

Summary

The topic of this thesis is the Business Judgment Rule. It can be defined as a doctrine that protects officers and directors from personal liability if they fulfilled certain conditions when adopting a business decision. The rule promotes making even very risky decisions that can turn out to be harmful to the corporation. This doctrine was originally developed by the courts in the United States of America, most important being the courts in the State of Delaware. However, the Business Judgment Rule has recently been adopted by many different states worldwide and it will probably be enacted in the Czech Republic as well. This thesis explains and examines the Business Judgment Rule, how the rule has developed over time and the situation in the Czech Republic. I mostly work with articles written by American authors and with decisions of the courts of the State of Delaware.

Chapter One defines the duties of directors of a company. It describes the standard of care which director must apply under the Czech law. Then it shortly deals with fiduciary duties (duty of care and duty of liability; questionably duty of good faith) as applied in the United States. Chapter Two analyzes the Business Judgment Rule and its different forms. There are two main conceptions of the rule – it can be seen as an abstention doctrine or as a standard of liability. Chapter Three explains the most important decision issued by American courts. It shows how the courts understand and apply the rule and which conditions shall be met for director to escape liability for poor business decisions. In Chapter Four the basic elements of the rule are discussed. Director must adopt a decision, there must be a business judgment. She cannot breach the duty of liability. Director must be free of conflict of interest. Decision must be an informed one, process due care must be present. Usually rationality of the decision is also required. Chapter Five focuses on the rationales of the rule. In every business decision there is a risk that the decision may turn out badly. Despite this fact, directors are required to make risky decisions. Court room is not the proper place where these decisions should be reexamined, the judges are not business experts. If an action is brought to court and directors can be found liable, it has impact on the composition of the board of directors and relationships among the directors. Last chapter – Chapter Six – analyses current legislation in the Czech Republic and also the draft of the new code on business corporations.

The main aim of this thesis is to explain the rule to anyone interested in business law and corporate governance and analyze the situation in the Czech Republic and possibilities of its application under positive law and under the current draft of the new code.