

# **The Duty of Loyalty of a Director of a Company and the Duty of Loyalty of a Member of a Company in Their Mutual Comparison**

## **Abstract**

According to the valid legislation, both the member of a company and the director of a company are subject to the duty of loyalty. The duty of loyalty has different content in relation to these persons and affects them with different intensity. The aim of this thesis is to compare selected aspects of the duty of loyalty of the member of company and the director of company.

The first part presents initial doctrinal and judicial evolution of the duty of loyalty of the member of company and the director of company in the legal order of the Czech Republic. Furthermore, the essence (creative elements) of the duty of loyalty of mentioned persons is discussed. In this context, legal doctrine concludes that the essence of loyalty of the member of company and the director lies, amongst other matters, in contract. However, each of these persons has a different obligation, which is associated with different rights and duties of the relevant members of company's bodies. The aim of the first part is to develop the issue, which I consider crucial for understanding arguments and conclusions presented in the thesis.

In the second part, I try to identify the interest which the member of company should take into consideration in accordance with his loyalty, as well as the interest that the director should prefer before interests of others within his necessary loyalty. In general, I analyse what can be considered as the interest of company. I deal with this topic mainly in terms of long-term profitability of company. This part ends with a comparison of differences in the interests pursued by the member of company and the director.

In the third part, I demonstrate the mutual differences and similarities of partial duties that arise for the member of company and the director from their duty of loyalty. Within this part I focus on the manifestations of the duty of loyalty, which are to a greater or lesser extent common to these persons. The aim of this part is to make a practical comparison, when the duty of loyalty of the member of company and the director manifests itself in a similar way, and when, on the contrary, differently.

The fourth part deals with the latest development of judicial decisions relating to the duty of loyalty. In this part I analyse decisions of higher courts of the Czech Republic, which I consider

unconceptual and in conflict with the doctrinal conclusions and judicial decisions of the Constitutional Court concerning the duty of loyalty. The aim of the last part is to demonstrate that the very essence of the duty of loyalty plays an important role in legal practice.

## **Key Words**

Duty of loyalty, Director of Company, Member of Company, Company