

## **The amendment to the Business Corporations Act**

The amendment to the Business Corporations Act, which enters into force on 1 January 2021 (the "amendment"), includes a number of significant changes. Below we provide a summary of one such change that concerns inactive business corporations.

### **Why address the issue of inactive business corporations?**

The amendment aims to eliminate, among other things, the existence of inactive business corporations, or at least significantly reduce their number. An effective sanction for inactive business corporations, which in most cases will result in the deletion of a business corporation from the Commercial Register, should reduce the number of cases of tax fraud in which inactive business corporations are abused as white horses, or at least make such conduct more difficult. The fact that, as a general rule, they have no recoverable assets from which amounts due can be paid, as well as the inability to trace a specific natural person who runs such a business corporation and who could be held liable, de facto leads to avoidance of responsibilities (criminal or otherwise).

Another consequence of the amendment will be a "cleansing" of the Commercial Register, removing inactive business corporations and increasing the volume of documents, which – according to the Ministry of Justice in the explanatory memorandum to the amendment – has long been alarmingly low.

### **New rules for dealing with inactive business corporations**

It will be possible to remove an inactive business corporation if two conditions are cumulatively

met. First, a business corporation must be in breach of its obligation to submit regular or extraordinary financial statements (or an annual report that includes financial statements) for at least two consecutive accounting periods (or to include them in the collection of documents in the Commercial Register) and secondly, contacting the business corporation has proved impossible.

A business corporation can be considered uncontactable if it is not possible for the court to request that the company submit the missing financial statements to the collection of documents. When making the request, the court will have to follow the rules for delivery contained in the Code of Civil Procedure, i.e. the court will primarily deliver the documents to the business corporation via a data box. Under Czech law, a document is deemed as having been delivered on the tenth day after its delivery to the data box even in those cases where the business corporation does not retrieve the document received (so-called fiction of delivery). In this case, however, if the business corporation does not log in to the data box within 10 days, the documents will not be deemed to have been delivered as the fiction of delivery of documents is excluded due to the severity of the consequence. The court will have to serve the documents using the other means of service specified in the Code of Civil Procedure; the last method of delivery is delivery by the postal service provider.

If a business corporation does not submit regular or extraordinary financial statements to the collection of documents, but if it is possible to deliver documents to the business corporation, only a disciplinary fine of up to CZK 100,000 will be imposed.



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If both of these conditions are met, the court will initiate proceedings to dissolve the business corporation ex officio; this fact will be entered in the Commercial Register. The entry of this data in the Commercial Register should ensure the protection of third parties, as it will be possible to dissolve a business corporation without liquidation at the earliest after one year from entering the data on initiating proceedings to dissolve a business corporation in the Commercial Register. This does not apply at the time of the ongoing insolvency proceedings.

## **Conclusion**

The proposed regulation should thus lead not only to an increase in the transparency of the business environment and a reduction in the risk of fraud in the Czech Republic, but also to an improvement in law enforcement and the avoidance of liability for tax (or other) fraud. The Ministry of Justice assumes that by introducing an effective sanction against inactive business corporations

that do not file financial statements in a collection of documents, business corporations will generally pay more attention to the consistent fulfilment of their legal obligations and will regularly file financial statements in a collection of documents within specified deadlines.

## **For more information**

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