

Conflict of interest of a member of the governing body when representing a business corporation

Abstract

The thesis focuses on individual cases of conflict of interest of a governing body member in which the information obligation arises and on the manner of fulfilling this information obligation towards individual bodies in capital companies. To answer individual sub-questions of the thesis, the author analyses academic literature and case law of both lower and higher courts. In doing so, he points out several interpretative issues, the solution of which is not unambiguous even among the professional public.

It first sets the topic in a broader context and then introduces individual cases of conflict of interest, which it systematically divides into general and specific conflicts of interest. In doing so, it highlights several cases where it is unclear whether the general or specific conflict of interest legislation should be applied. It deals with whether a legal person in which a member of the governing body of the business corporation also acts as a member of the governing body may be regarded as a close person of the member of the governing body of the business corporation. The author concludes that its solution differs depending on whether it is a case of general or specific conflict of interest. In addition, he draws attention to cases where a contract is to be concluded between a business corporation and another legal person in which a person close to the member of the governing body acts as its sole shareholder and member of the governing body. Consequently, it concludes that the legal regulation of a specific conflict of interest must be applied not only to contracts but also to unilateral juridical acts. According to the author, the application of the exception relating to contracts concluded in the ordinary course of business may also be allowed in the case of securing or confirming a debt or in the case of a joint debt.

The following part of the thesis focuses on the common issues in fulfilling the information obligation in cases of conflict of interest in capital companies. Regarding the recent case law of the Supreme Court, the author points out that the obligation to provide information to the supreme body may be fulfilled not only at the general meeting but also in exceptional cases less formally. Concerning the right of a member of the supreme body to request additional information, the author points out that his will does not always correspond to that of the supreme body. It also discusses the differences in fulfilling the information obligation towards a member of the supreme body of a business corporation who is a legal person. The author concludes that the obligation to provide information will generally be

directed towards the governing body of the shareholder. At this point, however, it points out that there may also arise a conflict of interest on the part of a member of the governing body of a shareholder. In such a case, a particular governing body member must inform the relevant bodies at that shareholder's level and refrain from acting until such time. Last but not least, in the case of a supervisory body, the author also allows for the exceptional fulfilment of the information obligation outside the supervisory body meeting. At the same time, the author draws attention to the risks that may arise for the members of the supervisory body when applying such a procedure.

Key words: conflict of interest, information obligation, capital companies