

Abstract

Private law consequences of violation of the duty to act with the diligence of a professional manager of a member of an elected body of a capital company

This thesis deals with the private law consequences of violation of the duty to act with the diligence of a professional manager of a member of an elected body of a capital company. Considering the big extent of all the existing private law consequences, I have chosen to focus on only two selected ones, which are the statutory guarantee of a member of an elected body in the extent of not compensated damage that this member has caused to a company and the duty to reimburse any unfair advantage gained in connection with violation of the duty to act with the diligence of a professional manager.

The thesis is divided into three main parts. First part deals briefly with defining the duty to act with the diligence of a professional manager. There are examined the two main parts of this duty, which are the duty of loyalty and the duty of care.

The second part of the thesis focuses on the first selected private law consequence which is the statutory guarantee of a member of an elected body, regulated in the civil code. There are analysed the main conditions for the creation of the statutory guarantee and the relation between them. Attention is also given to the moment of creation and to the moment of termination of the statutory guarantee and so is to the continuation of the statutory guarantee. The procedural aspects are also covered. Finally, the limits of the legislation regulating the statutory guarantee of the member of an elected body are described and the biggest problem of the practical use of this institute is pointed out. That is the information deficit of the creditors of a company who may want to use the statutory guarantee to satisfy themselves. In this context there are suggested and analysed a few possible solutions of this problem.

The third part of the thesis deals with another selected private law consequence which is the duty to reimburse any unfair advantage that was gained in connection with violation of the duty to act with the diligence of a professional manager. Here as well are firstly analysed the main conditions for the creation of this duty and the important relations between them. In connection to that the term unfair advantage is defined. Attention is also given to the reimbursement of the advantage itself, where are also defined the situations when the reimbursement is not possible. In that context the procedure of deciding the amount of financial compensation, that comes into account when the reimbursement is not possible, is examined. The procedural aspects of this duty are also addressed. Finally, there are named the persons that

are entitled to claim the reimbursement of the unfair advantage. In connection to that it is taken into consideration why could it be a problem in practice, when only the company itself would be entitled to claim the reimbursement of the unfair advantage.

Key words – due manaregical care, liability, memeber of an elected body