

Disqualification of a member of elected body of business corporation (de lege lata and de lege ferenda)

Abstract

The subject of this thesis is the interpretation of the current applicable rules on disqualification, as they have undergone significant changes since the adoption of the Business Corporation Act as a result of various amendments. To be able to proceed with a thorough *de lege lata* analysis, the thesis has been purposely narrowed down to issues related to the substantive regulation of this institute. As the thesis aims to provide a relevant picture of the current state of the regulation of disqualification, attention is also paid to the European Union law relating to disqualification and its effects in national legislation.

The subject of disqualification itself is introduced by a discussion of the general principles involved in the regulation of disqualification, since the conclusions reached later serve as supporting points for subsequent arguments. Subsequently, the extent of the personal scope of the disqualification regime is established and the main differences of opinion prevailing in the literature on the issue, including the conclusions of the author of this paper, are presented. Particular attention is paid in this regard to the question of whether the disqualification regulation affects both *de facto* and shadow directors. The thesis then follows the framework of the disqualification regulation and pays attention to the general and the special grounds for disqualification, as well as all the consequences that are associated with disqualification. As the individual grounds for disqualification contain a number of vague legal terms, a number of guidelines for their interpretation are provided in the subchapters, which the author has attempted to draw from the often relatively casuistically formulated conclusions of case law or literature.

In accordance with the set objective, the author of the thesis, where he considers it appropriate, draws attention to partial shortcomings of the existing regulation and *de lege ferenda* proposes possible changes. With regard to the primary purpose of disqualification, the author of this thesis considers one of the main shortcomings of the current legal regulation of disqualification to be the absence of the possibility to take into account, during the disqualification procedure, the actions committed by the person concerned as a member of the governing body of foreign companies, although this possibility exists within the EU member states.

Key words: Disqualification, Director, Register of disqualifications