

SUMMARY

Duty of due managerial care of member of an elective body of a limited company and consequences of its violation

The purpose of my thesis is to analyze duty of due managerial care (hereinafter as “duty of care”) of a member of an elective body of a limited company according to new legislation, which became effective in January 2014. Duty of care consist of several indefinite aspects and my aim is to define them and set boundaries in which person as a member of an elective body shall operate during performing his duties. Thesis refers to doctrinal view on this topic, offers solutions based on relevant jurisdiction and looks at consequences of violating duty of care.

The thesis is composed of six followed-up chapters. Chapter One is introductory, defines basic terminology and consists of defining persons, who shall follow the rules of duty of care and consideration of liability in case of distribution of competences in collegiate body. Chapter also deals with issue brought to Czech law with integrating a monistic structure of stock company. This passage comes to conclusion that duty of care belongs to statutory director in the event of violating guidelines made by board of directors.

Chapter Two is subdivided into two parts, each describing aspects of duty of care. Firstly it describes duty of loyalty to company and conflict of interest. Following subchapter focus on standards in necessary knowledge of a member of body. This part point out possible upward trend of requiring maximum amount of possible information and limited possibility of avoiding liability through delegating consideration of situation to external expert.

Previous passage results in definition of business judgment rule in Chapter Three, according to which discharge of office with duty of care should be in judicial process compared with objective quality of discharge of office of a person in similar situation. Legislation enables with this provision right to mislead in judgment. Main consequence is fact, that courts shall decide, whether member of body is liable, considering mainly his behavior before occurrence of damage and consequences of such behavior take into account only marginally.

Chapter Four presents influence on liability, when member of body acts on the instructions of general meeting or controlling entity. In the first case, if the matter of instructions belongs to competence of board meeting, such as strategic decision, following these instructions with member of body (board of directors/executive director) shall be obligatory and result in exemption of liability of member of board in this situation. In the second case, instructions are not obligatory and shall be followed only when a settlement agreement with controlling entity for occurrence of damage is possible. Last part of this chapter deals with liability shared between board of directors/executive director and supervisory board when consent of supervisory board for some agenda is needed.

Chapter Five mentions individual cases, when member of body is explicitly found breaching the duty of care, such as violation of duties relating with incorporation of company into the Companies Register, payment of share in profits to shareholders if this may result in bankruptcy or in other cases stated by law, or allowing acquisition of assets from founders or shareholders to company violating relevant provisions of Companies Code.

Chapter Six finally presents consequences of breaching duty of care. It includes expenditure of benefits of member of body and damages, settlement of member of body with corporation, possibility of a lawsuit, or finding member of body liable of bankruptcy and answer for fulfilling company's obligations. Breaching of duty of care may also have influence on duration of office. Moreover, chapter mentions liability of controlling entity when making influence on member of body of controlled entity.

New legislation is more restrictive and gives more options to penalize violation of duty of care. However, in consideration of newly formed business judgment rule, this shall not discourage questioned persons from making decisions.

Outcome of my research is provision of guideline through vaguely formulated terminology, as mentioned above, summarization of all known opinions on issue of duty of care in Czech Republic and evaluation, that despite restrictively looking legislature, it seems to improve management of companies without affecting diligent members of elective bodies, and also enables more successful exaction of claims in some cases.