

The Fiduciary Duty of Directors in U.S. Corporate Law

SAKAI, Taro

In this paper I explain the structure of the fiduciary duty of directors in U.S. corporate law and then examine the definition of “good faith,” a state of mind that is required of corporate directors when they fulfill their duties to the corporation. The concept of director’s good faith has attracted considerable attention among U.S. corporate law scholars and practitioners during the last two decades in connection with the availability of exculpatory charter provisions provided by state corporate statutes, e.g., DGCL 107 (b) (7), to eliminate the directors’ monetary liabilities to the corporation.

Although the notion of good faith is usually referred to as one’s faithfulness to the others in common sense and is contingent on particular circumstances, it has great importance in corporate law jurisprudence because of its interrelationship with the other fundamental concepts or elements in directors’ duties, such as loyalty, care or diligence, negligence, and abuse of discretion. I also explore the discussions regarding this issue, especially to ascertain the status of directors’ loyalty. According to recent studies and state corporate law cases, directors’ loyalty to the company should have a broad meaning including affirmative aspects to promote corporate welfare, not confined to a demand to refrain from self-dealing. Understanding the concept of directors’ good faith in detail helps us to consider such a view about issues on directors’ loyalty or their duties to the company.