

Chapter 10. Czech Corporate Law

The following chapter is dedicated to the topic of Czech Corporate Law. It aims to cover primarily the areas listed below (please note that these are – based on the authors' opinion and necessary selection – seen as the most critical areas for introducing the Czech business and/or corporate law to our international students, even though the topic itself is much broader and detailed):

- (a) Introduction to Czech business law (including the recent process of so called “recodification of the Czech private law”);
- (b) Czech commercial register;
- (c) Czech business corporations: general provisions of the Czech corporate law (act No. 90/2012 Coll.);
- (d) A limited liability company: specific provisions of the Czech corporate law (act No. 90/2012 Coll.); and
- (e) A joint stock company: specific provisions of the Czech corporate law (act No. 90/2012 Coll.).

10.1 Introduction to Czech business law

The focus of this sub-chapter is primarily placed on major sources, history, principles, and key legal terms & definitions from across the area of Czech business law. In addition, it also introduces a high-level legal scheme for acting on behalf of Czech entrepreneurs.

10.1.1 Recodification of the Czech private law

Recodification of private law in the Czech Republic is represented by a set of three formally and materially interconnected acts. These are as follows:

- (1) **Act No. 89/2012 Coll., Civil Code** (the number “89” has not been chosen randomly – it shall be seen as a symbol for the changes that took place back in 1989);
- (2) **Act No. 90/2012 Coll., Business Companies and Cooperatives Act, the so called “Business Corporations Act”**, which replaces the corporate part of the previously enacted Commercial Code (*i.e.* Act No. 513/1991 Coll., Commercial Code); and
- (3) **Act No. 91/2012 Coll. International Private Law Act**, which regulates the private-law relations with a foreign (international) element.

All these acts came into force on **1 January 2014** and they represented an imaginary end of the recodification works commenced already in the year 2000 – on an initiative of Czech ex-minister of justice, JUDr. Otakar Motejl. This reform shall be seen as **the largest change of the Czech private law over the past 25 years.**

The **aim** of this reform was to remove socialist relics from the Czech legal order and to follow up on the traditional continental law culture. As a result of this, Czech experts from across dozens of industries, business companies (corporations), judicial bodies, universities *etc.* and also the general public have recently faced several extremely difficult tasks – all related to the implementation of related legislative changes into the real life (including all of the accompanying changes in areas such as tax and procedural law). Given the fact that the New Civil Code includes 3,081 provisions, repealed about 238 existing legal regulations or their parts (*e.g.* Family Act, Commercial Code, Securities Act *etc.*), wholly united the contractual (obligations) law and introduced a huge number of new legal institutes, it is obvious that all lawyers, notaries, corporate lawyers, Czech judiciary, but also the entrepreneurs as well as “ordinary” Czech citizens had to familiarize themselves with plenty of new rules and contextual changes.

The Business Corporations Act, whose main author is JUDr. Bohumil Havel, Ph.D., forms an integral part of the private law recodification in the Czech Republic. This Act was approved by the Chamber of Deputies on 16 December 2011, by the Senate on 25 January 2012, and signed by the President of the Czech Republic on 20 February 2012. The Business Corporations Act then came into force on **1 January 2014**. It is an essential legal regulation for our corporate business world which, on one hand, changed the whole range of already existing legal institutes and, on the other hand, introduced plenty of entirely new corporate institutes and terms, such as the term “**business corporation**” itself – which compiles **business companies** (the personal as well as the capital ones and also the European companies and associations), and **cooperatives**. This liberal regulation offers mainly **non-mandatory rules**, with the exception of those statutory provisions which must be insisted on in the interest of public order, good morals or the protection of weaker and/or third parties.

As mentioned above, the Business Corporations Act replaced the corporate part of Act No. 513/1991 Coll., Commercial Code, as amended, which has been repealed as at 1 January 2014. Whilst **commercial obligations**, which formed Part 3 of the original Commercial Code, were fully transferred to the New Civil Code (which has led to a complete “unification of the law of obligations”), **the business companies and cooperatives** (*i.e.* business corporations) are now regulated by the Business Corporations Act. In addition to the above, the original Commercial Code contained also a number of general provisions. Those were also passed to the New Civil Code, **whereby the Business Corporations Act becomes a special law** (towards the general civil-law regulations), **which regulates exclusively business companies and cooperatives**.

In terms of its structure, the Business Corporations Act is divided into: (a) a **general part on business corporations**, which regulates a number of general issues and legal matters on all forms and types of business corporations, and (b) a **specific regulation of individual legal forms and types of business companies**. Besides, we must not forget the **general provisions on legal entities in the New Civil Code** – as each and every business corporation shall be seen as an **independent legal entity**.

The Business Corporations Act applies to **all business companies and cooperatives in the Czech Republic regardless of their size or subject of business**. The effect of the Business Corporations Act impacts (among others) the corporate governance rules, the conduct of members of the management and supervisory bodies, as well as normal daily activities of the Czech business companies and cooperatives. The duty of due managerial care, introduction of a business judgement rule, insolvency test and introduction of the rule of personal liability for

wrongful trading are primarily concerned in the corporate governance area. The authors of this Act were inspired by **modern legislative trends in the laws of many other countries in Europe, the USA and elsewhere**, e.g. legislation in Germany, the Netherlands, Austria, Poland, Italy, Switzerland, Great Britain, Russia and, of course, the requirements of EU laws. According to the ex-minister of justice, Mr Jiří Pospíšil, this is “the crucial act for Czech entrepreneurs which brings in a modern commercial law and which is extremely positive for the overall business community.”² The increase of the **competitiveness of the Czech corporate law** in the competition with other legal orders was one of the main objectives that the authors of the Business Corporations Act wished to achieve from the very beginning. Any modern corporate law would take into account that business companies and cooperatives are not limited by borders or legal orders of individual states, but on the contrary, they should be able to utilize those regulations that are attractive enough for them. Legislative stability and application legal certainty along with sufficient variability of doing business, which provides effective protection of rights and minimizes administrative and cost burden on individuals, are considered to be the **key attributes of business attractiveness**.

10.1.2 Sources of the Czech business law

Considering the above, it can be summarised that the **major sources of the new Czech business law** are therefore the following codes and/or acts:

- **Act No. 89/2012 Coll.**, New Civil Code (available [here](#)³);
- **Act No. 90/2012 Coll.**, “Business Corporations Act” (available [here](#)⁴);
- **Act No. 91/2012 Coll.**, International Private Law Act (available [here](#)⁵);
- **EU law** (various European regulations and directives as listed in the individual chapters and sub-chapters of this textbook);
- **Other private-law and/or public-law acts** (such as, for example, the “Trade Licensing Act”⁶, “Registry Act”⁷, anti-trust regulation(s)⁸ etc.).

10.1.3 Principles of the Czech business law

The **main principles of the Czech business law** are as follows:

- **The principle of freedom of contract**, *i.e.* a judicial concept which holds that contracts are based on mutual agreement and free choice;
- **The principle of equal position of concerned parties**, *i.e.* a key private-law attribute which states (confirms) that the private-law parties shall always be seen in the equal position (meaning on the same level – there is no subordinated party);
- **The principle of good faith and protection of third parties**, *i.e.* a confirmation that every party has to act in good faith in exercising its rights and performing its obligations (which

² Source: <http://www.podnikatel.cz/clanky/zakon-o-obchodnich-korporacich-prosel-snemovnou/>

³ <http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf>

⁴ <http://obcanskyzakonik.justice.cz/images/pdf/Business-Corporations-Act.pdf>

⁵ <http://obcanskyzakonik.justice.cz/images/pdf/Act-Governing-Private-International-Law.pdf>

⁶ Act No. 455/1991 Coll. which defines the operation of a „licensed trade“ as an ongoing activity, performed independently, in one's own name, at one's own responsibility, for the purpose of achieving profit and under the conditions set forth by the trade licensing law.

⁷ Act No. 304/2013 Coll., on public registers of legal entities and individuals (available here: http://obcanskyzakonik.justice.cz/images/pdf/Act_on_Public_Registers.pdf).

⁸ Please see the chapter dedicated to Competition Law.

shall be seen as the basis for performance-related obligations and obligations to protect and maintain);

- **The principle of fair business (fair business practices and trade)**, *i.e.* an attribute which relates to equal opportunities, transparency and accountability, fair trading practices, fair pricing strategies, ensuring no child and forced labour, ensuring good working conditions, respect for the environment *etc.*; and
- **The principle of professionalism**, *i.e.* a standard of personal conduct by a professional (an entrepreneur) in his/her business dealings. Whilst regulations and guidelines for acceptable and expected entrepreneurial behaviour vary from industry to industry, personal principles that typically focus on ethics, code of conduct, appropriate personal interactions and workplace integrity shall always remain the same.

10.1.4 Key legal terms & definitions

The main objective of the Czech business law is to **regulate the so called business relations**. Thanks to the above, business law must be seen as the **law of professionals (entrepreneurs)**.

An **entrepreneur** shall be understood as a person (or legal entity), who (which) is **professionally engaged** in a specific **business activity**.

Business activity shall then be understood as:

- A continuous activity;
- Carried out by an entrepreneur;
- Independently;
- In his/her/its own name and at his/her/its own account (responsibility);
- For the purpose of gaining profit.

Professionally engaged means that the business activity is carried out on the basis of an authorization granted in accordance with respective public laws. The most common and frequent type of this authorization is the above mentioned trade authorization, *i.e.* **trade license**.

Entrepreneurs can either be **individuals** or **legal entities**, *i.e.* **business corporations** (business companies and cooperatives), **foundations** *etc.* The most frequent and also common forms of Czech entrepreneurs are **business companies**, and **sole entrepreneurs**, *i.e.* **individuals**.

When speaking about distinguishing features of the Czech entrepreneurs, these relate to (a) name / trade name; (b) seat (registered office) / place of doing business; and (c) entrepreneurial registration number.

10.1.5 Acting on behalf of entrepreneurs

Entrepreneurs – individuals can mostly act:

- By their own acts (**directly**), or
- Through a legal representative acting on the basis of power of attorney (**indirectly**).

Entrepreneurs – legal entities can only act through:

- A **legal representative** (agent);
- **Statutory body** (respectively member of a statutory body); member of a statutory body may act on behalf of the legal entity concerned **in all matters**. **Any internal restriction of statutory body's authority is not effective towards third parties even if published;**

- Other persons on the basis of **power of attorney**;
- Other persons on the basis of **procuration** (a special general “power of attorney” related to business relations and operating).

Employees and other persons entrusted with performance of certain activity within respective legal entity always represent the legal entity **to the extent appropriate to their position and tasks as known to the public**.

Anyone who is entrusted with performance of a certain activity within the specific legal entity is authorized to undertake all legal acts (contracts) which **usually occur in the course of this activity**; this includes also employees and other persons working for this legal entity.

10.2 Czech commercial register

Czech Commercial Register is a **public register which maintains data concerning entrepreneurs prescribed by the law** (e.g. trade name, seat, registration number, details on the statutory body and its members *etc.*).

The leading principle of the commercial register is a **principle of publicity**. We distinguish between **material** and **formal publicity**. **Material publicity** confirms that any entry in the commercial register can be claimed against third persons only after its publication (protection of reliance in good faith on published data). **Formal publicity** says that commercial register is available to anybody and that any entry must always be published.

The Czech commercial register is **maintained by courts** – it is available in an **electronic form** and **accessible through electronic means**. Any entry is effective towards third persons (parties) **upon its publication**. The entries into the Czech commercial register must be supplied in an **electronic form** (see above).

Entities that must be entered into the Czech commercial register:

- Business companies and cooperatives (*i.e.* business corporations);
- Foreign entrepreneurs;
- Individuals upon request (please note that several exceptions apply); and
- Entities required by special laws.

Facts that must be registered in the Czech commercial register:

- Main **identification data** concerning an entrepreneur (trade name, seat, legal form, statutory body *etc.*);
- Data relating to **important events and changes** in organizational structure and subject of business (e.g. registered capital and its changes, termination of a business corporation, changes in statutes and/or founding documents *etc.*).

The Czech commercial register is available on www.justice.cz.

Task: Go to www.justice.cz, copy in the name of any chosen Czech business corporation and review the records entered into the commercial register. Compare those to the theoretical part above and make sure you also review the attached documents.

10.3 Business corporations – general provisions of the Czech corporate law

10.3.1 General introduction

Business corporations are considered as **legal entities** and **include business (commercial) companies** (hereinafter also “**companies**”) and **cooperatives**.

Companies include an **unlimited partnership** and a **limited partnership** (“partnerships”), a **limited liability company** and a **joint stock company** (“capital companies”), as well as a **European Company** and a **European Economic Interest Grouping**.

Cooperatives include a cooperative and a European Cooperative Society.

The **European corporations**, *i.e.* a European Company, a European Economic Interest Grouping and a European Cooperative Society shall be governed by the provisions of the Business Corporations Act **to the extent permitted by directly applicable legislation of the European Union** governing the European Company, the European Economic Interest Grouping or the European Cooperative Society.

Task: Based on the above information, draw a simple scheme of business corporations in the Czech laws. Please do not forget to split them into business companies and cooperatives, and subsequently also into partnerships and capital companies. Make sure your scheme includes the European companies, as well.

A **partnership** can only be established for the purpose of doing business or for the purpose of managing its own assets.

Activities that may only be carried out by a natural person pursuant to other legal regulations may constitute the objects or activity of a business corporation, provided that **such activities are performed by persons authorised to this end pursuant to other legal regulations** (*e.g.* doctors).

Legal acts governing the establishment, incorporation, modification, dissolution or **winding up** of a business corporation must be in **written form with certified signatures**, otherwise the legal will be seen as invalid.

Where a **capital company** or a **cooperative** includes information about its **registered capital** in its **commercial documents**, such information may only concern the part of the registered capital that has been **subscribed and paid-up**.

A **joint stock company** shall release information, which it is obliged to include in commercial documents, as well as other information prescribed by the Business Corporations Act, without **undue delay after its incorporation** and thereafter on a **continuous basis**, in a manner allowing **remote access**, which is **free of charge** for the public, so that the information is easily accessible upon entering an e-mail address (the “**website**”).

10.3.2 Establishment

A Czech business corporation shall be established by a **memorandum of association**. A memorandum of association on the establishment of a **capital company** shall have the form of an **authentic instrument**. A memorandum of association on the establishment of a **cooperative** under the Business Corporations Act shall be **concluded upon its adoption at the foundation meeting**.

If permitted by law for a company to be established by a **sole founder** (please see the details below), the company shall be established by a **deed of foundation** in the form of an **authentic instrument**.

Not filing the application for registration of a company in the commercial register within **6 months after the date of its establishment** shall be conclusively presumed to have the same effect as a withdrawal from a contract.

The period referred to above **may be modified in the memorandum of association**.

10.3.3 Single member company

A **capital company** may be established by a **single founder**. A capital company may also have a **sole member** as a result of all its business shares being held by that member. In a single member company, the powers of the supreme body shall be exercised by its member.

10.3.4 Contribution

A **contribution** is the **monetary value of the subject of the contribution into the registered capital** of a business corporation. In case of a **joint stock company**, the contribution shall be expressed as **nominal or book value of a share**.

The **subject of the contribution** shall be an item which a member or a future member (the so called “contributor”) undertakes to contribute to the business corporation in order to acquire or increase a business share in the business corporation concerned (the “contribution obligation”).

The **contribution obligation** may be met by a cash payment (the “**cash contribution**”) or by contributing another item whose value can be expressed in monetary terms (the “**contribution in kind**”).

The **contributor** shall fulfil the contribution obligation within the period of time and in the manner prescribed by the Business Corporations Act and by the memorandum of association.

The **value of a contribution in kind** shall be specified in the memorandum of association of the business corporation concerned (and always assessed and evaluated by an expert).

A contribution in kind **may not consist of work or services** (please note that exceptions apply).

10.3.5 Contribution administrator

Before the incorporation of each business corporation, the subjects of the contribution or parts thereof that have been paid up or contributed shall be received and administered by the **contribution administrator** appointed in the memorandum of association. The founder or one of the founders may also act as the contribution administrator.

Where the contribution in kind consists of an **immovable property**, the subject of the contribution shall be contributed by the contributor by handing over the immovable property to the contribution administrator together with a written statement on the contribution of the immovable property, with certified signature(s).

Where the contribution in kind consists of a **movable property**, the subject of the contribution shall be contributed by handing the item over to the contribution administrator, unless provided otherwise in the memorandum of association.

If, by nature, it is **impossible to effectively hand over the movable property**, it shall be handed over through the delivery of the data carriers or other media capturing the item to be handed over, and the documentation describing the nature, contents and other facts relevant for the possibility to use the contribution in kind.

Where the contribution in kind consists of an **enterprise or a part thereof**, the subject of the contribution shall be contributed on the effective date of the contribution agreement. The relevant provisions of the Civil Code on purchases shall apply *mutatis mutandis* to a contribution agreement of an enterprise or a part thereof.

Where the contribution in kind consists of a **receivable**, the subject of the contribution shall be contributed on the effective date of the agreement on the contribution of the receivable. The relevant provisions of the Civil Code on the assignment of receivables shall apply *mutatis mutandis* to an agreement on the contribution of a receivable. The contributor shall be liable for the collection of the receivable up to its valued amount.

In all other cases, the contribution in kind shall be contributed on the **effective date of the contribution agreement** between the contributor and the contributor administrator.

A **cash contribution into capital companies** shall be paid into a designated account held with a bank or a savings and loan cooperative (the “bank”) to be opened by the contribution administrator. The bank shall not make these funds available for disposal before the incorporation of the capital company unless necessary for the payment of incorporation expenses or refund of issue prices to the founders.

A contribution in kind shall be fully contributed to the capital company prior to its incorporation.

A written declaration on the fulfilment of the contribution obligation or a part thereof by the individual contributors shall be issued by the contribution administrator to the person who is entitled to file the application for registration in the commercial register. Such declaration shall be attached to the application for registration in the commercial register, unless it is not required by law to register the extent in which the contribution obligation is fulfilled in the commercial register.

10.3.6 Registered capital

The **registered capital** of a business corporation shall be equal to the sum of all contributions. The Business Corporations Act specifies the minimum required amount thereof within the individual types of companies (please see the details below).

10.3.7 Business share

A **business share** represents the member's interest (participation) in a business corporation concerned and the rights and duties attached thereto.

Each member may hold **one business share** only in the same business corporation. This shall not apply to an interest in a capital company and to business shares of a limited partner.

Where a business share in a commercial company is in **joint ownership**, the joint owners shall act as co-member and their interest shall only be administered by the administrator of joint property *vis-à-vis* the commercial company.

10.3.8 Profit share

A **profit share** shall be determined on the basis of ordinary or extraordinary financial statements approved by the supreme body of the business corporation concerned. It can only be distributed among the **members**, unless provided otherwise in the memorandum of association.

A profit share of capital companies shall be due and payable within **3 months** after the date when the supreme body of the business corporation adopted the decision on profit distribution, unless stipulated otherwise in the memorandum of association or by the supreme body. A profit share of a partnership shall be due and payable within **6 months** after the end of the accounting period, unless stipulated otherwise in the memorandum of association.

Decisions to pay a profit share are made by the **statutory body**.

10.3.9 Share of liquidation balance

Upon a business corporation's winding-up with liquidation, each member shall be entitled to a **share of the liquidation balance**. Such share shall be paid out in **cash**, unless stipulated otherwise in the memorandum of association or in a separate agreement between the members and the corporation concerned.

The liquidation balance shall be first distributed among the **members up to the level at which they met their contribution obligation.** Where the liquidation balance is **insufficient** for such distribution, it shall be distributed among the members according to the proportion of their paid-up or contributed contributions.

Where none of the members was subject to a contribution obligation, the liquidation balance shall be distributed **equally** among the members.

10.3.10 Business corporation bodies

The **supreme body** of a partnership is all of its members; the supreme body of a capital company is the general meeting; and the supreme body of a cooperative is the members' meeting.

For the purpose of the Czech Business Corporations Act, the **supervisory body** of a business corporation shall be the supervisory board, the auditing committee or other similar body.

A **collective body** shall appoint its chairman, whose vote shall be decisive in the event of a tie, unless stipulated otherwise for this case in the memorandum of association. This shall not apply to partnerships.

Each member of a partnership shall act as its **statutory body**. In a limited-liability company, each executive shall act as the company's statutory body, unless the memorandum of association stipulates that multiple executives shall act as a collective body.

Any decision taken by a body of the business corporation shall be effective *vis-à-vis* the business corporation **upon its adoption**. Any decision taken by the sole member acting as a body of the business corporation shall be effective *vis-à-vis* the business corporation **upon its receipt by the business corporation**. Any decision taken by a body of the business corporation shall be effective *vis-à-vis* third parties as **from the time when they became aware or could have become aware thereof**.

The representative of a legal entity which is a member of a body of a business corporation must fulfil the **requirements and preconditions for the execution of the function** defined by law for the members of the body themselves. **Compensation for any damage** caused by the representative shall be provided to the business corporation by the representative and the legal entity he or she represents, acting jointly and severally.

10.3.11 Rules of conduct of members of corporate bodies

A person shall be deemed to act with **due care** and the **necessary knowledge** where, in **business-related decisions**, he or she could in **good faith** and **reasonably** assume to be acting on an **informed basis** and in **justifiable interest** of the business corporation concerned (the so called „**Business Judgement Rule**“). The foregoing shall not apply in cases where such decision-making was carried out without the **necessary loyalty**.

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.

When **assessing whether a member of a body acted with due care**, the care that would be exercised in a similar situation by another reasonably diligent person if they would be in the position of a member of a similar body of the business corporation shall always be taken into account.

A person who **violated the duty of due care** shall return to the business corporation any **benefit obtained** in connection with such behaviour. Where such return of the benefit is impossible, the obliged person shall pay an equivalent amount to the business corporation in **cash**.

10.3.12 Conflicts of interest rules

If a member of a body of a business corporation **becomes aware of a conflict that may arise between his or her interest and the interest of the business corporation during the exercise of his or her office**, he or she shall **inform**, without undue delay, other members of the body of which he or she is a member as well as the supervisory body, if established, or, failing that, the supreme body. The same shall apply *mutatis mutandis* to **potential conflicts of interest** of persons who are closely related to the member of a body of the business corporation, and persons influenced or controlled by that member.

Where a member of a body of a business corporation intends to **sign a contract with the corporation**, he or she shall **inform**, without undue delay, the body of which he or she is a member as well as the supervisory body, if established, or, failing that, the supreme body. At the same time, the member shall indicate under which conditions the contract is to be concluded.

The same shall apply *mutatis mutandis* to **contracts between the business corporation and any person who is closely related** to the member of a body of the business corporation, and persons influenced or controlled by that member.

10.3.13 Executive service agreement

The rights and duties between a business corporation and a member of its elected body shall be governed, *mutatis mutandis*, by the provisions of the Civil Code governing an **order**, unless implied otherwise from the **executive service agreement**, where concluded, or from the Business Corporations Act.

An executive service agreement for a **capital company** and its subsequent modifications shall be agreed **in writing** and **approved by the company's supreme body**.

Unless **remuneration** is agreed in the executive service agreement in accordance with the Czech Business Corporations Act, it shall be conclusively presumed that the exercise of the office is **free of charge**.

An executive service agreement for a capital company shall also include the following details on remuneration:

- Definition of all **remuneration components** which the member of the body is or may be entitled to, including any benefits in kind, payment to the complementary pension insurance scheme or other benefits;
- Specification of the **amount of remuneration** or the **method of its calculation**, and its form;
- Definition of **rules for the payment of special bonuses and profit share** for the member of the body, where these may be granted; and
- Information about the **benefits or emoluments** for the member of the body consisting in the transfer of participating securities or in the possibility of the acquisition by the member of the body or a person closely related to him or her, where the remuneration is to be provided in such form.

10.3.14 Resignation

A member of a body of a business corporation may **resign from his or her office**. However, he or she may not do so at a time which is **inappropriate for the business corporation**.

The above stated inappropriateness shall be explained as any situation which is very important in the life of each business corporation concerned – *e.g.* financial problems, entering new markets *etc.*

Unless determined otherwise in the memorandum of association or the executive service agreement, the resigning member shall notify his or her resignation to the **appointing body**, and his or her office shall terminate **one month after the delivery of such notification**, unless the competent body of the business corporation **approves a different office termination date** at the request of the resigning member. Where the competent body is a **sole member**, the office shall terminate one month after the delivery of the resignation notification to the sole member, unless they agree on a different office termination date.

10.3.15 Expulsion from office of a member of the statutory body of a business corporation

During **insolvency proceedings**, the insolvency court shall, even *ex officio*, decide that a member of the statutory body of the bankrupt business corporation who was in office at the time of the ruling on bankruptcy or afterwards may not hold the office as a member of the statutory body of any business corporation or act as a person in a similar position (the "expulsion") **for a period of 3 years after the expulsion decision became legally effective.**

A court may also, even *ex officio*, decide to **expel a member** if it turns out that, in the past 3 years, the member of the statutory board repeatedly and seriously breached the duty of due care or, where applicable, any other duty of care associated with the exercise of his or her office pursuant to another legal regulation.

Task: You were already explained about the Czech “duty of care (loyalty)”. Can you think of any practical situations which would be seen as a breach of this duty? Can you think of any similar situations in your domestic jurisdiction?

10.3.16 Nullity of a business corporation

After the incorporation of a business corporation, it shall be **pronounced null** by a court, even *ex officio*, if:

- The memorandum of association was not drawn up in the prescribed form;
- The provisions concerning the minimum amount of registered capital to be paid up were not complied with; or
- The court finds legal incapacity of all the founding members.

10.3.17 Dissolution and winding-up of a business corporation and liquidation provisions

A court, on the basis of a petition of a person who has a legal interest therein or a petition of the prosecutor’s office, shall also dissolve a business corporation and order its liquidation, where the court finds a **substantial public interest** to do so, in the event that:

- The business corporation **lost all its business licences**; this shall not apply in case the business corporation was also established for the purpose of managing its own assets or for a purpose other than doing business;
- The business corporation **has not been able to perform its activities** and, consequently, **serve its purpose for more than 1 year**;
- The business corporation is not able to perform its activities because of **insurmountable differences between the members**; and/or
- The business corporation, without making recourse to natural persons, **carries out an activity which may only be performed by natural persons pursuant to other legal regulation.**

10.4 Specific provisions of the Czech corporate law – a limited liability company

10.4.1 Introduction to specific provisions of the Czech Business Corporations Act

Both a limited liability company and a joint stock company must be established by a **notarial deed** executed by a Czech notary. Before registering in the Commercial Register, the founders must pay the **monetary contributions** into a **special bank account** opened specifically for this purpose. The bank will not allow the company (or anybody else) to use the money deposited in such bank account before the registration of the company in the Commercial Register, unless the money is to be used for the payment of establishment-related costs. This bank account will be opened on the basis of an **agreement** concluded between the bank and the contribution administrator of the company. The **contribution administrator** is an individual (either a founder or another person) responsible (before the registration in the Commercial Register) for the payment of contributions (both monetary and also non-monetary). The contribution administrator can also be a foreign person.

Before registering in the Commercial Register, both branches and business companies must obtain a **trade licence** from a trade licensing office corresponding to the activities they intend to undertake, or some other form of business authorisation. For this purpose, they must appoint a **responsible representative** who is responsible for the company's compliance with the conditions of the trade licences. The appointment of a responsible representative is not required for any of the 80 general business activities covered by the so-called **free trade licence**. One responsible representative may be responsible for more than one trade licence of the company. On the other hand, one responsible representative may not perform this function on behalf of more than four entrepreneurs. The company has the option to submit a single application to the trade licensing office; in such an application it will apply for both (i) trade licence(s), and (ii) registration with the tax office – along with the application for a trade licence.

Shareholders of a joint stock company do not guarantee the company's obligations. **Partners** of a limited liability company jointly and severally guarantee such company's obligations only up to the sum of unpaid contributions to the company's registered capital.

As mentioned above, executive directors, directors and board members of Czech business companies are obliged to perform their respective offices with **due care** (and are liable for any damage caused to such company by any breach on their part of this obligation).

In some cases, the so called **shadow directors** (*i.e.* persons who *de facto* control a Czech business company, even if they do not have any official position in such a company) or other companies from the same **group of companies** can be liable for damage caused to such Czech company by exercising their influence over such Czech company to its detriment.

The Czech legal system recognises the concept of the **criminal liability of legal entities**; such liability can be in some cases effective beyond the Czech Republic's borders. This concept allows for, in some cases, the prosecution of a legal entity where a crime has been committed to the benefit of such legal entity by its director, employee or other associated person.

10.4.2 Establishment

A limited liability company is commonly used only for **small and medium-sized businesses**. It may be **established** either by means of (i) a founder's deed by one entity (whether an

individual or a legal entity); or (ii) a memorandum of association concluded by several entities or individuals. Such founder's deed or memorandum of association must be executed in the form of a **notarial deed**.

10.4.3 Registered capital

The **registered capital** of a limited liability company is composed of the contributions made by the shareholders (partners). The **minimum contribution of each shareholder** to the registered capital is **CZK 1**. However, in the event of such a low contribution, the risk of insolvency (and related consequences for executive directors and shareholders) should be considered.

Non-monetary contributions must be fully settled before the company's registration in the Commercial Register. The founder's deed or memorandum of association must specify the non-monetary contribution, its value (which is determined by an expert) and the expert who determined its value.

At least **30 per cent of subscribed monetary contributions** must be paid up before the registration of the company in the Commercial Register.

10.4.4 Ownership interest

A limited liability company does not issue shares. The **ownership interest** represents the shareholder's participation in the company and the rights and duties derived from such participation.

The size of the ownership interest is basically **determined by the ratio of a particular shareholder's investment contribution to the company's registered capital**.

A limited liability company may **have more than one type of ownership interest**, to which different rights and obligations attach. For example, the obligation to work for the company can attach to one ownership interest and the obligation to contribute a higher sum of capital to the company can attach to another one. A shareholder may **hold more than one ownership interest** (provided that the founder's deed or the memorandum of association allows so). An ownership interest in a limited liability company is **not as easily transferable** as the shares in a joint stock company. It requires a **written agreement** (with notarised signatures).

A shareholder may transfer his/her ownership interest to another shareholder **without the approval of the general meeting** (unless the memorandum of association stipulates otherwise). A shareholder may also transfer his/her ownership interest to a third party **with the approval of the general meeting** (unless the founder's deed or the memorandum of association stipulates that such approval is not required).

10.4.5 Corporate bodies

The corporate governance of a limited liability company is much **simpler** than that of a joint stock company.

A limited liability company **does not have a board of directors**. Its executive body is made up of **one or more executive directors**. The law does not restrict their **number**, but their number must be stipulated in the founder's deed or the memorandum of association. The executive director is **appointed** by the general meeting (the supreme body of the limited

liability company) or by the sole shareholder exercising the powers of the general meeting. Each executive director represents the company **independently**, unless the founder's deed or the memorandum of association stipulate otherwise. The founder's deed or the memorandum of association may stipulate that the executive directors form a **collective body**, which will make the legal position of executive directors closer to that of the board of directors in a joint-stock company.

The law does not require the limited liability company to establish a **supervisory board**; however, a supervisory board can be established, provided that the founder's deed or memorandum of association stipulates so.

10.4.6 Advantages and disadvantages of a limited liability company

The main **advantages** of a Czech limited liability company are the following aspects:

- Relatively low registered capital;
- Relatively low administrative requirements;
- Protection of the members from the company's creditors by a corporate veil;
- Optional supervisory board (please note that exceptions apply).

The main **disadvantages** of a Czech limited liability company are the following aspects:

- Shareholders are jointly and severally liable up to the amount of the unpaid registered capital as recorded in the Commercial Register if the full payment of the registered capital has not been registered in the Commercial Register yet;
- The procedure of the transfer of the ownership interest is more complicated than in the joint stock company.

10.5 Specific provisions of the Czech corporate law – a joint stock company

10.5.1 Establishment

A joint-stock company is usually used for **large businesses**. It is established by **articles of association** by **one or more shareholders** (individuals or legal entities). The articles of association must be executed in the form of a **notarial deed**.

10.5.2 Shares

A joint-stock company could have issued either **bearer** or **registered shares** in the form of either **certificated** or **book entered** shares. However, please note that as of 1 January 2014, the certificated bearer shares are no longer allowed and existing certificated bearer shares must be either immobilised (physically deposited) in a bank or exchanged for book entered shares.

The **transferability** of registered shares may be restricted (*e.g.* by requiring that the general meeting approves share transfers) but not excluded by articles of association. The transferability of bearer shares may not be restricted. Registered certificated shares are transferred by means of, an oral/written agreement, an endorsement and a hand-over of the shares. Book-entered

shares are transferred by virtue of the registration of the new owner with the Central Securities Depository.

10.5.3 Registered capital

The **minimum registered capital** is CZK 2,000,000 (or EUR 80,000 for companies which are allowed by a special law to keep their accounts in EUR).

At least **30 per cent of the registered capital** must be paid up before the application for the registration of the joint stock company in the commercial register is filed (or earlier, if the articles of association stipulate so).

10.5.4 Corporate bodies

The executive body of a joint-stock company is a **board of directors**. Members of the board of directors are **elected** and **recalled** by the general meeting (or by the supervisory board if the articles of association stipulate so). The board of directors **decides on all matters that are not reserved for the general meeting or the supervisory board**.

A joint-stock company must establish a **supervisory board**, which monitors the activities of the board of directors and the operations of the joint-stock company.

Alternatively, instead of a board of directors and a supervisory board, a joint stock company can have an administrative board and a single director (**monistic system**). The choice of the corporate bodies' structure (*i.e.* either dualistic, or monistic) must be stipulated in the **articles of association**. If the articles of association stipulate so, the administrative board can have only one member who can, at the same time, perform the office of a director.

10.6 Summary

The **Czech private law recodification** provided citizens of the Czech Republic with a number of changes and it significantly changed the legal environment for doing business and for activities of business companies and cooperatives, the so called business (commercial) corporations. The key codes of this reform include the New Civil Code, the Business Corporations Act and the International Private Law Act (all of those came into force on 1 January 2014). In addition to these basic pillars, there were also many changes made in the accompanying legislation. The aim of the recent recodification was to remove the remains of the laws from the socialist era and to modernize and liberalize the Czech private law following the example of many countries of the European Union, the USA *etc.*

The Czech **joint stock company** and the Czech **limited liability company** are legal persons, whereas the so called **branch office** is not a separate legal entity. As far as the company's liability is concerned, both joint stock company and a limited liability company are **liable** by its entire property for its breach of obligations. However, shareholders of a joint stock company are not liable for breaches of company's obligations at all. Members of a limited liability company are jointly and severally liable for the company's obligations up to the unpaid contributions of all members to the registered capital. Branch office is not liable for breach of its obligations (the parent company is liable therefor).

The Czech joint stock company's **minimum amount of the registered capital** is CZK 2,000,000. Limited liability company's minimum amount of the registered capital is CZK 1

(per shareholder/partner). For the establishment of a Czech branch office, there is no registered capital required.

Obligatory bodies of a Czech joint stock company are General Meeting, Board of Directors and the Supervisory Board (please be aware of the monistic system, as well). Obligatory bodies of a Czech limited liability company are General Meeting and Executive(s). The Czech branch office must have a Head of Branch who is entitled to act on behalf of the parent company with regards to the branch office concerned.

10.7 Self-assessment questions and tasks

1. Explain the process of so called recodification of the Czech private law. Why is it so important? What changes did this reform bring? What are the key – new – codes? Do we still have the Czech Commercial Code?
2. What are some of the sources of Czech business/corporate law?
3. Define the term business corporation.
4. Define the principle of freedom of contract.
5. Define the principle of equal position of concerned parties.
6. Define the principle of good faith and protection of third parties.
7. What are the other principles of Czech business law?
8. Who is an entrepreneur?
9. What is a business activity?
10. What are the key distinguishing features of Czech entrepreneurs?
11. Who can act on behalf of Czech legal entities?
12. How would you write a power of attorney?
13. Where can the Czech commercial register be found?
14. Which entities MUST be registered in the Czech commercial register?
15. Explain the principle of publicity.
16. Name all the possible forms and types of business corporations in the Czech Republic.
17. Must a joint stock company have its own websites?
18. How is a Czech business corporation established? Is there any difference in this process – with regards to partnerships and capital companies?
19. What is a difference between single member and single founder?
20. Make sure you are able to define the following: contribution, subject of contribution, contribution obligation, contributor, monetary contribution, non-monetary contribution, and contribution administrator.
21. Which types of Czech business corporations must have a registered capital?
22. What is a business share? How is this called in the joint stock company?
23. What are the conditions for paying the profit share?
24. Who is the recipient of the share of liquidation balance?
25. What is the difference between single and collective body?
26. Explain the business judgement rule. What does it stand for? Why is it important?
27. Name one situation where there is a conflict of interest between the member of a business corporation and the corporation itself. How would you solve such situation – practically? What do you need to do with regards to Business Corporations Act?
28. What is the executive service agreement? What are its mandatory parts and clauses?
29. Can a member of a statutory body be expelled from his/her function? Can he/she resign? What are the legal conditions for the above?
30. Name at least 7 key features and characteristics of a limited liability company.

31. Name at least 7 key features and characteristics of a joint stock company.
32. What is a branch office?

10.8 Further reading/listening

Legislation: selected provisions of the Czech Civil Code; selected provisions of the Business Corporations Act; selected provisions of the International Private Law Act; selected provisions of the Trade Licensing Act.

Printed books:

- HAVEL, B. *et al. Business Corporations Act with updated explanatory report and index (in Czech)*. Ostrava: Nakladatelství Sagit, a.s., 2012. ISBN 978-80-7208-923-9.
- MACGREGOR, R. *Introduction to Law for Business*. Ostrava: KEY Publishing s.r.o., 2012. ISBN: 978-80-7418-137-5.

Online resources: www.justice.cz (Czech commercial register).

Documentary video(s): I Am Fishead: <https://www.youtube.com/watch?v=bcRRZsag0Io>.