

The duty of loyalty of a member of a business company

This thesis deals with the topic closely connected with the field of corporate governance which is a part of corporate law. According to the American legal theory is duty of loyalty one of the fiduciary duties. The traditional classification of fiduciary duties is based on dualism – duty of loyalty and duty of care. But this concept is changing over time mainly due to case law. There is no settled opinion on the basic question how many fiduciary duties there are. Current opinion of the respected authority in this field – Delaware’ Supreme Court is based on dualism of fiduciary duties, but not in the traditional meaning. The duty of loyalty includes according to the opinion of the judges not only conflicts of interests and self-dealing situations, but breach of good faith as well.

On the other hand the traditional point of view was settled on two fiduciary duties – loyalty and care as well. Duty of loyalty was connected with conflicts of interest situations between principal and agent, when the personal financial interest of the agent was present. Duty of loyalty protected the legal position of the principal when agent managed entrusted property. The duty of care was connected with the interest of the principal and due performance of the agent with the adequate level of care. It was closely linked to the business judgment rule test. Consequences of the breach of fiduciary duties lead to the accountability. One of the most important things about this duty is its application- it is not necessarily based on legal act or judgment, but it is an implied duty of certain type of relationships.

This duty was historically based on the principal – agent relationship mainly to protect weaker part of the obligation. Over time, the content extended to present form, when is quite usual to apply fiduciary duties on business corporations. Mainly the directors as members of board of directors owe the fiduciary duty to the corporation and to shareholders as well. Partners in limited liability companies (LLC) owe duty of loyalty each other and all of them

to the LLC as well. The relationship of duty of loyalty between shareholders, corporation and members of board of directors in stock company is not very clear. Some theories argues that the interrelation is similar to LLC situation others are resolutely against.

The current position of the duty of loyalty in the Czech legal theory is not very settled at all. Neither legal theorists nor judges pay attention to the duty of loyalty and its application. It can be traced mainly in few judgments of the Supreme Court, when was the duty of loyalty used as a remedy for certain injustice and interpretation tool as well. Changes are expected in connection with Draft of the New Civil Code and Draft of the Corporation Code, where the field of corporate governance has much stronger influence than in the current regulations.

Keywords: fiduciary duties, duty of loyalty, duty of care, business judgment rule