Is It Safe?

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Under Czech law, can a statutory body member of a Czech company escape from the risk of his/her liability, if a certain action (e.g. entering into a contract on behalf of the company) is approved by GM or the sole shareholder in advance? Directors of Czech limited liability companies and members of boards of directors of Czech joint-stock companies from various countries and with different legal backgrounds and experience may well be asking themselves this single question: Is it safe?

Until the end of 2013, the answer was no, because the only guidance was a relatively vague provision saying that the statutory body member is obliged to act with a due managerial care. The new Business Corporations Act effective as of 1 January 2014 has brought new hope to statutory body members. Section 51(2), which has no predecessor in the former legislation, provides: “A member of the statutory body of a capital company may request instructions from the supreme body of the business corporation regarding the management of its business; however, the same shall be without prejudice to his or her obligation to act with due care.”

Many statutory body members wanted to believe that in cases where they are not sure about a certain business matter, it would be safe for them to request the instruction from the supreme body (GM or a sole shareholder). They wanted to overlook the sentence following the semi-colon (in Section 51(2), as above) which casts serious doubts on the conclusion that an instruction from the supreme body actually relieves the statutory body member from his/her liability.

The Czech Supreme Court’s judgment dated 27 June 2018, ref. no. 29 Cdo 3325/2016, confirmed that the doubts are well-founded. It follows from the judgment that although the instruction given by GM pursuant to the abovementioned provision is binding on the members of the board of directors, the member still may be held liable for a breach of his/her obligations relating to the GM convening, drafting the respective GM resolution and providing all relevant information to the shareholders. The Supreme Court stated: “If the Company’s Board of Directors proposes to the General Meeting to adopt a resolution to be subsequently followed by the Board of Directors, its members are obliged to proceed in accordance with the requirement of due managerial care in convening the General Meeting, in drafting the respective resolution that the General Meeting should accept, as well as in providing all relevant information to shareholders, so that they can decide at a General Meeting with sufficient knowledge of the matter and being aware of the advantages, disadvantages and risks associated with the resolution of the General Meeting.”

In the light of these requirements, it seems very difficult for a statutory body member to be relieved from their liability by just referring to a supreme body’s instruction given to them. We will need to wait for further case-law to explain this issue in more detail, which hopefully one day will provide a clearer response to the eternal question from the headline of this article.

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