

Abstract

The duty to act with the diligence of a professional manager and consequences of the violation of this duty

This thesis deals with the duty to act with the diligence of a professional manager and the consequences of doing so. The author of the thesis tries to define in detail the duty to act with the diligence of a professional manager as a standard form of conduct and its individual definition components and also the consequences that occur in case of breach of this duty. The thesis defines the theoretical basis and tries to critically evaluate problematic issues related to this standard of conduct and to bring their own opinion on the matter. The thesis is divided into six parts. The first part deals with the master-agent issues and the related costs of representation. Shortly, attention is paid to the fiduciary duty and the reasons for its anchoring in general. The second chapter deals with the development of the duty to act with the diligence of a professional manager from the time of the General Austrian Civil Code of Law to legislation in the Civil Code in force and the Business Corporations Act. The third chapter defines individual elements of the care of a professional manager, namely the duty of loyalty, due care and necessary knowledge, with a partial overlap into foreign legal systems. Within the framework of the duty of loyalty, the author deals with the understanding of the company's interest from the perspective of corporate governance. The fourth chapter is devoted to the issue of requested instructions for business management. The fifth chapter deals with the rule of business judgment with an overlap with foreign regulations. The author also discusses the burden of proof in court proceedings. The sixth chapter is devoted to selected private consequences of breach of the duty of care of a proper manager. It deals with the issue of compensation for damages and other related institutes such as defining damages as material damage and non-material damage, the right of shareholders to compensation for damage sustained indirectly to the value of their participation in the corporation, running the limitation period for damage caused by a member of the statutory body. Attention is paid to the discussed issues, such as whether the duty of care of a due manager is a contractual or legal obligation, or whether an obligation to compensating damages can be waived in whole or in part by an agreement on the settlement. Or whether the liability under the provision of Section 159 (3) of the Civil Code shall cease as a result of the conclusion of settlement. Furthermore, the internal delegation and the external delegation are analysed, as well as liability for damage within collective decision-making. Attention is also paid to liability in accordance with the provisions of Section 159 (3) of the Civil Code. Finally, the author mentions an action to supplement the liabilities introduced into the text of law with an amendment to the Business Corporations Act.