



December 2020

Big amendment to the Act on Business Corporations 2021

On 1st January 2021, big amendment to the Act on Business Corporations comes into effect that brings a number of substantial changes which may apply to activities of your company. You will find an overview of the most important changes below.

Contributions, shares and capital of business corporation

As a result of the amendment, **establishment of a limited liability company (s. r. o.) becomes easier**. In the event that the amount of the monetary contributions does not exceed CZK 20,000, the monetary contributions can be paid up also in another manner than to a special bank account, e.g., via notarial custody.

The legislature newly confirms conclusions from judicial decisions on the manner of distribution of **profit and other equity funds** of the company with regard to the maximum length of the period within which the decision on distribution has to be adopted and with regard to the maximum amount which can be distributed. An **advance for share in profit** paid out in breach of law shall be always returned. The **limitation on distribution and payment of the share in profit or other equity funds** will be extended.

Members of bodies of business corporations

In the event that a **legal entity is a member of a body of a business corporation**, it will have to appoint, without undue delay, a specific individual who will represent it in the body; this natural person has to be entered in the Commercial Register. If the legal entity does not do so, it cannot be entered in the Commercial Register and the office of this legal entity will cease to exist after expiry of certain period. In relation to **resignation from office** of a member of an elected body, new periods will apply within which the office of a member of elected body will cease to exist, depending on various circumstances.

The rules for **agreements of performance of office** are amended as well. If the agreement on performance of office is not approved, it does not become effective.

The regulation of **insolvency offenses of a member of a statutory body** will be substantially amended and hitherto shortcomings will be remedied. The events of default will be set out stricter; however, the maximum length of the exclusion from office will be 3 years. For sake of simplification and streamlining, the insolvency court will examine as one of the incidental disputes in the insolvency proceedings whether or not members of the body contributed by breach of their obligations to the insolvency of the corporation. Sanctions for these members of the body can consist in surrender of the consideration for the performance of office or in

the obligation to supplement the insolvency estate. However, only the insolvency trustee will be authorized to file such petition with the court.

Business groups – parent and subsidiary companies

In the event that controlled company prepares annual report, the report on relations will form a part thereof and will be subject to **verification by an auditor**. The group of persons who can file a **petition for review of the report on relations** is being extended; however, this petition can be newly filed only for serious reasons. The conditions for making use of the **right to request that the share is bought back** are being clarified as well.

Limited liability company (s. r. o.)

Creation of shares without right to profit will be newly possible. However, there will have to be at least one **share** in the company **carrying voting right**. Among the compulsory **particulars of the memorandum of association** will belong the designation of shares, provided that the shareholder can own more shares, and the name of the type of share and the rights and obligations attached to it, provided that the memorandum of association stipulates for more types of shares. Provided that the memorandum of association so stipulates, the provisions compulsory upon the establishment of the company (e.g., the obligation to provide contributions, determination of the contribution administrator) can be removed by mere decision of the executive director.

Action by a member can be newly filed also with regard to the application to have a member expelled. A former member will be entitled to represent the company in the proceedings regarding the action by a member also after termination of his participation in the company if he has legal interest therein.

A member will be newly entitled to **attend general meeting jointly with one person** determined by him, provided that such person assumes the confidentiality obligation. **Limitation of execution of member's voting rights** is being extended also to cases set out by the memorandum of association. The regulation of decisions **per rollam** is being changed as well. If, on the grounds prescribed by law, the proposal of such decision has to be in the form of a public deed, only a copy thereof shall be sent to the members. Member's certified signature has to be attached to member's opinion on the proposal.

The powers of general meeting are being changed rather formally. Even such change can affect companies that have the powers of the general meeting written in the memorandum of association according to the hitherto wording of the Act. The **executive director** shall be bound by the principles and instructions of the general meeting, except for the instructions regarding business management. The memorandum of association can newly stipulate for shares carrying the right to appoint one or more executive directors or to recall them (so called **delegation right**). The rules regarding the **ban of competition** imposed on the executive director can be newly extended by the memorandum of association without further conditions.

Joint stock company (a.s.)

Similar rules as with regard to the limited liability company apply for the attendance of the general meeting jointly with one person, limitation on execution of the voting rights, decisions per rollam, powers of the general meeting, general meeting instructions and ban on competition.

Similarly as with regard to limited liability company, the articles of association can stipulate that a shareholder holding a share carrying a **delegation right** may appoint a member of the board of directors or a member of the supervisory board.

The structure of the monistic (one-tier) system) is being changed substantially. The body of the statutory manager (statutární ředitel) is being cancelled. The statutory body will newly be the administrative board which will be in charge of the management of the company's business and supervision of activities of the company.

Cooperative

Cooperative can be newly established also without holding a foundation meeting of persons interested in membership, by mere agreement of the persons interested in membership about the content of the articles of association.

According to the transitory provisions, memorandums of association, founder's deeds and articles of association have to be adjusted to the new wording of the Act by 1st January 2022. Information which has not been subject to entry in the Commercial Register so far and a deed which has not been subject to deposition in the Collection of Deeds so far, have to be entered in the Commercial Register, respectively deposited in the Collection of Deeds within 6 months (i.e., by 1st July 2021) of the effective date of the amendment.

Pursuant to the Act on Public Registers, companies which has not fulfilled the obligation to deposit financial statements in the Collection of Deeds or to whom it is impossible to deliver documents can be newly cancelled on the basis of a petition.

In relation to this amendment, in particular review of memorandums of association, founder's deeds and articles of association are recommended.

We will be pleased to answer any queries you might have.

CZERWENKA & PARTNER v.o.s. team