

# **Duty of Due Managerial Care in Corporate Law**

## **Abstract**

All members of elected corporate bodies are bound by duty of due managerial care. Precise understanding of the content of this elementary obligation is required for legal certainty of those persons, who accept the position of member of an elected corporate body.

This work aims to explain context and historical, economic and legal background of the current duty of due managerial care in corporate law, compare its content with that of comparable duties in selected foreign jurisdictions, review and assess the assumed content of this duty under Czech law having regard to such comparable duties, and to analyze selected consequences and implications of breach of such duty under Czech law.

This work reflects on the legal framework in effect as of 28 February 2022 and takes into account also the amendment to the Corporations Act implemented by Act No. 33/2020 Coll.

The work is organized into eight chapters (including introduction and conclusion). The research questions are being addressed in chapters 2 through 7 where chapters 2 through 4 are considered key.

The second chapter is dedicated to the context, in which the duty of due managerial care exists under Czech law, in particular the historical and economic background, and also to general terms and concepts, that are important for further analysis – besides the term „*corporation*“, concepts of legal capacity, purpose, will and interest of the corporation are being discussed.

The third chapter analyzes the general concept of duty of due managerial care both under Czech law and in selected jurisdictions. This chapter then considers the content of individual constitute duties, which correspond to the Czech dichotomy of duty of loyalty and duty of care, and also to the business judgment rule concept under Czech law.

In its fourth chapter, the work addresses the personal aspects of the duty of due managerial care, particularly the scope of persons having such duty, and also the implications of delegation and instructions for the duty of due managerial care.

Fifth chapter explains the legal grounds for duty of due managerial care (and answers the question of whether such duty is of contractual or statutory nature) and further considers selected consequences and implications of a breach of duty of due managerial care in the context of corporate law.

Sixth chapter describes the legal concept of damages resulting from breach of duty of due managerial care. Seventh chapter addresses, at least in a limited extent, the enforcement of entitlements arising from breach of the duty of due managerial care.

Lastly, the conclusion summarizes the above analyses of research topics and formulates conclusions of this work on their basis.

**Keywords: Directors' duties, Duty of Loyalty, Duty of Care**