

ABSTRACT OF DIPLOMA THESIS

An impact of incapacitation of a limited company upon legal theory and practice

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The main purpose of my thesis was to analyse the significant change in the concept of limited company, i.e. old-new concept of the members of statutory body as agents of the company. However, I conceived a thesis more generally as analysis of the question of whether the New Civil Code and the Business Corporations Act incapacitated limited company or not. The thesis is divided into five main chapters, including an introduction and a conclusion.

In the second chapter I try to reconstruct legal thinking of First Czechoslovak Republic on this issue, because its reference by the New Civil Code. Although views on the status of a statutory body of legal persons and the legal capacity of a legal person were different, I came to the conclusion that there was more or less consensus that members of statutory body are agents of legal persons. Regarding the legal capacity of a legal person, then it can be concluded that the doctrine of the First Czechoslovak Republic concluded either that the legal person is a person incompetent, or that the legal capacity is not by definition characteristic of legal person.

In the third chapter I deal with the question of how the New Civil Code defines legal capacity and whether limited companies has legal capacity or not. Here I come to the conclusion that this definition is open to question whether conduct of members of the statutory bodies of limited companies can be considered as own actions of the company. Although it is more likely to lead to the conclusion that it is not, the answer to this question depends on how the law regulates position of the members of the statutory bodies.

The fourth and fifth chapters are devoted to the application of agency law rules on member of a statutory body under the New Civil Code and the Law on Corporations, which brings me to the fact that a member of the statutory body from a agent only differ in a few details, and that in many cases it will be necessary to apply general agency law rules on members of the statutory body of the limited company.

In conclusion I come to that in terms of legal regulation position of a member of the statutory body of limited company and position of other agent is not so different that it would be possible to speak about own conduct of limited company. Simultaneously, I express doubts about the correctness of this conclusion from the theory of private law and the adequacy of the statutory definition. The absurd impacts of the conclusion about of the incapacity of the limited company in my opinion should be corrected by the fact that the Civil Code is not consistent in terminology and it confuses the protection of individuals with limited or partial incapacitation with the general definition of capacity to act.