

International Comparative Legal Guides



Corporate Governance 2020

A practical cross-border insight into corporate governance law

13th Edition

Featuring contributions from:

Advokatfirmaet BAHR AS

Al Hashmi Law

Arthur Cox

Baker McKenzie

Bowmans

Cravath, Swaine & Moore LLP

Creel Abogados, S.C.

Cyril Amarchand Mangaldas

Davis Polk & Wardwell LLP

Ferraiuoli LLC

GSK Stockmann

Hannes Snellman Attorneys Ltd

Herbert Smith Freehills

Houhoff

Lacourte Raquin Tatar

Law Firm Neffat

Lenz & Staehelin

Macfarlanes LLP

Mannheimer Swartling Advokatbyrå

Marsh & McLennan Companies

Nielsen Nørager Law Firm LLP

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SZA Schilling, Zutt & Anschutz
Rechtsanwaltsgesellschaft mbH

Tian Yuan Law Firm

Uría Menéndez

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Czech Republic



Jitka
Logesová



Robert
Pelikán



Radka
Václavíková



Kateřina
Kulhánková

Wolf Theiss

1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

In the Czech Republic, the main corporate entities to be discussed are the limited liability company (“**LLC**”) and the joint stock company (“**JSC**”).

Only shares (and other securities) of a JSC may be listed and publicly traded on a regulated market. The Prague Stock Exchange (with its four different markets) is the largest organiser of the securities market in the Czech Republic. As at the time of writing, 11 companies were listed on the Prime market of the Prague Stock Exchange.

1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

- Act No. 90/2012 Coll., on Commercial Companies and Cooperatives (“**Business Corporations Act**”).
- Act No. 33/2020 Coll., amending the Business Corporations Act and other related acts (“**Amendment to the Business Corporations Act**”).
- Act No. 89/2012 Coll., Civil Code.
- Act No. 256/2004 Coll., on Capital Market Business.
- Act No. 125/2008 Coll., on Transformations of Commercial Companies and Cooperatives (“**the Transformation Act**”).
- Czech Corporate Governance Code 2018.
- Listed JSCs and public entities should follow the “comply or explain” rule; other entities should follow the “think and comply” principle.
- Government Resolution No. 115/2020 on the Strategy of State Ownership Policy.
- The Resolution draws on the updated OECD Recommendation on the Governance of State-Owned Companies of July 2015. It addresses areas such as transparency, the nomination process, the remuneration policy, and the powers and responsibilities of authorities for monitoring and evaluating performance.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

Issues relating to the Amendment to the Business Corporations Act

- One-tier Board structure
The powers of the Board of Directors were redefined with respect to the difficulties with division of powers between the Board of Directors and statutory director. The current concept that the Board of Directors may have only one member, if so determined by the company’s Articles of Association, has been maintained.
- *De facto* and shadow director (an elected body member)
The provision of inadmissibility of competition, the obligation to act with the due diligence of a proper manager (duty of due care) and the consequences for breaches of such, are also applicable to a person who is effectively in a position of a member of the elected body, even if in fact he/she/it is not a member of this body, and without regard to the relationship of this person to the commercial corporation. The provisions on conflict of interest shall apply with some exceptions.
- Restriction on “chaining” of legal entities
If a member of an elected body of a capital company or cooperative is a legal entity, it must, without undue delay, empower a single natural person (“representative”) who will represent the legal entity within the body (empowering another legal entity is not allowed).
If the legal entity fails to appoint a representative and if this representative is not registered in the Commercial Register within a period of three months from the day that the post of this legal entity commenced, this post will cease to exist.
- Extension of the notification obligation in case of conflict of interest
So far only a member of an elected body of a commercial corporation, who intends to enter into a contract with this corporation, has had an information obligation. This also applies to contracts between a commercial corporation and a person close to a member of its elected body or persons affected or controlled by him/her.
Recently, this obligation was also established in cases where a commercial corporation intends to enter into a contract with an influential or controlling person or with a person controlled by the same controlling person. In such a case, the member of the authorised representative must inform the supervisory body about this without undue delay (if it has been established); otherwise, the executive body will inform the supervisory body about it. This does not apply

if the contract is entered into with a person managing the company or with another person forming a group.

- Pre-emption right to a business share in a limited liability company
If the company transfers its own business share, the shareholders have a pre-emption right. If multiple shareholders exercise a pre-emption right, the transferred business share will be distributed among those shareholders according to the ratio of their business shares (this provision does not apply to JSCs).

1.4 What are the current perspectives in this jurisdiction regarding the risks of short-termism and the importance of promoting sustainable value creation over the long-term?

The Czech Corporate Governance Code 2018 states that members of elected bodies should always consider the legitimate interest of stakeholders and the sustainable development of society as a whole.

No legal provision regulates prevention of short-termism or the promotion of sustainable value creation over the long term.

It is generally considered that the “enlightened shareholders” value approach applies, although it is not expressly stated in Czech law.

2 Shareholders

2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

Shareholders exercise their right to participate in the management of the company at the General Meeting or outside of the General Meeting (if decisions *per rollam* (“by letter”) are permitted under a company’s Articles of Association).

In an LLC, shareholders can give strategic directions to directors; in a JSC, they can do so if this is provided for in the Articles of Association. Directions concerning day-to-day management are not allowed but the directors can ask the General Meeting for advice.

A shareholder participates in the management of the company through partial rights such as:

- The right to attend and vote at the General Meeting.
- The right to explanation – a shareholder shall be entitled to request and obtain from the company an explanation of matters concerning the company or the entities controlled by the company, provided that such explanation is necessary in order to be able to assess the contents of the matters included in the agenda of the General Meeting or to exercise the shareholders’ rights at the General Meeting.
- A shareholder does have the right to require that the Supervisory Board determine that the conditions for the refusal to provide an explanation were not met and the Board of Directors is obliged to provide the explanation.
- The right to make proposals and counterproposals on matters included in the agenda of the General Meeting.
- The right to demand invalidation of the resolution of the General Meeting for the reason of non-compliance with the legislation, the Articles of Association or *contra bonos mores*.

Qualified shareholders are provided with certain additional rights, such as:

- The right to request the Board of Directors to convene a General Meeting to discuss the matters suggested by them.
- The right to request the Board of Directors to include the matter determined by the qualified shareholder(s) in the agenda of the General Meeting.

- The right to request the Supervisory Board to review the exercise of powers by the director in those matters specified in the request.
- Qualified shareholders of the controlled person may, for grounded reasons, propose that the court appoint an expert for the purpose of review of the report on relations.

2.2 What responsibilities, if any, do shareholders have with regard to the corporate governance of the corporate entity/entities in which they are invested?

- Obligation not to abuse a right to vote
If a member of a private corporation abuses their right to vote to the detriment of the whole, a court may, upon the application of a person who has demonstrated a legal interest, decide to disregard the vote of that member in a particular case (a duty to provide compensation for resulting damages may be created).
- Liability for applying influence
Anybody who has been able to significantly influence the behaviour of the corporation is liable for damages caused to the corporation if they have not been acting with due care in the interest of the corporation.

2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have with regard to such meetings?

A General Meeting and a Substitute General Meeting may be held. The distinction between these two types of meetings depends upon the quorum of the General Meeting.

- a) General Meeting
 - The General Meeting shall have a quorum if the present shareholders hold shares, the par value or the number of which exceeds 30% of the registered capital, unless provided otherwise in the Articles of Association.
 - For LLCs, unless provided otherwise in the Articles of Association, the General Meeting shall have a quorum if the members attending have at least a half of all votes (50% quorum).
- b) Substitute General Meeting
 - In a JSC, if the General Meeting is unable to assemble a quorum, the Board of Directors will convene, if still necessary and without undue delay, a Substitute General Meeting with the same agenda. The Substitute General Meeting is able to act regardless of the quorum settled for the General Meeting (as stated above).
 - The deadline for sending invitations is reduced to 15 days and the invitation may not contain the justification for the draft resolution of the General Meeting.
 - An invitation to the Substitute General Meeting shall be sent to the shareholders no later than 15 days after the date of the initial General Meeting.
 - The Substitute General Meeting must take place no later than six weeks after the date of the initial General Meeting.
 - Any matters which were not included in the proposed agenda of the initial General Meeting can only be decided at the Substitute General Meeting if all shareholders agree to it.
 - For LLCs, unless provided otherwise in the Articles of Association, the concept of a Substitute General Meeting is not established.

General Meeting

- Convening a General Meeting
 - The General Meeting shall be convened by the Board of Directors at least once in every accounting period, unless the Articles of Association provide that the General Meeting is to be convened more frequently.
 - Under certain conditions required by the Business Corporations Act, the General Meeting will be convened by the Board of Directors or where appropriate by a member of the elected body (where the Board of Directors is unable to act for a prolonged period of time), without undue delay.
 - If the Board of Directors of a company has not been elected or if the elected Board of Directors has persistently failed to fulfil its duties and the General Meeting has not even been convened by a member of the Board of Directors, the General Meeting shall be convened by the Supervisory Board. The Supervisory Board may also convene the General Meeting when necessary in the interests of the company. If the Supervisory Board fails to convene the General Meeting, it may be convened by any one member of the Supervisory Board.
- Right to attend the General Meeting
 - A shareholder shall participate in the General Meeting in person or by proxy. The power of attorney for the General Meeting must be granted in writing and clearly state whether it was granted for representation at one or more General Meetings.
 - One person designated by the shareholder may also be present with the shareholder at the General Meeting, unless otherwise specified by the Articles of Association.
- Right to vote at the General Meeting
 - The General Meeting adopts decisions by a majority of votes of the present shareholders, unless a different majority is required by the Business Corporations Act or by the Articles of Association.
 - A shareholder shall not exercise his or her voting right:
 - a) if they are in default with the fulfilment of the contribution obligation, to the extent of the default;
 - b) if the decision to be taken by the General Meeting concerns their contribution in kind;
 - c) if the General Meeting is to decide on whether the shareholder or a person acting in concert with the shareholder should be relieved of the fulfilment of an obligation, and/or the shareholder should be recalled from office as a member of a company body for violating an obligation in the performance of their office;
 - d) in other cases, provided for in the Business Corporations Act or in another legal regulation; and
 - e) for any other important reason stipulated in the Articles of Association.
- Voting expressly permitted by a company's Articles of Association:
 - *Per rollam*.
 - Voting at the General Meeting or decision-making outside of the General Meeting using appropriate technical facilities. Correspondence voting shall also be deemed to constitute voting at the General Meeting using appropriate technical facilities.
 - The members of the company's bodies may be elected by cumulative voting.
- Right to be informed about convening of the General Meeting
 - At least 30 days prior to the General Meeting, the convener will publish an invitation to the General Meeting on the company's website and, at the same time, they will send it to the shareholders owning registered shares to their address stated in the list of shareholders and to the shareholders owning book-entry registered shares to their address stated in the record of book-entry securities.
 - The invitation must be posted on the company's website until the time of the General Meeting.
 - An invitation to the General Meeting shall always include at least the statutory requirements (e.g. the venue, date and time of the General Meeting, an indication of whether an ordinary or Substitute General Meeting is being convened, etc.).
 - If an amendment to the Articles of Association is on the agenda of the General Meeting, the invitation to the General Meeting must contain at least a brief and concise description and justification of the proposed changes to the Articles of Association.
 - The complete draft amendment to the Articles of Association will be published by the Board of Directors, together with an invitation to a General Meeting on the company's website, and the company will allow each shareholder to review the draft amendment to the Articles of Association at the company's headquarters within the time limit specified in the invitation to the General Meeting, free of charge; the shareholder must be notified about this right in the invitation to the General Meeting.
- General Meeting agenda
 - Matters which were not included in the agenda of the General Meeting can only be discussed or decided at the General Meeting if all shareholders agree to it.
 - The General Meeting may decide that some of the items included in the agenda of the General Meeting should be postponed to the next General Meeting or are not to be discussed at all. This shall not apply where the General Meeting is held at the request of a qualified shareholder, unless such shareholder agrees to it.
- Right to demand invalidation of the resolution of the General Meeting
 - In order to challenge a resolution adopted by a General Meeting, shareholders must file a reasoned protest during the General Meeting, unless the protester did not file a protest for serious reasons.
 - In case of doubt as to whether an objection was raised, it shall be deemed to have been raised.
- Right to explanation – please see question 2.1.
- Right to make proposals and counterproposals – please see question 2.1.

2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?

- Duty of loyalty
By accepting membership in a corporation, a member (a shareholder) undertakes to act, with respect to the corporation, with integrity and comply with its internal orders.

- **Obligation not to abuse a right to vote**
If a member of a private corporation abuses its right to vote to the detriment of the whole, a court may, upon the application of a person who has demonstrated legal interest, decide to disregard the vote of that member in a particular case (a duty to provide compensation for resulting damages may be created). Shareholders are obliged to pay their contributions to the registered capital of the company.
- In an LLC, the Articles of Association might stipulate that the company can, by a resolution of the GM, require the shareholders to provide an additional contribution to cover losses.

Joint stock company

- **Notification of the proportion of voting rights**
 - A person who reaches or exceeds a share of all the voting rights of the legally defined issuer, at a certain limit or below this limit, shall notify the issuer and the Czech National Bank.
 - A failure to fulfil the notification duty shall not result in the invalidity of a legal act by virtue of which a person has acquired or increased its participation in the issuer, but the voting rights attached to the participation thus acquired shall not be exercised until the reporting duty has been fulfilled.
- In a JSC, shareholders are not liable for the company's debts during its existence. Upon a business corporation's winding up through liquidation, the members shall be liable for the company's debts after its winding up, up to the amount of their share of the liquidation balance.

Limited liability company

- In an LLC, shareholders are jointly and severally liable for the company's debts up to the amount at which they have not fulfilled their contribution obligation, pursuant to the record in the commercial register at the time when fulfilment was demanded by a creditor. After fulfilment of all their contribution obligation, they are not liable for the company's debts during its existence.
- Upon a business corporation's winding up through liquidation, the members shall be liable for the company's debts after its winding-up, up to the amount of their share of the liquidation balance and at least to the extent to which they were liable during its existence.

2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?

- Where it is permitted for a member of a business corporation to claim any right on behalf of or against the business corporation, the burden of proof that they did not commit an infringement shall be upon the obliged person, unless a court has decided that this cannot be reasonably requested from the obliged person.
- **Right to explanation** – a shareholder shall be entitled to request and obtain from the company an explanation of matters concerning the company or the entities controlled by the company, provided that such explanation is necessary in order to be able to assess the contents of the matters included in the agenda of the General Meeting or to exercise the shareholder's rights at the General Meeting.
 - A shareholder does have the right to require that the Supervisory Board determine that the conditions for the refusal to provide an explanation were not met and the Board of Directors is obliged to provide the explanation.

- In case the Supervisory Board does express its opinion within the legal deadline, the court will decide whether the company is obliged to provide the information or not, based upon a motion of the shareholder.

■ Qualified shareholder

Each qualified shareholder is entitled to claim compensation for the company against a member of the Board of Directors or Supervisory Board and to represent the company in this proceeding.

Limited liability company

- Every shareholder shall be entitled to claim, on behalf of the company, compensation of damage against an executive director and to represent the company in these proceedings.
- An action can also be lodged by a shareholder:
 - a) if the damage is caused to the company by a member of the Supervisory Board, if established;
 - b) if the damage is caused to the company by an influential entity; or
 - c) to exercise the company's right to have a member expelled by a court.

2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?

In a listed JSC, a person who reaches or exceeds the share of all the voting rights of the issuer in the amount of 1% (if the registered capital of the issuer exceeds CZK 500 million), 3% (if the issuer's registered capital is more than CZK 100 million), 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50% or 75%, or who reduces its share of all voting rights below these limits, shall notify the issuer and the Czech National Bank.

A failure to fulfil the notification duty shall not result in the invalidity of a legal act by virtue of which a person has acquired or increased its participation in the issuer, but the voting rights attached to the participation thus acquired shall not be exercised until the reporting duty has been fulfilled.

2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

Shareholders in listed companies are bound by several disclosure duties, in particular:

- the duty of major shareholders to announce their holdings;
- the duty of current and potential shareholders, who intend to undertake voluntary or mandatory takeover bids, to publish that they have made a decision to perform a takeover bid; and
- the duty to disclose trading in shares by persons with managerial responsibilities in the company.

Any planned merger or spin-off must be published 30 days before the General Meeting that will pass the resolution approving the merger or spin-off, along with an executed version of a merger project outlining the terms and conditions of the planned merger.

Dissolution is also published in advance.

A concern (a business group)

The existence of a concern shall be published by its members without undue delay on their websites, otherwise the procedure of exemption from the obligation to compensate damage cannot be applied (use of so-called intra-group solidarity).

Information duty of the issuer of certain transferable securities

- The annual report and the consolidated annual report must be published by an issuer at the latest within four months of the end of the accounting period. The annual report (and consolidated annual report) contains the audited financial statements and the auditor's report in its full text.
- The annual report or the consolidated annual report shall provide investors with a true and fair view of the financial situation, business activity and economic results of the issuer and its consolidation for the past accounting period, and perspective for future developments in the financial situation, business activity and economic result of the issuer and its consolidated group. The annual report and the consolidated annual report must include, for example:
 - information on the principles and procedures of internal control;
 - a description of the decision-making procedures and the composition of the statutory body, Supervisory Board or other executive or supervisory body of the issuer and, if established, their committees as well;
 - a description of the rights and duties attaching to the relevant type of share; and
 - principles of remuneration of the persons with the managing authority of the issuer.

2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?

Shareholder activism is not *per se* regulated under Czech law. So-called proportional voting of members of the Board of Directors and a Supervisory Board can be stipulated in the Articles of Association; if this is the case, smaller shareholders can concentrate their votes to elect their representative to these bodies, but this is rarely seen in practice.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

Joint stock company

Czech law provides the possibility for a JSC to choose between two management systems: the two-tier board structure (which has been traditional for the Czech Republic) and the one-tier board structure.

- Two-tier Board structure:
 - The company has a Board of Directors and a Supervisory Board.
 - The Board of Directors exclusively exercises the management of the company. The Board of Directors has residual powers, meaning it has all the powers not vested in the general shareholders' meeting and the Supervisory Board. The Board of Directors complies with the principles and guidelines approved by the General Meeting if they comply with legislation and the Articles of Association. However, no one is entitled to give the Board of Directors instructions on business management.
 - The Supervisory Board shall supervise the exercising of powers by the Board of Directors and the company's activities. Nobody shall be entitled to instruct the Supervisory Board regarding its statutory obligation to review the powers of the Board of Directors.

- One-tier Board structure:
 - The Board of Directors (also called the Managing Board) is responsible for the business management and supervision of the activities of the company.
 - The Board of Directors will comply with the principles and guidelines approved by the General Meeting if they comply with legislation and the Articles of Association. However, no one is entitled to give the Board of Directors instructions on business management or supervision of the activities of the company.
 - The Czech Corporate Governance Code 2018 states that the powers of the Board of Directors should be divided between executive and non-executive members.

Limited liability company

An LLC is managed by at least one managing director. The Supervisory Board is voluntary.

3.2 How are members of the management body appointed and removed?

Joint stock company

- Two-tier Board structure
 - Unless provided otherwise in the Articles of Association, the Board of Directors shall consist of three members.
 - Members of the Board of Directors shall be elected and recalled by the General Meeting, unless it is determined in the Articles of Association that the same falls within the powers of the Supervisory Board.
 - The Articles of Association may determine that the share is linked to the right to appoint one or more members of the Board of Directors and to remove the member appointed in this way. The total number of the members appointed this way must not exceed the number of members of the Board of Directors elected by the General Meeting or, if the Articles of Association determine so, the number of members of the Board of Directors elected by the Supervisory Board.
- One-tier Board structure
 - Unless the Articles of Association do not determine otherwise, the Board of Directors consists of three members.
 - Members of the Board of Directors are voted for and dismissed by the General Meeting, unless the Articles of Association determine that the right to appoint one or more members and to dismiss such a member is associated with a share.

Limited liability company

- One or more managing directors shall constitute the statutory body of a company.
- Managing directors are appointed and recalled by the General Meeting.
- However, the Articles of Association may determine that the share is linked to the right to appoint one or more managing directors and to dismiss the managing director thus appointed. The total number of managing directors thus appointed must not exceed the number of managing directors elected by the General Meeting.

3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

The main sources are the Business Corporations Act, the Civil Code and the Czech Corporate Governance Code 2018.

- Rights and obligations between a commercial corporation and a member of its elected body are especially governed in the executive service agreement.

This agreement (as well as any remuneration to be provided) is approved by the body that is entitled to appoint the member. Without this approval, the agreement will not come into force. Unless the company's General Meeting has decided otherwise, the approved agreement will be effective from the date of its entering into or from the date of the establishment of the position, whichever occurred at the later date.

If remuneration in a capital company is not agreed in this contract, the performance is undertaken free of charge.

- Special obligations in the case of bankruptcy of a commercial corporation: if a member of a statutory body has contributed to the bankruptcy of a commercial corporation by breach of their obligations, the court may decide that they are under the obligation to hand over the property or substance of the benefit obtained from the executive service agreement and any other benefit received from the commercial corporation, that is, up to two years before the opening of the insolvency proceedings (this applies only in the case of insolvency proceedings initiated at the request of a person other than the debtor).

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

Joint stock company

Generally, there are no restrictions in relation to the number and value of securities that may be held by the members of the Board of Directors, members of the management body or of the Supervisory Board and the executive managers. Furthermore, especially in multinational companies, it is a common practice for the executive members to be granted stock option plans, shares and other special rights within the group as part of their remuneration package.

Listed companies must disclose in their annual report:

- Information about the number of shares, options and similar instruments owned by all members of management bodies in total and by all members of a supervisory body in total.
- Information about plans based on which members of the management bodies are entitled to acquire the company's shares, options and similar instruments on more favourable terms.
- If members of the Board of Directors or the Supervisory Board of listed companies possess inside information regarding the company's shares or other similar instruments, they are obligated to keep such information confidential, may not purchase or sell such instruments or make recommendations to any party in this regard.

Limited liability company

There are no restrictions or limitations in relation to the number and value of shares that may be held by directors in an LLC.

3.5 What is the process for meetings of members of the management body?

The managing directors in an LLC do not form a collective body (unless stated otherwise by the company's Articles of Association). Therefore, the decision-making process is not regulated.

On the other hand, the bodies in a JSC form a collective body and, as such, the members must convene a meeting and adopt decisions at such meetings. The company's Articles of Association may allow for meetings to take place via technical means (e.g. telephone or video conference).

The results of such meetings should be issued as written minutes of the meeting.

3.6 What are the principal general legal duties and liabilities of members of the management body?

Duty to act with the due diligence of a proper manager (duty of due care)

- A person who accepts the office of a member of an elected body undertakes to discharge the office with the necessary loyalty as well as with the necessary knowledge and care. A person who is unable to act with due managerial care, having become aware thereof upon accepting or in the discharge of the office and fails to draw conclusions for himself, is presumed to act with negligence.
- 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 the justifiable interest of the business corporation (business judgment rule). The foregoing shall not apply in cases where such decision-making was carried out without the necessary loyalty.
- When assessing whether a member of a body acted with due care, it shall always be considered how another reasonably diligent person in the position of a member of a similar body of the business corporation would have acted.
- Liabilities for the breach of the duty of due care:
 - Compensation for damages caused – If a member of an elected body fails to compensate the legal person for damages caused by breaching their duties, although they were obliged to compensate the damages, they are liable to any creditor of the legal person to the extent to which they failed to compensate the damages, if the creditor is unable to recover the performance from the legal person.
 - A person who violated the duty of due care shall *return* to the business corporation *any profit* 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.
 - Disqualification – The court may decide that a member of a statutory body of a commercial corporation, who in the last three years has repeatedly or seriously breached their duties, is disqualified from the position. A person who violates this prohibition imposed on them is liable for the fulfilment of all the commercial corporation's obligations that arose at a time when, despite the prohibition, they effectively pursued the activities of a member.

Special obligations in the case of bankruptcy of a commercial corporation

If a member of a statutory body has contributed to the bankruptcy of a commercial corporation by breach of their obligations, the court may decide that:

- a) they are under an obligation to hand over the property or substance of the benefit obtained from the executive service agreement and any other benefit received from the commercial corporation, that is up to two years before the opening of insolvency proceedings (this applies only in the case of insolvency proceedings initiated at the request of a person other than the debtor); and
- b) where bankruptcy has been declared on the assets of a commercial corporation, the court may also decide that the member is obliged to provide the property or substance of the performance up to the amount of the difference between the sum of the debts and the value of the assets.

The Czech Corporate Governance Code 2018 states that:

- The members of an elected body should adhere to a high ethical standard, in particular standards of accountability, honesty, fairness and transparency.
- Members of the company's elected bodies should not act as members of elected bodies in more than four other business corporations, except in business corporations that form a business group with the company.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

The directors are in charge of the company's business management and represent the company in all matters. In particular, some of these duties include:

- Ensuring that the prescribed records and accounts are duly and properly kept and that a list of shareholders is administrated.
- Informing the shareholders, upon request, at the General Meeting of the company, about any company-related matters relevant for the assessment of the matters on the agenda of the General Meeting.
- Disclosing financial statements or the main facts shown therein in the manner prescribed by the law and by the Articles of Association for convening the General Meeting, at least 30 days before the date of the General Meeting, including a specification of the time and place where the financial statements are available for review.
- Drawing up the full wording of the Articles of Association and filing them with the Collection of Deeds of the Commercial Register without undue delay after becoming aware of any change in the Articles of Association occurring based on any legal fact.

3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

It is not compulsory for a member of a company's body to have a professional liability insurance policy in place. Nevertheless, it is a common practice for local subsidiaries of multinational companies to have in place D&O insurance policies that cover both the local entity and its local directors.

3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

The Board of Directors follows the long-term strategy adopted by the General Meeting and complies with the principles and guidelines approved by the General Meeting, if it complies with legislation and the Articles of Association. However, no one is entitled to give the Board of Directors instructions on business management (and supervision of the activities of the company in case of a one-tier Board structure as well).

4 Other Stakeholders

4.1 May the board/management body consider the interests of stakeholders other than shareholders in making decisions? Are there any mandated disclosures or required actions in this regard?

Typically, the Board of Directors should first consider its fiduciary duties, which reflect a relationship of trust and loyalty between the directors, the company, its board members, and its stakeholders. The expectation is that a director will act in good faith, and in the best interests of the company.

Nevertheless, when making decisions, directors should consider other stakeholders or elements involving their decision-making process, including without limitation, the company creditors or the company employees with extensive knowledge that would enable the directors to ultimately take an informed business decision.

When the company approaches the point of bankruptcy, this loyalty is more on the side of creditors. The Board of Directors must act in a such way as not to harm a legitimate interest of creditors and not to disadvantage creditors.

The Czech Corporate Governance Code 2018 states that members of elected bodies should always consider the legitimate interest of stakeholders and the sustainable development of society as a whole.

4.2 What, if any, is the role of employees in corporate governance?

Employees play a significant role in corporate governance as a matter of law only in JSCs with more than 500 employees, when one-third of the Supervisory Board members are appointed by the employees of the company.

4.3 What, if any, is the role of other stakeholders in corporate governance?

There are no express provisions of law regulating an active role of other stakeholders in the company's corporate governance.

4.4 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Directors of Czech companies should proceed with their day-to-day activities taking into consideration corporate social responsibility.

JSCs' annual reports must contain information about "activities in the field of R&D, activities in the field of environment protection and in employment relationships". Hence, only these three dimensions are officially and explicitly recognised by Czech law. However, there is no clear rule about the exact extent and depth expected for this information.

There are no further statutory obligations in the area of corporate social responsibility; however, the topic is becoming increasingly more important as companies seek to follow the rules and incorporate further obligations in their codes of ethics or other internal regulation.

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency?

The disclosure obligations and transparency are handled by the directors.

The Supervisory Board is responsible for reviewing the financial statements and proposal for distribution of profits.

An audit committee is responsible for supervising the audit procedures in the listed companies.

5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

Companies must disclose specific information on their website and file certain documents with the Collection of Deeds kept by the Commercial Register, where the documents are published. Also, certain documents must be published in the Commercial Journal. In case of listed companies, certain information must be provided to the Czech National Bank.

The Commercial Register extracts available online contain information such as the company name, registered office, identification number, names, dates of birth and addresses of the members of the bodies, and the manner of acting on behalf of the company and its registered capital.

The following documents must be filed with the Collection of Deeds kept by the Commercial Register, which is also available online:

- The Articles of Association, bylaws and full wording of any amendments thereto.
- Financial statements.
- Proposals for profit distribution and its final amount or for settlement of losses, unless they form part of the financial statements.

- Auditor report on the financial statements (if applicable).
- Annual reports (if applicable).
- Reports on relations between related entities.
- Decisions on the appointment or recall or another method of termination of the function of any board member.
- Documents relating to a merger or change of legal form of the company.
- Decisions on the dissolution of the company and on the appointment of a liquidator.

Listed companies are required to disclose further information in their annual reports, which must be published on their websites, as well as provided to the Czech National Bank.

In case business documents provide information on registered capital, this information needs to reflect only the subscribed and paid portions of the registered capital.

Finally, a JSC must set up websites that are freely accessible to the public. The following information must be provided on the website: company name; registered office; identification number; details of entry in the Commercial Register; financial statements (audited); and annual report. The most important information to be published are invitations to attend the company's General Meetings.

The existence of a concern shall be published by its members without undue delay on their websites, otherwise the procedure of exemption from the obligation to compensate damages cannot be applied (use of so-called intra-group solidarity).

LLCs are not required by law to have websites, but when they do, the extent of the information set out on it should be the same as the above.

5.3 What is the role of audits and auditors in such disclosures?

If the company meets the mandatory criteria to have its financial statements audited, an auditor must be appointed in order to verify the company's annual financial statements. The auditor's report will be prepared based upon information obtained from the prepared annual financial statements, the company and its shareholders. Furthermore, such report should clarify that the financial statements are accurate and true and do not present any significant irregularities.

Board members or shareholders are also obliged to inform the auditor of any irregularities concerning the company.



Jitka Logesová is an experienced corporate partner who has worked extensively on cross-border transactions and projects for over 20 years. Her clients include major private equity firms and corporations in transactions involving assets and target companies in the Czech Republic, Slovakia and Hungary as well as the rest of the CEE region. Prior to joining Wolf Theiss, Jitka served as a co-head of the regional CEE private equity team at another international law firm. In addition to her transactional practice, Jitka focuses on corporate compliance and corporate governance projects for companies across CEE/SEE. She frequently lectures on corporate compliance-related topics and is ranked as one of the leading lawyers in her field in Central Europe. She is a frequent speaker at conferences and has also published extensively on this topic.

Wolf Theiss
Pobřežní 12
186 00 Prague 8
Czech Republic

Tel: +420 234 765 223
Email: jitka.logesova@wolftheiss.com
URL: www.wolftheiss.com



Robert Pelikán is a well-known expert in corporate law. He graduated from Charles University, Faculty of Law (Ph.D.), worked at several prestigious law firms and later established himself as a partner in Vrána & Pelikán law firm. He regularly advised and represented prestigious clients such as Mastercard, Shell, Conoco and Benzina or the Czech Telecommunications Office. From 2015 to 2018 he served as the Minister of Justice of the Czech Republic. He is also active in academia. He co-authored the Commentary to the Civil Code (2014) and a textbook on corporate law (Corporate Law, 2015). Robert teaches corporate and competition law at the Charles University, Faculty of Law and is a member of the Legislation Council of the Government of the Czech Republic.

Wolf Theiss
Pobřežní 12
186 00 Prague 8
Czech Republic

Tel: +420 234 765 238
Email: robert.pelikan@wolftheiss.com
URL: www.wolftheiss.com



Radka Václavíková is a member of our Corporate and M&A team. She specialises in corporate, commercial and M&A matters and provides clients with legal support in a wide range of transactions and daily corporate affairs. Prior to joining Wolf Theiss, Radka gained extensive experience at the European Parliament where she worked with the JURI (Legal Affairs) and IMCO (Internal Market and Consumer Protection) Committees as well as at the Constitutional Court of the Czech Republic. Radka graduated from Charles University in Prague and completed an extended English and European Union Law course offered by the British Law Centre in association with the University of Cambridge.

Wolf Theiss
Pobřežní 12
186 00 Prague 8
Czech Republic

Tel: +420 234 765 225
Email: radka.vaclavikova@wolftheiss.com
URL: www.wolftheiss.com



Kateřina Kulhánková is a corporate lawyer advising on corporate restructuring and cross-border transactions. She also has experience in drafting and negotiating all kinds of commercial agreements. She specialises in information technology law, telecommunications law, and intellectual property rights online and works on matters in innovative areas such as cybersecurity and cloud services. Kateřina is active in all kinds of trademark, copyright, and licensing cases and advises clients in the field of IT compliance (privacy and data security issues) and e-commerce projects. She has extensive experience in IP enforcement and advisory matters, drafting and negotiating IP-focused commercial agreements and advising on IP aspects of major transactions and corporate restructurings. She also advises on antitrust risk assessment, commercial agreements and merger clearance processes and represents clients before the Czech Antitrust Authority.

Wolf Theiss
Pobřežní 12
186 00 Prague 8
Czech Republic

Tel: +420 234 765 252
Email: katerina.kulhankova@wolftheiss.com
URL: www.wolftheiss.com

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