common interests of all the shareholders by optimizing over time shareholder value*" (Principle 1 "Basic provisions") is no longer included in the Code, nor is the explanation that "*a company's supervisory and management bodies should act in close co-operation in order to attain maximum benefit for the company and its shareholders*", as embedded in the Code's previous version. Nevertheless, an overall analysis of the Code suggests that the Code's primary focus is on the company's shareholders: the corporate governance framework has to protect the rights of shareholders and recognise the rights of stakeholders (investors, employees, creditors, suppliers, clients, local community, and other persons having certain interests in the that company) entrenched in the laws or mutual agreements.[72]

Accordingly, it can be assumed that the current regulatory framework essentially places the concept of the company's interest under the enlightened shareholder value approach.

D. Receptiveness of the company's interest to sustainability imperatives

In addition to responsible business conduct pursued voluntarily by companies themselves, there are statutory sustainability-related duties imposed on companies by specific laws aimed at fostering better transition to sustainable corporate governance. These laws are, in principle, national

70 AB Nasdaq Vilnius, Corporate Governance Code for the Companies Listed on Nasdaq Vilnius, 2019, https://www.nasdaqbaltic.com/files/vilnius/teisesaktai/Nasdaq%20Vilnius%20bendroviu%20valdysenos%20kodeksas%20(galioja%20nuo%20%202019_01_15)%20EN.pdf; It was introduced in 2006 and then revised in 2009 and 2019 accordingly.

71 Law of Securities of the Republic of Lithuania No. X-1023 (VZ, 2007, No. 17–626 (with further amendments and supplements), Art. 12(3).

72 E.g. Principles 1–3 and 8.

transposition measures of EU directives (e.g. corporate sustainability reporting directive,[73] directive on gender-balanced boards,[74] amendments to the shareholders' rights directive aimed to encourage more long-term engagement of shareholders[75]).

For example, for better linking directors' remuneration to sustainability targets in listed companies, a shareholders' general meeting must approve the remuneration policy. The remuneration policy must, at a minimum, be addressed to the company manager, members of the board, and the supervisory council, and, *inter alia,* detail how it reflects the company's business strategy, long-term goals, and interests, and include financial and non-financial performance criteria, including, where appropriate, criteria relating to corporate social responsibility (Art. 37^3 of the LSC). Further, an annual management report of a listed company must contain information about remuneration to individual members of the management body with explanation, *inter alia,* as to how the remuneration is in line with the approved remuneration policy and how performance criteria have been applied.[76]

Another example is the new rules on sustainability reporting for large undertakings (which, *inter alia,* includes public and private companies) and listed companies (except micro-companies) enacted on 1 July 2024.[77] Sustainability reporting covers environmental, social, and human rights,

73 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance), OJ L 322, 16.12.2022, p. 15–80, http://data.europa.eu/eli/dir/2022/2464/oj.

74 Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures (Text with EEA relevance), OJ L 315, 7.12.2022, p. 44–59, http://data.europa.eu/eli/dir/2022/2381/oj.

75 Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (consolidated text), http://data.europa.eu/eli/dir/2007/36/2024-01-09, Arts. 9a and 9b.

76 Law on reporting of undertakings and groups of undertakings of the Republic of Lithuania No. XIV-2811, TAR, 2024, No. 12134, which entered into force on 1 July 2024 ("Law on Reporting") and repealed Law on reporting of undertakings of the Republic of Lithuania as well as Law on consolidated reporting of groups of undertakings of the Republic of Lithuania; Art. 10(1)-3, Art.19, Art. 25.

77 Arts. 4 and 19 of Law on Reporting. There is also a requirement to ensure a public accessibility to the third-country company's sustainability report at a consolidated level to be applied for their 2028 activities (Arts. 26 and 41(21)).

and governance factors; it contains information about the company's own operations, its group, and its value chain (Art. 3(30), Art. 21 of the Law on Reporting). In consideration of short-, medium-, and long-term indicators, sustainability reporting, as an integral component of the annual management report, should encompass, *inter alia*, a description of the company's business model and strategy, its policies relating to sustainability matters, relevant sustainability-related targets, and describe the role of corporate bodies in relation to sustainability matters. The report should also include an overview of the corporate sustainability due diligence process, as well as an assessment of the impact of corporate activities on individuals and the environment, by outlining principal actual or potential adverse impact associated with both the company's own operations, its group and its value chain. Furthermore, it should detail actions undertaken to prevent, mitigate, remediate, or eliminate such adverse impact, along with the outcomes of these measures.[78] Sustainability reporting prepared according to the European standards and accompanied by an assurance opinion from an independent expert (auditor, assurance services provider) must be submitted to the business register and disclosed on a website of the listed company (Art. 22(1), Art. 34, Art. 36(1), Art 37(1) of the Law on Reporting).

To fulfil the sustainability reporting duty, undertakings likely will have to adapt their information systems, define policies and strategies, and review their business model.[79] The Law on Reporting is gradually applied in terms of its personal scope; it sets forth that large public-interest entities with more than 500 employees on average per annum and parent undertakings of large groups with more than 500 employees in the group have to start reporting on their 2024 activities, while other large undertakings beginning reporting with their 2025 activities, and listed small and medium-sized undertakings beginning with their 2026 activities (with an opt-out for their activities until 1 January 2028) (Art. 41).[80]

78 Law on Reporting provides for certain exceptions for simplified sustainability reporting, e.g. for listed SMEs (Art 21 (9)).

79 Explanatory note No. XIVP-3684 of 25 April 2024 to the draft laws No. XIVP-3675 – XIVP-3690.

80 The repealed legislation has already required large public-interest companies with more than 500 employees to prepare a corporate social responsibility report as part of an annual corporate reporting, (Art. 23(5), Art. 23^2 of Law on reporting of undertakings of the Republic of Lithuania No. IX-575, VZ, 2001, No. 99–3516, with further amendments and supplements).

The amendments to the Law on Equal Opportunity for Men and Women at the end of 2024, that are aimed at enhancing gender diversity at boards of large undertakings, is another example of measures taken in pursuance of sustainable corporate governance.[81] It was stressed in *travaux prepatories* of the amendments to the Law on Equal Opportunity for Men and Women that the proportion of women on the boards of the largest listed companies in Lithuania is below the EU average.[82] The progress in Lithuania has been slow: over the last 7 years, the number of women on the boards of medium and large Lithuanian companies increased by only 3 percent, and only 1 percent for company manager positions.[83] As this rate, it would take more than three decades to achieve full gender balance on corporate boards.[84]

For selection procedures starting from 1 December 2024, large companies with boards and/or supervisory councils must take necessary measures to ensure that persons of the underrepresented gender occupy at least 33 percent (but not more than 49 percent) of the positions of company manager, board members, and members of supervisory council by 30 June 2026. Large companies must determine the relevant requirements and criteria for occupying such positions. Candidates to the positions of company manager, board members, and members of supervisory council of a large company must be selected based on a comparative assessment of the qualifications of each candidate. When candidates are equally qualified, priority must be given to the candidate of the underrepresented gender, with a few exceptions. Large companies must inform their shareholders who vote to elect the company manager, members of management, and supervisory bodies about the rules on gender-balanced boards.

The Law on Reporting[85] requires that, for large listed companies with boards and/or supervisory councils, the management report on corporate governance, which is submitted on a yearly basis to the business register and published on the company's website, must include: statistical infor-

81 Law on equal opportunities for women and men of the Republic of Lithuania No. VIII-947, VZ, 1998, No. 112–3100 (with further amendments and supplements); Law No. XIV-3011 amending Law on equal opportunities for women and men of the Republic of Lithuania, TAR, 2024, No. 17776, which came into force on 1 December 2024, save to a few exceptions; Art 2 ($1^{1)}$-(1^{2}), Art. 6^{1}, Art. 11^{1}, Art. 20.

82 Explanatory note No. XIVP-4002 of 27 June 2024 to the proposed amendments to the Law on Reporting.

83 Ibid.

84 Ibid.

85 Art. 24(2); Law No. XIV-3012 amending Law on Reporting, TAR, 2024, No. 17777, which came into force on 1 December 2024; Art. 24(1)-12.

mation on gender representation in the company's management and supervisory bodies (percentage of representation by gender); details of the measures the company has already taken or intends to take to ensure that the persons of the underrepresented gender occupy at least 33 percent (but not more than 49 percent) of the positions of company manager, board members, and members of supervisory council; and, in the event that the threshold has not been met, the reasons why this proportion has not been achieved. Other large non-listed companies must report on gender balance on their management and supervisory bodies on a yearly basis by submitting a gender equality report to the Office of the Equal Opportunities Ombudsman.

In addition to the above sustainability-related duties – reporting and formation of gender-balanced corporate boards as imposed on certain types of companies by specific laws, in the sustainability context it is worth mentioning a general duty not to cause harm to others which is embedded in the CC.

Every person has a duty to follow the rules of such behaviour so as not to harm another person with their actions (acts, omissions) (Art. 6.263(1) of the CC). Civil liability may arise from a failure to fulfil not only a duty established by law or contract (wrongful omission) or from the performance of acts prohibited by law or contract (wrongful act), but also from a breach of a general duty to act carefully and diligently (Art. 6.246(1) of the CC). A person is at fault if, taking into account the essence of the obligation and other circumstances, she/he was not as careful and prudent as was necessary under the relevant circumstances (Art. 6.248(3) of the CC). If the above sustainability-related specific duties are imposed only on large and/or listed companies, a general duty of care not to cause harm to others concerns all companies in their activities. Accordingly, all companies, in complying with their general duty of care not to cause harm to others, have to act prudently in order to manage sustainability risks.

Nonetheless, given that sustainability is predominantly about the manner in which the company pursues its corporate purpose, the duty of care of the corporate management could better reflect the move towards sustainability.[86] For example, according to the Corporate Governance Code for the companies listed on Nasdaq Vilnius, the management board should take into account the needs of the company and of its shareholders, employees,

86 Bianchini/Palmiter/Mikalonienė, p. 161 (169).

and other stakeholders when implementing the company's strategy and exercising good corporate governance by striving to build sustainable business (3.1.2 in relation to Principle 3). However, the Corporate Governance Code, last revised in 2019, does not yet take into account the 2023 updated guidance on corporate sustainability set out in the OECD Principles of Corporate Governance,[87] nor does it account for other comparative modern Corporate Governance Codes that reflect the move towards sustainability with regard to listed companies.

E. Conclusion

In Lithuania, both going-concern public and private companies have their own interests that are separate and distinct from the interests of shareholders and other stakeholders of the company. The conventional understanding of a company as a commercial undertaking and a private for-profit legal entity, which was introduced during the transformation from socialism to a market economy, plays an essential role in determining the company's interest. The legal framework essentially puts the concept of the company's interest under the enlightened shareholder value approach, which means that management bodies acting in the interests of the company must act for the benefit of the company's shareholders as a whole, while at the same time taking into account the interests of other relevant stakeholders.

To balance various interests that are linked to the companies' activities and to respond to societal developments, the regulatory approach in fostering better transition to sustainable corporate governance is to not redefine the company's interest, a central concept of corporate governance, nor to repeal the priority of shareholders' interests in a favour of a pluralistic approach and not to put the interests of other stakeholders of the company on the same footing as shareholders. Instead, the legislature uses a different technique – *first*, establishing the general standards of justice, reasonableness, and good faith, and a general duty of care not to cause harm to others that concern all companies in their activities, and *second*, imposing statutory sustainability-related duties on companies that limit the private autonomy of the companies that must comply with those legal duties and restricting the discretion of the corporate management in a business decision-making.

87 OECD, G20/OECD Principles of Corporate Governance 2023, OECD Publishing, Paris, https://doi.org/10.1787/ed750b30-en.

Regarding sustainability-related duties in the corporate governance context, the regulatory approach is to focus on large and/or listed companies by prescribing statutory corporate duties that originate from EU directives into Lithuanian law. It is likely that societal change will be integrated into the corporate governance of the (non-listed) SMEs that dominate in Lithuania through voluntary responsible action and prudent behavior on not-to-harm basis. SMEs will also be better able to contribute to sustainable development through their business relationships with partners who must comply with corporate sustainability reporting and due diligence obligations.

References

AB Nasdaq Vilnius, Corporate Governance Code for the Companies Listed on Nasdaq Vilnius, 2019, https://www.nasdaqbaltic.com/files/vilnius/teisesaktai/Nasdaq%20Vilnius%20bendroviu%20valdysenos%20kodeksas%20(galioja%20nuo%20%202019_01_15)%20EN.pdf (last accessed 27 December 2024)

Abramavičius, Armanas/Mikelėnas, Valentinas, Įmonių vadovų teisinė atsakomybė, 2-as leid., Vilnius 1999

Andersen, Paul Krüger/Andersson, Jan Bertil/Bartkus, Gintautas/Baums, Theodor/Clarke, Blanaid J./Conac, Pierre-Henri/Corbisier, Isabelle/Daskalov, Waltschin/Engrácia Antunes, José/Fuentes, Mónica/Giudici, Paolo/Hannigan, Brenda/Kalss, Susanne/Kisfaludi, Andras/de Kluiver, H. J./ Opalski, Adam/ Patakyova, Maria/Perakis, Evanghelos Emm/Porkona, Jarmila/Roest, Joti/Sillanpää, Matti J./Soltysinski, Stanislaw/Teichmann, Christoph/Urbain-Parleani, Isabelle/Vutt, Andres/Sørensen, Karsten Engsig/Winner, Martin/De Wulf, Hans, European Model Company Act (EMCA) (September 1, 2017), Nordic & European Company Law Working Paper No. 16–26, https://ssrn.com/abstract=2929348 (last accessed 9 January 2025)

Bebchuk, Lucian A. B/Tallarita, Roberto, Will Corporations Deliver Value to All Stakeholders? (August 4, 2021), forthcoming in Vanderbilt Law Review, Vol. 75 (May 2022), https://ssrn.com/abstract=3899421 (last accessed 9 January 2025)

Bitė, Virginijus, Uždarosios akcinės bendrovės teisinis reglamentavimas: sukūrimas, raida ir šių dienų tendencijos, in Birštonas (ed.), Privatinės teisės doktrina ir praktika: Liber Amicorum Vytautui Pakalniškiui. Mykolo Romerio universitetas, Vilnius 2014, p. 150–180

Bosaitė, Akvilė/Butov, Sergej, Juridiniai asmenys kaip civilinės teisės subjektai, in Mizaras (ed.), *Civilinė* teisė. Bendroji dalis: vadovėlis, Vilniaus universitetas, Vilnius 2009, p. 211–316

Drukteinienė, Simona/Jurkevičius, Vaidas/Mikelėnas,Valentinas/Bitė, Virginijus-Pakalniškis, Vytautas, Civilinės teisės ir jos pošakių bei institutų raida 1918–2018 m., in Sinkevičius/Jakulevičienė (eds.), Lietuvos teisė 1918 – 2018 m.: šimtmečio patirtis ir perspektyvos, Mykolo Romerio universitetas, Vilnius 2018, p. 280–338

Ferrarini, Guido, Corporate Purpose and Sustainability (December 7, 2020). European Corporate Governance Institute – Law Working Paper #559/2020, An edited version of this paper will be published as a chapter in Danny Busch, Guido Ferrarini and Seraina Grünewald (eds.), Sustainable Finance, Palgrave MacMillan (forthcoming), SSRN: https://ssrn.com/abstract=3753594 (last accessed 9 January 2025)

Fleischer, Holger, Corporate Purpose: A Management Concept and its Implications for Company Law (January 21, 2021). European Corporate Governance Institute – Law Working Paper No. 561/2021, https://ssrn.com/abstract=3770656 (last accessed 11 December 2024)

Greičius, Rimgaudas, Privataus juridinio asmens vadovo fiduciarinės pareigos, Vilnius 2007

Hopt, Klaus J., Corporate Purpose and Stakeholder Value – Historical, Economic and Comparative Law Remarks on the Current Debate, Legislative Options and Enforcement Problems – (March 15, 2023). European Corporate Governance Institute – Law Working Paper No. 690/2023, https://ssrn.com/abstract=4390119 (last accessed 9 January 2025)

Jakuntavičiūtė, Gintarė, Civil liability of the members of management bodies of the legal entities, Doctoral dissertation, Mykolo Romerio University, Vilnius 2012

Jakutytė-Sungailienė, Asta, Įmonė – *sui generis* civilinių teisių objektas, in Sagatys (ed.), Lietuvos Respublikos civilinis kodeksas: pirmieji dešimt galiojimo metų, Mykolo Romerio universitetas, Vilnius 2013, p. 129–159

Kershaw, David/Schuster, Edmund-Philipp, The Purposive Transformation of Corporate Law (March 31, 2019). LSE Legal Studies Working Paper No. 4/2019, Forthcoming, American Journal of Comparative Law, European Corporate Governance Institute – Law Working Paper No. 616/2021, https://ssrn.com/abstract=3363267, (last accessed 11 December 2024)

Kiršienė, Julija/Pakalniškis, Vytautas/Ruškytė, Ramutė/Vitkevičius, Pranciškus, in Pakalniškis (ed.), Civilinė teisė. Bendoji dalis, T.1, Lietuvos teisės universitetas, Vilnius 2004

Lauraitytė, Eglė, Corporate social responsibility – company law aspects., Doctoral dissertation, Vilnius University, Vilnius 2016

Lauraityte, Eglė/Miliauskas, Paulius, Sustainable Companies under the Lithuanian Company Law (April 11, 2013). University of Oslo Faculty of Law Research Paper No. 2013–10, https://ssrn.com/abstract=2248591 (last accessed 9 January 2025)

Mikalonienė, Lina. Sustainability Concept in Company Law and Corporate Governance: Why, How and Who, in Bianchini/Palmiter (eds.), The Emerging Law of Sustainable Corporations: Chronicles from a Course, a Colloquium, and a Symposium, Padova University Press, Padova, 2022, p. 161–176 https://www.padovauniversitypress.it/en/publications/9788869383335

Mikalonienė, Lina, Uždarosios akcinės bendrovės akcininko teisės ir jų gynimo būdai, Vilnius 2015

Mikalonienė, Lina/Mikelėnas, Valentinas/Miliauskas, Paulius/Mitkevičius, Vilius/Tikniūtė, Agnė, The convergence and divergence of legal forms of enterprises: is Lithuanian legal regulation attractive in international context? Vilnius university, Vilnius 2017, https://www.tf.vu.lt/publications/imoniu-teisiniu-formu-konvergencija-ir-divergencija-ar-lietuvos-teisinis-reglamentavimas-yra-patrauklus-tarptautiniame-kontekste-2017/

Mikelėnas, Valentinas/Bartkus, Gintautas/Mizaras, Vytautas/ Keserauskas, Šarūnas, Lietuvos Respublikos civilinio kodekso komentaras. Antroji knyga. Asmenys, Vilnius 2002

OECD, G20/OECD Principles of Corporate Governance 2023, OECD Publishing, Paris, https://doi.org/10.1787/ed750b30-en (last accessed 27 December 2024)

Pakalniškis, Vytautas, Pirmasis Lietuvos Respublikos civilinis kodeksas – modernios valstybės kūrimo priemonė, in Sagatys (ed.), Lietuvos Respublikos civilinis kodeksas: pirmieji dešimt galiojimo metų, Mykolo Romerio universitetas, Vilnius 2013, p. 13–32

Pakalniškis, Vytautas/Tikniūtė, Agnė, Juridinio asmens instituto raidos bruožai šiuolaikinėje Lietuvos privatinėje teisėje, in Mesonis (ed.), Regnum est: 1990 m. Kovo 11-osios Nepriklausomybės Aktui – 20. Liber Amicorum Vytautui Landsbergiui. Mykolo Romerio universitetas, Vilnius 2010, p. 575–593

Petrin, Martin, Beyond Shareholder Value: Exploring Justifications for a Broader Corporate Purpose (November 1, 2020). Research Handbook on Corporate Purpose and Personhood (Elizabeth Pollman & Robert B. Thompson, eds, Edward Elgar Publishing) (Forthcoming), https://ssrn.com/abstract=3722836 (last accessed 9 January 2025)

Rock, Edward B., For Whom is the Corporation Managed in 2020?: The Debate over Corporate Purpose (May 1, 2020). European Corporate Governance Institute – Law Working Paper No. 515/2020, NYU School of Law, Public Law Research Paper No. 20–16, NYU Law and Economics Research Paper, https://ssrn.com/abstract=3589951 (last accessed 9 January 2025)

Sjåfjell, Beate K./Mähönen, Jukka, The future of Nordic company law, in Sjåfjell, Beate K./Mähönen, Jukka (eds.), Nordic Company Law: Broadening the Horizon. Scandinavian University Press 2023, p. 305-322

Sjåfjell, Beate, Sustainable Value Creation Within Planetary Boundaries – Reforming Corporate Purpose and Duties of the Corporate Board (August 4, 2020). Sustainability 2020, 12, 6245, University of Oslo Faculty of Law Research Paper No. 2020–20, Nordic & European Company Law Working Paper No. 21–04, https://ssrn.com/abstract=3666952 (last accessed 11 December 2024)

Tikniūtė, Agnė/Jurkevičius, Vaidas. Atstovo samprata Lietuvos civilinėje teisėje, in Sagatys (ed.), Lietuvos Respublikos civilinis kodeksas: pirmieji dešimt galiojimo metų, Mykolo Romerio universitetas, Vilnius 2013, p. 359–393

Žilys, Juozas, Visavertės nuosavybės teisės ir ūkio sistemos konstitucinių pagrindų genezė. Teisiniai tekstai ir kontekstai, in Birštonas (ed.), Privatinės teisės doktrina ir praktika: Liber Amicorum Vytautui Pakalniškiui. Mykolo Romerio universitetas, Vilnius 2014, p. 13–78