

Dissertation Abstract

Introduction

The issue of the role and activities of the statutory bodies is subject to the concern of the specialized jurisprudence for many years and the development of legislation also reflects this fact. However, although there is between legal and business community a considerable uncertainty and unpredictability of the court decisions in particular regarding the assessment of the specific situations and conduct of members of statutory bodies.

Especially the rules regarding the relationship of the board member to the company, the decision making process of the Board of Directors, acts of the Board of Directors and its members, rights and duties of board members, and the thereof resulting liability of board members, especially the regulation of excessive remunerations of board members or in the event of parallel employment and commercial legal relationship of board members to the company.

Object of the Dissertation Thesis

The thesis includes the detailed analysis of the legislation concerning the status and the basic obligations of the Board of Directors of the company and its members, especially (a) the obligation to exercise their empowers with due care, (b) the duty of loyalty, (c) the obligation of confidentiality, and (d) no conflict of interest rule, with a focus on problematic areas. The thesis further deals with solving the above range of obligations in foreign jurisdictions in particular the analysis of concepts „duty of due care“, „good faith“, „duty of loyalty“, „duty of oversight“, „business judgment rule“, „duty of candor“, „procedural due care“, „fiduciary duties“ known by English legal territory and concepts „*Treuepflicht*“, „*Pflicht zur Offenheit*“, „*Pflicht zur Leitung*“, „*Sorgfaltspflicht*“, „*Grundsätze unternehmerischen Ermessens*“, „*Sicherung des Fortbestands der Gesellschaft*“, and „*Berichtspflicht*“ known by German legal territory.

Aim of the Dissertation Thesis

The aim of this thesis is an analysis of a number of difficult legal issues related duties, status, responsibilities and remuneration of board members, some of which are indeed presently in some way solved but usually not completely uniform. The thesis focuses particularly on issues where neither the legal experts nor the courts achieved a uniform view or where such view cannot be considered sustainable in the long term. The final chapter of the thesis entitled *Considerations De lege ferenda* contains certain proposals of provisions of the Commercial Code.

Applied Methods in the Dissertation Thesis

In the thesis mainly used methods are the method of description, method of analysis, method of comparison, and subsequent induction methods. The method of description is used to describe the naming, classification and description of the rules and their interpretation. The method of analysis is mainly used in the thesis for the analysis of different approaches, whether of courts or legal literature to the legislation and its application. In comparison methods are then compared different approaches, whether of the Czech legislation by the authorities to transcribing or from literature, as well as approaches to similar issues in foreign jurisdictions, particularly the State of Delaware and German law. At the same time the thesis to a limited extent by the nature of the problem examined uses and applies the methods of deduction, where progress is being reversed, and the abstract rule is confirmed or ruled out in the various cases. Method of hypothesis, which is formulated in advance and subsequently tested, is used incidentally in this thesis. The thesis mainly focuses on the methods of induction, where each of the specific facts and events is inferred a general or abstract rule. After methods were used description, analysis, comparison, induction method is applied which seeks to formulate rules of law following the results of previous methods used.

Conclusions of the Dissertation Thesis

After review of different foreign legal regulations, it is clear that Czech legislation is on the very beginning of a comprehensive assessment of the acts of the board members. The triad of management responsibilities (fiduciary duties): (i) a duty of care, (ii) the principle of good faith, and (iii) the duty of loyalty, is in the Czech law expressly introduced a duty of care - care of proper businessman only. The duty of loyalty and good faith is also inferred by the literature and case law, but the legal support for the establishment of these institutes is virtually non-existent.

The Czech law does not explicitly establish the duty of oversight, nevertheless it is clear that the Board of Directors cannot fulfill its obligation to decide on an informed basis without having to introduce a functional and information and reporting system that provides management timely and accurate information to enable proper decisions and assess whether the company and its business are in compliance with the law. Furthermore, the Czech law does not explicitly introduce the duty of candor, according to which the board members must inform about their possible involvement in the decided matters. However, already under the current legislation could be applied the similar tests, which are used by the foreign courts, based on a broad interpretation of the concept of care of proper businessman.

From this it seems appropriate to incorporate a comprehensive consideration of actions board members, including the business judgment rule to the laws governing corporate law. In this respect is very difficult to formulate a general rule, which could be applied to all cases of actions of the kind, but having regard to the continental law system of the Czech Republic the incorporation of these rules and institutions for the future will be inevitable.

In this respect, a balance between the Board of Directors and its members on the one hand, companies on the other hand, shareholders in the third part, and also the creditors of the fourth part, has to be found by a gradual improvement of legislation and application of laws. Many inspiring regulations can be found in foreign jurisdictions and foreign case law. Equally important in this context, is the theory of competition between the jurisdictions and its findings, because the EU as well as in some U.S. jurisdictions the competition between the jurisdictions exists. Any legislative action has impact into the competition between the jurisdictions, since history shows empirically that companies prefer in the long-term law in relation to the predictability of law and predictability of court decisions. It is therefore necessary that the predictability of law and predictability of the court's decision is as much as possible achieved, because this is the only way how to ensure that the Czech Republic will be a welcomed destination for legal entities including joint stock companies.