

Abstract

Board of directors and the position of its members

A joint-stock company belongs among the most important legal forms of business organizations, which, on the one hand, results from their frequency, and, on the other hand, from their share amounts in the entrepreneurial entities' incomes.

The body, which acts on behalf of a joint-stock company outwards, which is responsible for the business organization management as well as for a lot of other rights and obligations, and which substantially influences the company operation and fulfillment of its shareholders' basic interests, is, according to the Czech legal regulations, a Board of Directors. In this Thesis I am trying to document, in maximum extent, a role of the Board of Directors as a joint-stock company's statutory body, to describe its rights, obligations and decisive influence on the company management and administration. Considering the importance of the Board's role as well as a historically respected separation of the company ownership from its management and administration, I have focused, in more detail, on issues described in the Anglo-American legal area as a so-called agency problem. Within the basic obligations I have, therefore, mainly dealt with the duty of loyalty, ban on competition, ban on internal trade, and duty of care.

A dispositive character of some legal standards has been supported in my Thesis with regulations included in particular Articles of Czech joint-stock companies. Meanings of some provisions, institutions and problems have been documented through their comparison with a law of the Anglo-American area, mainly of the United States of America, as well as with legal regulations which are closest to the Czech legal culture and history, i.e. with the German ones. I have also documented a current development in the field of European law. I am trying to support statements or my own opinions and conclusions with references to professional literature; questionable or heterogeneous opinions of the legal literature are supported with judicature, which, however, is not generally too numerous.

This Thesis is divided into nine chapters.

The introduction, where I have described a modern character of a joint-stock company and its basic features related to a business company, is followed by the second

chapter where I have briefly summarized a historical development of joint-stock companies in the Czech countries, focused mainly on their bodies. The third chapter includes a definition of the dualistic and monistic model of a joint-stock company, which are two basic models of the joint-stock company management and administration. This chapter also includes their mutual comparison. Special attention is then paid to a so-called European company which allows the existence of a joint-stock company of both models.

The fourth chapter includes a characteristic of Board of Directors as an executive and managing body which is entitled to act on behalf of the company outwards, and which is in charge of the company business management and other activities determined by the Commercial Code, other legal regulations and Company Articles. The right of the Board of Directors to act on behalf of the company and trade management of the company have been described in more detail.

In the fifth chapter I have defined an establishment of the Board position, and conditions of the capability to become a member of the Board of Directors. Further, I have defined a basic characteristic of the relationship between a Board member and a joint-stock company, which is a commercial and legal relationship.

The sixth chapter deals with Board members duties and obligations. The primary obligation, in my opinion, is the duty of loyalty, i.e. the tenure of the position in compliance with the company's interests, not with interests of individual members of the body. Further, it is the obligation to perform the position duties with a care of a proper manager and administrator, ban on competition and internal trade. In more detail I have analyzed valid Czech legal regulations mainly in comparison with the Anglo-American legal area which deals with these issues mainly in the field of a common law and legal regulations of individual American states, i.e. not at the federal level. In connection with the primary obligations I have also briefly deal with two basic models of corporate governance, i.e. a so-called "shareholder value" and "stockholder value". Sequentially to the Board members' obligations, the seventh chapter deals with their liabilities, especially their liability for damage.

In the seventh chapter I have analyzed basic rights of members of the Board of Directors. Considering the relatively brief legal regulations, I have mainly dealt with the right to be provided with remuneration and information.

The eighth chapter deals with a termination of the Board member position, especially due to a member's death, resignation or dismissal. Besides these basic regulations, the law also includes other ways of the position termination, e.g. expiry of the office term or absence of conditions for the office to be performed.

In the conclusion I have summarized that for the Czech Republic I still find a dualistic model of a joint-stock company management and administration to be the basic one. My opinion is supported with a historical context, current development, including expected modifications which are to be made by a new Commercial and Civil Codes, as well as with the existence of an independent control body, separated from the Board of Directors, i.e. existence of the Supervisory Board which, in my opinion, allows a wider and more efficient supervision and control. Board of Directors is a statutory body with an extraordinarily wide scope of competences as it takes decisions concerning all the company issues unless they belong, according to the Commercial Code or Company Articles, to the scope of activities of the Shareholders' Meeting or Supervisory Board. The right of the Board of Directors to act on behalf of the company cannot be efficiently restricted towards any third entities either. This is the reason why I think that its basic obligations, above all the duty of loyalty and duty of care, have to be determined in more detail than it is done in the current legal regulations and in draft versions of the new Commercial and Civil Codes.