

Major amendment to the Czech Business Corporations Act

On 1 January 2021, a major amendment to the Czech Business Corporations Act entered into force. This is one of the most important laws regulating the structure, establishment, dissolution and operation of companies and cooperatives. Due to the importance of these changes, we have prepared a brief summary of selected changes.

1. Change of a structure of monistic joint-stock company

Prior to the amendment taking effect, a monistic joint-stock company was able to have either a management board (with the possibility to elect its chairman) or a statutory director as its executive body. The new law has abolished the positions of statutory director and chairman of the management board. Thus, a monistic joint-stock company now has only one main executive body – the management board. The business management and control of the company's management therefore lie within the competence of the management board as a whole. The management board can subsequently distribute responsibility for the performance of individual duties among its members.

2. Agreement on the performance of the function of directors / board members is ineffective until approved by the general meeting

The approval of the general meeting is required in order for an agreement (or its amendment) on the performance of the function of directors / board members to be effective. This change will have a significant impact on directors and board members, as for example it will not be possible to pay remuneration on the basis of the agreement until its approval. The effectiveness of such an agreement will be retroactive to the date of its

conclusion, unless the general meeting stipulates otherwise.

3. Pledge of a share and registration of other rights in rem connected with the share

From now on, the conditions for the pledge of a share are no longer obligatorily connected with the conditions for the transfer of the same share. The memorandum of association or the articles of association will be able to set conditions for share pledges that will not affect their transferability at all. According to the new legislation, it will be possible, for instance, to have fully transferable shares, but to exclude their pledge completely. It is also a novelty that other rights in rem to the share will now also be subject to the registration in the same way as the share pledge. Therefore, for example, the creation of an effective pre-emption right that is being established as a right in rem requires it to be recorded in the Commercial Register. Until the date of this registration, the pre-emption right will not exist.

4. Stricter sanctions for members of statutory bodies if they did not act with due care and thus led the company to bankruptcy

The current legislation only provided a potential guarantee that in event of the company's bankruptcy, the members of the statutory body would be liable for the company's debts if the statutory body's members could have prevented the bankruptcy but failed to do so. The amendment introduces the possibility of requiring a member of the body (who contributed to the company's bankruptcy by violating his/her duties) to return all monetary and other remuneration (e.g., remuneration under executive service agreement) received from the company during the two years preceding the bankruptcy decision. However, it also gives the court the opportunity to decide, if



CERHA HEMPEL
CEE NEWSLETTER
Czech Republic

the company is declared bankrupt, that the member of the body must pay the difference between the sum of the debts and the value of the company's assets.

For more information

Mgr. David Kučera
Partner Czech Republic
david.kucera@cerhahempel.cz
Tel: +420 221 111 711

Mgr. Soňa Panáková
Junior Associate Czech Republic
sona.panakova@cerhahempel.cz