SPECIAL DUTIES OF DIRECTORS IN LIMITED LIABILITY COMPANIES UNDER THE LAW OF THE SLOVAK REPUBLIC

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Abstract: The author deals with and examines the conditions and consequences of a breach of duties by statutory bodies which have just recently been introduced into the Slovak law. At the same time, the author compares these with the statutory regulation of similar concepts in selected countries. This article focuses mainly on the specification of duties imposed on statutory bodies in cases when a company is in "crisis". Moreover, it also deals with duties related to the registration of companies with the Register of Public Sector Partners.

Keywords: director's duties in a limited liability company, Register of Public Sector Partners, company in crisis, director's liability for damage

1. Introduction

The Slovak legislator is currently focusing, to a very special extent, on directors in limited liability companies, their rights and duties and especially their liability for the performance of their tasks. This has consequently led to significant changes made in the relevant statutory regulation. The above-mentioned situation has undoubtedly been brought about by a number of factors, but the main reason is an enormous interest of the legislator to improve the business environment in the Slovak Republic which has long been struggling with the insolvency of business partners caused mainly by the conduct or negligence of companies' statutory bodies. The given issue is also closely related to efforts made by the legislator to clearly identify particular natural persons within companies' ownership structures who represent their ultimate beneficial owners,[1] i.e. persons found at the end of an ownership chain who constitute the actual recipients of benefits obtained from business activities of a particular company, due to the fact that these persons are actually able to affect the management and operation of a company through persons who act as its statutory bodies.

Given the fact that the above-mentioned issues, which the business environment in the Slovak Republic has been struggling with, have been a part of it ever since it started to exist, it has to be pointed out that the procedures which had led to their emergence developed to quite a sophisticated form and thus cannot be removed easily. The Slovak legislator is facing an important challenge which can either result in a significant improvement of conditions for conducting business activities in the Slovak Republic or can eventually end in a complete failure. In order to achieve the given objectives, the relevant statutory regulation will not suffice and it will definitely be desirable to ensure through other state bodies (namely through courts) that such statutory regulation is actually applied in a business life flexibly and actively. At the same time, it is important to set the conditions for performing the post of a statutory body in a limited liability company in a way which will actually not result in a situation in which the persons eligible for performing such post would be "discouraged" from it due to the fact that the risk of being held personally liable is too high.

2. Scope of activities undertaken by directors in limited liability companies

Given the fact that the duties of statutory bodies in limited liability companies are defined in a rather general way, it is firstly necessary to define the scope of activities undertaken by directors. Their identification constitutes the basis for defining their roles.[2]

The activities undertaken by directors in limited liability companies may, in terms of a doctrinal interpretation[3] and currently effective laws, be generally specified in a number of ways. Firstly, the scope of activities undertaken by directors could be defined in a way that a director acts on behalf of a company in all matters.[4] However, if we accepted the above-mentioned fact without any reservations, then the role and namely the scope of activities undertaken by the remaining bodies in a company would be quite questionable. In specifying the scope of activities undertaken by directors, one has to accept also specific statutory limits which are visible in the restrictions on directors' powers. Despite the fact that the law of the Slovak Republic recognises the legal personality of a limited liability company, it is apparent from the nature or the character of legal entities, that these may not perform a certain kind of legal acts due to the fact that some legal acts can be performed solely by human beings (e.g. entering into a marriage, etc.). It is therefore possible to define the scope of activities undertaken by directors also in a negative way by stating that directors are not allowed to perform on behalf of a company those legal acts which the company itself is incapable of performing. Furthermore, the limitation of powers of a statutory body can also be seen in respect of the scope of activities undertaken by other bodies in a company. A statutory body may not, through its conduct, interfere with the scope of activities undertaken by other bodies in a company.[5] The general prohibition to interfere with the scope of activities undertaken by individual bodies in a limited liability company is, from my point of view, broken with respect to strengthening the position of a general meeting in a limited liability company at the expense of the remaining bodies of a company. The above-mentioned phenomenon is visible especially in a so called "rubber" provision contained in Section 125(3) of Act No. 513/1991 Coll. (Commercial Code) (hereinafter referred to as the "ComC") which expressly allows the change in powers conferred on bodies in limited liability companies in favour of a general meeting. I share the opinion presented by Eliáš who stated in this regard that this statutory provision has not been thought-out very well due to the fact that it undermines the necessary stability in the structural arrangement of competence relationships among company's bodies. Moreover, the provision contained in Section 125(3) is a mandatory one which means that neither the articles of incorporation may prohibit the general meeting to apply a legal rule contained therein. It would undoubtedly be desirable if our legislator respected the rationality in the arrangement of internal relations in a company much more in the future and prescribed that a general meeting is empowered to make decisions solely on those issues which only the relevant law and the articles of incorporation reserve for its decision-making.[6] I have to note that such opinion was presented in 1997 but, up to this day, no change has been made in the given area which would specifically resolve the given issue.

According to the currently effective statutory regulation, the scope of activities undertaken by directors in limited liability companies may be divided into two basic groups depending on whether an activity is undertaken on behalf of a company with

[1] The term "ultimate beneficial owner" is defined in Section 6a of Act No. 298/2007 on Protection from Money Laundering and on Protection from Financing of Terrorism and on Amendments and Supplements to Certain Other Acts

[2] For further details, see: Smalik, M.: Liability, position and duties of limited liability company directors. Saarbrücken : LAP Lambert Academic Publishing, 2015, 95 p.

[3] As for the interpretation of director's scope of activities in relevant theoretical and application contexts with an emphasis on the review of relevant Slovak and Czech case law, see e.g. commentary on the provisions of Sections 133 to 136 of the Commercial Code by Mamojka Jr. (In: Mamojka, M. a kolektív: Obchodný zákonník. Veľký komentár, 1. zväzok. Žilina: Eurokódex, 2016, p. 523-544).

[4] Section 20 (1) of Act No. 40/1964 Coll. (Civil Code)

[5] Dvořák, T.: Akciová společnosť a Evropská akciová společnost. Prague: Aspi, 2005, p. 465

[6] For further details, see: Eliáš, K.: Společnost s ručením omezeným, 1. vydání. Prague: Prospektrum, 1997, p. 161-162

respect to third parties or whether an activity deals with internal matters of a company.[7]

The second area in which directors in limited liability companies undertake their activities is the *business management of a company*.[8] The term *business management* is an essential term when it comes to the specification of the scope of activities undertaken by directors but the currently effective laws fail to provide its definition. Its content may only be derived from a broader context related to the performance of director's tasks. I believe that one may use the definition provided or presented by scientific literature. Malovský – Weing defines this term as a regular operation of a trade.[9] The explanatory memorandum states with respect to Section 134 of the Commercial Code, which governs the decision-making in the business management of a company, that this term shall be understood as the operation of a basic economic activity and decision-making on the internal matters of a company…, i.e. on organisational, technical, production and economic matters, etc. Fekete perceives this concept as decision-making on all internal matters of a company unless a general meeting reserves decision-making on such matters.[10] It is apparent from the above-mentioned statements that these activities deal with internal matters of a company and are built upon the organisation and management of a company during its regular operation. It is important to note that directors may, in the business management of a company, make decisions solely pursuant to the mandatory provisions contained in Section 134 of the ComC which states that a decision in the given area has to be approved by a majority of directors. This naturally applies unless the articles of incorporation require a higher number (e.g. two-thirds majority, etc.). The provision in question represents a special regulation in respect of Section 66(4) of the ComC which does not apply to the decision-making on business management by directors to the extent of a quorum prescribed for adopting the given decision. In order to improve the flexibility in adopting decisions in the given area, I opine that directors should be allowed to make their decisions outside a general meeting (*per rollam* decisions) under Section 66(4) of the ComC. However, it is important to regulate the voting performed in such way in company's articles of incorporation or by-laws. Given the importance of decisions made in the course of business management, one of the advantages of *per rollam* voting also lies in the fact that its result is recorded in a definite way since it is performed either in writing or through electronic means which ensure that the given procedure is unequivocal. In the event that a decision in the given area is adopted at directors' session, it is advisable to adequately apply Section 195 of the ComC to the course of such session. According to this Section, the course of the sessions of the board of directors and its decisions are recorded in minutes.

However, the currently effective law also imposes duties on directors where such duties neither fall within the business management of a company, nor within the area of acting on behalf of a company.[11] Having said that, as for the scope of activities undertaken by directors, one may also recognize a specific scope of duties which is also related to their activities undertaken with respect to company's internal matters but which does not constitute activities falling within the business management of a company.[12] This opinion was also shared by the Supreme Court of the Czech Republic which confirmed the fact that convening a general meeting falls neither within the business management, nor does it fall within the activities performed on behalf of a company with respect to the external environment.[13] Blaha expressed a very similar opinion by stating that it is necessary to point out the fact that not all internal matters of a company may fall within the term business management. It is necessary to distinguish between the decision-making of directors in the business management and decision-making on other internal matters concerning solely a company and its shareholders, such as organisation, convening and course of general meetings, etc. Making decisions on these other internal matters concerning solely a company and its shareholders is a specific obligation which the law imposes on directors.[14] The need to perceive these duties imposed on directors in a special way is also significantly visible in certain stages of company's existence (e.g. liquidation of a company) where a significant proportion of activities undertaken by directors is transferred to a different person (liquidator). However, these special rights enjoyed by a director (e.g. right to convene a general meeting) continue to exist even after such third person is appointed.

3. Special duties imposed on statutory bodies in limited liability companies

Defining the scope of activities undertaken by statutory bodies in limited liability companies is directly related to the specification of their duties,[15] which, given the significance of the role of directors and the business plan of a company, is so important that it is given particular attention in the scientific, professional as well as legislative field. However, despite this fact, there are still more and more cases which either point out the incorrect application of legal rules regulating this area or actually call upon the legislator to adopt legislative amendments which would prevent their emergence.

As we have already pointed out above, the duties of directors in limited liability companies (the same applies to statutory bodies in other companies) are formulated in a rather general way and it is actually rather unusual and rare to give an exact name to a particular duty. This fact arises from objective circumstances according to which one has to approach this area with a particular care and in a way so as not to actually resort to the restriction of the scope of their activities through a very detailed enumeration of duties imposed on statutory bodies.

In defining the duties imposed on directors within their scope of activities undertaken inside the company and with respect to the external environment, we could highlight two basic terms that actually define the stance which statutory bodies should take towards the performance of their tasks. The need to follow them can also be seen during the performance of particular duties imposed on them. In the light of the above-mentioned, the duties of statutory bodies are generally divided into duties of care and duties of loyalty[16]. These terms represent the cornerstone on which the principles determining the duties of directors in limited liability companies are built. We could agree with an opinion presented by Novotná Krtoušová[17] who stated that despite the fact that there is no clear distinction drawn between the duty of loyalty and duty of care, these two terms correspond to the two basic problems faced by shareholders. The first

[7] Mamojka Jr. points out the fact that the activities dealing with internal matters of a company (e.g. an expression of will to dismiss an employee immediately) shall not be subject to the restrictions which apply to the action taken with respect to the external environment, i.e. according to the company law and relevant case law, an employee is not deemed to be a "third party" with respect to his/her employer (In: Mamojka, M. a kolektív: Obchodný zákonník. Veľký komentár, 1. zväzok. Žilina: Eurokódex, 2016, p. 526).

[8] Blaha understands the term "business management" as *"...making decisions on organisational and technical issues, issues concerning the internal operation of an undertaking, on company's business plan, etc."* In: Patakyová, M. a kol.: Obchodný zákoník. Komentár. 3. vydanie. Prague: C. H. Beck, 2010, p. 412

[9] Malovský – Weing, A.: Příručka obchodního práva. Prague: Československý kompas, 1947, p. 202.

[10] Fekete, I.: Obchodná spoločnosť s ručením obmedzeným. Komplexná príručka. Bratislava: Epos, 2004, p. 463.

[11] See: SMALIK,M.: *Zmluva o výkone funkcie konateľa spoločnosti s ručením obmedzeným alebo "Pracovná zmluva konateľa"* . Pracovné a sociálne zákonodarstvo z hľadiska aktuálnych legislatívnych zmien : zborník vedeckých článkov Bratislava : Merkury, 2014. p. 205-215, ISBN 978-80-89458-34-9

[12] For more information about the activities undertaken by directors with respect to company's internal matters, see: Faldyna, F. a kol.: Obchodní právo. Prague : Aspi, 2005, p. 367.

[13] Supreme Court of the Czech Republic dated 30.4.1997, file No. Odon 2/97.

[14] Blaha In: Patakyová, M. a kol.: Obchodný zákonník. Komentár. 3. vydanie. Prague: C. H. Beck, 2010, p. 413.

[15] See: Armour, J., Hansmann, H. and Kraakman, R.: Agency Problems, Legal Strategies, and Enforcement (July 20, 2009). Oxford Legal Studies Research Paper No. 21/2009; Yale Law, Economics & Public Policy Research Paper No. 388; Harvard Law and Economics Research Paper Series No. 644; ECGI - Law Working Paper No. 135/2009. Available at SSRN: https://ssrn.com/abstract=1436555

[16] Davies, P. L. Gover and Davies´ Principles of Modern Company Law. 8th edition, London : Sweet & Maxwell, 2008, p. 488.

[17] Novotná, Krtoušová, L.: Zákaz konfliktu zájmů jako jádro fiduciární povinnosti lojality. In. Obchodně právní revue. Vol. 8, 6/2016, p. 182

problem lies in the fact that a member of company's statutory body can actually be active but not in a way that would be in company's interest and the second problem lies in his/her incompetence. This perception of the scope of basic duties of statutory bodies also corresponds to the principles of British law which also distinguishes between the duty of loyalty based on fiduciary duties which were further shaped in case law, and the duty of care, skill and diligence.[18]

In spite of the fact that the Slovak law does not expressly regulate the duty of loyalty, its content might clearly be derived through the interpretation of individual provisions on the duties of directors in limited liability companies contained in the ComC.[19] The duty of loyalty can thus be perceived in a way that statutory bodies are required to fully act in the interest of a company, its shareholders and not to give preference to their own personal interest.[20] The duty of loyalty thus sets the right direction which statutory bodies should take, unlike the duty of care which prescribes the quality of such effort.[21] To put it simply, we can state that a statutory body (its member) must always take into foremost consideration the interest of a company and its shareholders when performing its tasks. At the same time, it should observe the law because the welfare of a company and its shareholders is not superior to law.[22]

Having referred to the fundamental duties of companies' statutory bodies, one may also identify certain special duties prescribed by the currently applicable law which have just recently been introduced. In particular, we refer to the duty imposed on a director which arises in a situation where a company is in "crisis" and directors' duties related to the Register of Public Sector Partners.

Act No. 87/2015 Coll. which amends and supplements Act No. 513/1991 Coll. (Commercial Code) as subsequently amended and which amends and supplements certain other Acts introduced (among other things) the concept of a company in crisis. According to the explanatory memorandum[23], the purpose of this amendment/supplement to the already existing statutory regulation of companies was to respond to the existing problems concerning the bankruptcy and restructuring in the Slovak Republic and related issues arising in commercial relations and their social implications. The primary objective of the Bill is to prevent the infringement of creditors' rights in the course of bankruptcy or restructuring proceedings and to strengthen the responsibility for carrying out business activities. In order to achieve the given objective, the foregoing Act also introduced the so called register of disqualifications and further measures aimed at the prevention of the so called tunnelling (ban on repayment of contributions or performances substituting own resources).[24] The legislator hereby expresses an effort to set clear rules for providing loans and credits to companies which face insolvency. Under the currently effective law[25], a company is in crisis if it is insolvent or at a risk of being insolvent. The term "insolvency" is defined in Section 3 of Act No. 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Supplements to Certain Acts pursuant to which a debtor is insolvent when it is unable to repay its debts of when it is indebted.[26] Should a debtor file for bankruptcy, such debtor is deemed to be insolvent. A company is at a risk of being insolvent when the ratio of its equity and liabilities is lower than 8:100. Pursuant to Section 768n of the ComC, this ratio of equity and liabilities for ascertaining whether a company is or is not in crisis shall apply in 2018. Until then, the ratio of equity and liabilities corresponding to 6:100 shall apply in 2017. Besides other significant restrictions and duties which relate to the period in which a company is in crisis (e.g. ban on returning performances substituting own resources, securing liabilities replacing own resources, ban on the repayment of contribution, etc.), the legislator has also introduced a special duty to be imposed on a member of a statutory body in a company which, according to the given criteria, is in crisis. A company's statutory body which discovers or, in consideration of all circumstances, could have discovered that a company is in crisis is obliged, in accordance with the necessary due diligence requirements, to take all action that would be taken in such situation by another reasonably prudent person in a similar position to overcome such crisis.[27] This implies the fact that there has been a rather wide area established for holding company's statutory bodies liable since the legislator has created a relatively new group of special duties to be imposed on these bodies. In the event that these duties are not adhered to, i.e. the failure to take "all" such action that would be taken by another reasonably prudent person in a similar situation to overcome the crisis, statutory bodies are at a risk of being held liable for damage. The explanatory memorandum only states with respect to this provision that the law shall impose on companies' statutory bodies in crisis special duties which are derived from the nature of the crisis itself and which shall be aimed at overcoming such crisis as well as at monitoring whether the measures taken for overcoming the crisis are effective. I believe that, on the one hand, the legislator's effort to define certain duties to be imposed on company's statutory bodies is desirable due to the fact that precisely these bodies are generally responsible for the state a company is in. On the other hand though, there is a number of questions arising in connection with holding these bodies liable for beaching this duty. We could also point out that the duties to be imposed on statutory bodies of a company in crisis are defined in a very general way and the legislator provides no, not even a non-exhaustive illustration, of action which should be taken by statutory bodies at the time when a company is in crisis. I believe that determining at least the basic characteristic of action which should be taken by statutory bodies could eventually lead to a more effective application of the given provision. At the same time, I have to note that in consideration of the previous cases of holding statutory bodies liable for damage suffered as a result of a breach of their duties in the course of undertaking their activities[28], it is, to a certain extent possible, that this provision will be interpreted in more of a formal sense and any potential punishment of statutory bodies will be rather complicated. On the other hand, we have to note that any ambiguity as to the interpretation of the given provision could lead to the punishment of also those statutory bodies which, in terms of their abilities and personal competence, attempted to take an action that could have prevented the crisis of a company, but it turns out later on that they failed to take all such action as prescribed by the relevant law and this, in terms of any legal certainty, is not a desirable state. However, it should also be pointed out that too much effort to define particular duties of statutory bodies of a company in crisis in a much clearer way could eventually result in the limitation of cases to which the relevant law applies. This remark shall be perceived as justified but it shall be also pointed out that this is an entirely new concept which was not recognised by the previous statutory regulation. Having said that, we believe that even the case law

[18] See: Hansmann, H. and Kraakman, R.: What is Corporate Law? (Feb 25, 2004). Yale Law & Economics Research Paper No. 300. Available at SSRN: https://ssrn.com/abstract=568623.

[19] See: Smalik, M.: Autonómia konateľa spoločnosti s ručením obmedzeným. Autonomie jednotlivce. Prague : Leges, 2014. p. 74-78.

[20] Vítek, J.: Odpovědnost statutárních orgánů obchodních společností. Prague: Wolters Kluwer ČR, 2012p. 204

[21] Fleischer, A., Hazard, C., G., Klipperová, M. Z.: Pokušení správních rad. Prague: Victoria Publishing, 1996, p. 83

[22] Strapáč, P.: Ustanovenie, postavenie a zodpovednosť člena predstavenstva akciovej spoločnosti..Bratislava: EUROUNION, 2012, p. 153

[23] Explanatory memorandum to the Government Bill on the Register of Public Sector Partners available on 20.6.2017 at: https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=5432

[24] For the definition of the term "prohibition to return performances substituting own resources" see: Duračinská, J.: Riadenie spoločnosti v kríze. In. Zborník príspevkov z medzinárodnej vedeckej konferencie Bratislavské právnické fórum 2016 organizovanej Univerzitou Komenského v Bratislave, Právnickou fakultou v dňoch 21. – 22. októbra 2016 pod záštitou predsedu Národnej rady Slovenskej republiky Andreja Danka. Bratislava: Comenius University in Bratislava, Faculty of Law, 2016, p. 11

[25] Section 67a of Act No. 513/1991 Coll. (Commercial Code)

[26] For the definition of the terms "unable to pay one's debts" and "indebted" see Section 3(2) and (3) of Act No. 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Supplements to Certain Other Acts

[27] Section 67b of Act No. 513/1991 Coll. (Commercial Code)

[28] For further information on lodging claims against statutory bodies for breaching their duties, see: Duračinská, J.: Uplatňovanie nárokov spoločnosťou a spoločníkmi voči členom štatutárnych orgánov vzniknutých z porušenia ich povinností z hľadiska právnej komparatistiky. In. Zborník príspevkov z medzinárodnej vedeckej konferencie Bratislavské právnické fórum 2013. Bratislava: Comenius University in Bratislava, Faculty of Law, 2013, p. 811 – 820.

established by judges will be built on a rather unknown base and the creation of a more unequivocal definition of clearer rules of statutory bodies' conduct will take a longer period of time. As a result, this may be contrary to legislator's primary objective in the given area.

In consideration of the above-mentioned facts and the rationality of both approaches, it will later be necessary to evaluate the given statutory regulation, namely in terms of its application practice and in terms of whether the expectations which had existed prior to the adoption of the relevant statutory regulation were met.

In addition to this, a similar stance could be taken towards other recently introduced requirements/duties related to the performance of tasks by directors in limited liability companies with respect to the Register of Public Sector Partners (hereinafter referred to as the "Register"). The obligation to register a certain group of companies with the given register is laid down in Act No. 315/2016 Coll. on the Register of Public Sector Partners and on Amendments and Supplements to Certain Other Acts (so called Letter-box Companies Act) pursuant to which (in addition to other entities)[29] companies which receive funds from public sources have to be registered with the given register. These entities are therefore subject to the statutory registration obligation or otherwise suffer harsh consequences and sanctions. It has to be noted in this regard that the legislator specifies a narrow group of entities, the so called authorised persons[30], who can carry out such registration. This means that the registration is not carried out by companies' statutory bodies but by other entities on the basis of a contract entered into between a company and the authorised person. However, in spite of the above-mentioned fact, the Letter-Box Companies Act imposes special duties, namely the personal liability of directors in cases in which the application for the registration of a company with the Register of Public Sector Partners contains untrue or incomplete information about the ultimate beneficial owner or about public officials or in cases in which the application for recording a change in the already registered information about the ultimate beneficial owner is not filed within the statutory period or in cases in which the prohibition set out in Section 19 of this Act is breached.[31] We could therefore identify special duties imposed on statutory bodies of companies which are subject to the statutory registration obligation. These special duties include an obligation to choose a certain authorised person and to provide such authorised person, for the purpose of identifying the ultimate beneficial owner and registering the given company with the register, with all information and documents which such person might need for the performance of its activities. The sanction (penalty) which directors are liable to for breaching this obligation ranges from EUR 10,000 to EUR 100,000 and such penalty will be imposed by the relevant registration authority. The legislator thus imposes on companies' statutory bodies an obligation to ensure that the authorised person carries out the registration with the Register of Public Sector Partners which, at the same time, reflects the actual state of required information, or otherwise these suffer rather severe penalties. This liability of directors is constituted as strict liability without any possibility of liberation. Another significant sanction imposed for the breach of directors' duties in connection with the registration of a company with the Register of Public Sector Partners lies in the fact that the final decision on removal and on imposing a sanction on a statutory body actually constitutes the decision on exclusion.[32] It has to be noted in this regard that the legislator imposes a special category of duties on the bodies of those companies which are subject to the statutory obligation to be registered with the Register of Public Sector Partners and states that the failure to comply with such duties actually makes the registration authority impose a penalty but, at the same time, the legislator fails to provide for such cases in which, provided that these are successfully proved, these bodies would not be held liable or would not be liable to penalty. We also have to note in this regard that the Letter-box Companies Act also sets out a certain form of a joint liability of authorized persons for complying with the duties related to the registration with the register and constitutes a statutory guarantee of those persons who act as authorized persons at the time when the obligation is breached. The authorized persons thus provide a statutory guarantee for paying up the penalty which the registration authority imposes on a company's statutory body. The liability of a statutory body differs from that of an authorized person in a way that statutory body's liability is constituted on the principle of strict liability without any possibility of liberation. The liability of authorized persons is also a strict liability but carries the possibility of liberation if the authorized person proves that it exercised all due care in the performance of its duties.[33] This different approach taken by the legislator is probably derived from the presumption that statutory bodies (its member) are entities which, on an objective principle, should be familiar with all facts concerning the company in which these perform their tasks and which are relevant for its registration with the register. Given the sanctions constituted on an objective principle without any possibility of liberation and given also the fact that statutory body's conduct related to the registration of a company with the register could possibly amount to criminal liability[34], it is necessary to note that these duties imposed on a statutory body are so significant that the failure to comply with them is punishable with the most severe sanctions in the entire Slovak statutory regulation concerning the liability of statutory bodies. Therefore, directors should exercise the utmost responsibility and care during the performance of their duties arising out of the Act on the Register of Public Sector Partners so that they avoid any possible sanctions which could eventually have severe and devastating effects on them.

4. Conclusion

The definition of duties imposed on directors in limited liability companies is very frequently dealt with in scholarly papers focusing on company law. Particularly when it comes to business activities conducted in the Slovak Republic, it is an area which plays an important role in terms of its implications for complying with commercial duties. This is possibly also the reason why it is subjected to constant changes and introduction of new concepts as well as duties imposed on statutory bodies and related liability structures which aim to, under the threat of punishment, make these entities perform their tasks duly. Recent significant changes have also been introduced mainly due to this fact and these are undoubtedly aimed at exerting more pressure on statutory bodies to perform their tasks more responsibly. We should therefore praise legislator's effort made in this regard. On the other hand, the introduction of "draconian" sanctions may also result in an undesirable effect of discouraging capable and competent persons from acting as statutory bodies and may also entail attempts to find ways for avoiding such statutory duties. I therefore believe that the introduction of new duties and sanctions for the non-compliance with the given duties should simultaneously be accompanied by certain recognition or motivation of "dutiful" and competent statutory bodies (or their

[29] Section 2(1)(a) of Act No. 315/2016 Coll. on the Register of Public Sector Partners and on Amendments and Supplements to Certain Other Acts specifies all entities which are under an obligation to register with the Register of Public Sector Partners

[30] Under Section 2(1)(b) of Act No. 315/2016 Coll. on the Register of Public Sector Partners and on Amendments and Supplements to Certain Other Acts, only an attorney, notary public, bank, branch of a foreign bank, auditor and tax advisor who have their place of business or registered office in the territory of the Slovak Republic may act an authorised person.

[31] Section 13 of Act No. 315/2016 Coll. on the Register of Public Sector Partners and on Amendments and Supplements to Certain Other Acts

[32] The decision on exclusion is regulated in Section 13a of Act No. 513/1991 Coll. (Commercial Code) under which: The decision issued by a court may state that a natural person is not allowed to act as a member of a statutory or supervisory body in a company or cooperative (hereinafter referred to as the "excluded representative") within the period designated by the court or, according to the court's decision, during the period of three years from the moment the court's decision becomes final (hereinafter referred to as the "decision on exclusion"). This shall likewise apply to the activities undertaken by the head of branch of an undertaking, head of undertaking of a foreign person, head of branch of undertaking of a foreign person or to a procurator.

[33] For more information on due diligence, refer to: Lukáčka, P.: Zodpovednosť štatutárneho orgánu spoločnosti s ručením obmedzeným za škodu spôsobenú pri výkone svojej pôsobnosti In: Míľniky práva v stredoeurópskom priestore 2011. - Bratislava : Univerzita Komenského v Bratislave, Právnická fakulta, 2011. - p. 178-179.

[34] E.g. fraud under Section 221, subsidy fraud under Section 225, distortion of data in economic and commercial records under Section 259 and 260 of Act No. 300/2005 Coll. (Criminal Code)

members) so that there is a certain balance redressed between their strict duties and liability for performing their tasks (e.g. decreasing the administrative burden on companies, etc.).

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