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## Amendment to the Czech Business Corporations Act 2021 (Part I)

**An amendment to Act No. 90/2012 Coll., Business Corporations Act, as amended (the “Business Corporations Act”), will come into effect in the Czech Republic on 1 January 2021. This amendment will result in substantial changes to the duties and obligations of corporations and their bodies. This update, Part I, relates to the impact on the position of members of executive bodies, and Part II, which will be released separately, will cover the effects on companies and their shareholders.**

The major changes introduced by the amendment in relation to the position of members of executive bodies of corporations relate in particular to remuneration, legal entities that are members of an executive body and the liability of members of executive bodies.

### CONTRACT WITH A MEMBER OF AN EXECUTIVE BODY

Under current Czech law, a contract on the performance of the function of a member of the executive body (performance contract) must be drawn up in writing and approved by the highest body of the company. The amended wording of the Business Corporations Act **now explicitly stipulates that such a contract will not be effective without this approval**. Unless the highest body of the company decides otherwise, the approved performance contract will come into effect on the date of its conclusion or on the date that the member begins performing his or her function (whichever occurs later).

The amended Business Corporations Act also stipulates that, if there is any conflict between the articles of association and the performance contract, **the rules contained in the articles of association shall apply**. The aim here is to avoid circumventing the will of the shareholders expressed in the articles of association. However, if the performance contract is approved by the majority of shareholders required to amend the articles of association, then the relevant provisions of the contract entered into with a member of an executive body must be applied.

## SALARY AND OTHER BENEFITS PROVIDED TO AN EMPLOYEE WHO IS ALSO A MEMBER OF AN EXECUTIVE BODY

The Business Corporations Act currently states that salary and other benefits provided to any employee who is also a member of the company's executive body, or to a person affiliated with such an employee, can be provided only with the approval of the body authorised to approve the performance contract. **The new amendment repeals this provision without providing any replacement.**

In practice, this rule often led to situations where the approval of a salary or a salary adjustment had to be included in the agenda of the corporation's general meeting or in a decision by its sole shareholder, even where these amounts were negligible. This change aims to simplify this.

According to the explanatory memorandum on the amendment, the general rules on conflicts of interest contained in the Business Corporations Act (which remain unaffected by the amendment) apply in this case. These rules are considered sufficient by the legislator to fulfil the intended purpose. In line with these rules, the business corporation must be notified if any contract is made with an employee who is also a member of the company's executive body, or with any person affiliated with such an employee, with the highest body or the supervisory body then being able to prohibit such a contract from being made if they so choose.

## LEGAL ENTITY AS A MEMBER OF AN EXECUTIVE BODY

Under Czech law, a legal entity (corporation) may generally be appointed as a member of the executive body of another legal entity. If the entity serving as the executive body has a different entity as its executive body, a chain of legal entities being in the position of executive bodies is created. This may cause some difficulties in practice.

The new amendment to the Business Corporations Act **imposes an obligation on any legal entity appointed as a member of the body of another legal entity to name one individual to represent it.** This individual must be registered in the company's entry in the Czech Commercial Register. If the legal entity does not name one individual as its representative, or if such an individual is not registered in the Commercial Register within three months from the day he or she took office as the representative, then the function of the legal entity in the elected body will expire.

## STRICTER LIABILITY OF A MEMBER OF AN EXECUTIVE BODY

The amendment introduces stricter liability for the members of executive bodies. **Where a member of an executive body has contributed to the bankruptcy** of a company by violating his or her obligations, then he or she may, among other things, be required to pay into the insolvency estate the difference between the corporation's total debt and the value of its assets (taking into account the extent to which the breach of the obligation of duty of due care contributed to the deficient amount).

The amendment also modifies the conditions under which the court may dismiss a member of an executive body from his or her **office** in a business corporation. Such a decision may be made (i) in the event of a serious breach of due care; or (ii) in the case of repeated breach of duty committed in the three years before the commencement of the relevant proceedings. **It is no longer necessary for both of these conditions to be met cumulatively.**

Furthermore, for **persons who are not formally members of an executive body, but are de facto holders of such a position**, the amendment imposes **similar obligations as those that exist for the elected members of the executive bodies**. These persons include *inter alia* the so-called shadow directors. Such persons must comply with conflict-of-interest rules as if they were formally elected members of those bodies.

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