

Tax & Fiscal Alert

February 2014

Changes applicable to limited liability companies in 2014

The (New) Civil Code and Act on Business Corporations (including most of the accompanying legislation) become effective on January 1st, 2014.

There are many more or less significant changes brought to business companies, now business corporations, by the new legislation. The summary of the most significant ones you will find below.

It is important to realize that the usage of most of the new institutes will only be possible, if the company's corporate documents are adequately modified; new duties prescribed by law (even though not stated in the Memorandum of Association) will have to be kept. The breach of some duties may be sanctioned by court up to the amount of CZK 100,000 or may lead to court dissolution of a company.

Creation of a company

The existing restrictions regarding the maximum number of 50 members of a limited liability company are cancelled as of January 1st, 2014. Under the new provisions, a member may become a sole member in indefinite number of companies (the existing legislation allowed a member to become a sole member in no more than three companies).

Under the new provisions, chaining of limited liability companies is not prohibited any more.

Registered capital

The minimum amount of contribution is CZK 1, against the existing amount of CZK 20,000, unless a bigger amount of contribution is stipulated by the Memorandum of Association. A monetary contribution is always paid to a bank account (it has been possible to pay it off also to a contribution administrator so far, while observing the restrictions arising out of the Act on restriction of payments in cash).

Non-monetary contribution will be evaluated by an expert chosen by founders from the list; the appointment does not have to be made by court any more.

Member of a limited liability company

Under the new provisions, a member may withdraw from the company, where the conditions stipulated in law are met. A possibility to withdraw may be excluded and/or extended by the Memorandum of Association by granting a member the right to withdraw from the company.

Change to the Memorandum of Association

It will be possible to amend the Memorandum of Association only upon an agreement of all members, unless such amendment is agreed by the general meeting resolution as provided by the Memorandum of Association. The form of a Notarial Deed is always required.

The maximum amount of a surcharge duty must be determined by the Memorandum of Association, if the imposition thereof is decided upon by the general meeting.

Share in Business

A company may issue more types of business shares and a member may own more shares in business.

Where transferability of a share is not restricted or excluded, a share in business may be represented by a security to order – ordinary sheet (may be issued also as a collective instrument).

The amount of a settlement share, as regulated by law, may in various cases be determined differently (from the equity capital or from the proceeds of sold share). Other suitable mode of determination of a settlement amount may be stipulated by the Memorandum of Association.

Directors

Under the new provisions, also a legal person may become a member of the company's elected body, however a natural person, acting on behalf of such legal person, must be stated in the Commercial Register.

Under the new provisions, directors may create a collective body; in such case regulations for board of directors will apply appropriately. A third person (other corporate agent, a person outside of a company, etc.) may newly be authorized to represent a director in the collective body negotiation.

A contract for the performance of office must contain all parts of remuneration of a director, otherwise the performance of his/her office is free of charge.

Competition forbidden shall not apply bar none, it may be excluded. Competition forbidden may be extended to members.

The withdrawal from office must be announced to a body, which elected a member; the office shall cease to exist by the expiration of 1 month after the announcement, unless a later date of termination of the office is agreed upon with the director.

Under the new provisions, a company may provide loans to its directors, alternatively transfer the assets to him/her without completion of the existing duties; Section 196a regulating the rules for loan provision and transfer of assets in holding company was cancelled completely and replaced with the rules regarding conflict of interest.

Where all conditions defined by law are met, a director may be excluded from the office in all business companies for the period of up to ten years, he/she may be obliged to deliver all consideration received on the grounds of the performance of office of a director for the last two years or be liable for all debts and duties of a company.

General Meeting

Upon meeting certain statutory conditions a limited liability company shall set up its own web page and fulfill a duty regulated by law to publish similar information and documents as a joint stock company. Where a limited liability company already has its own web pages, it shall publish specific information stated by law. It is not yet confirmed, whether the LLC shall on its web page publish also the invitation to the general meeting, however it is recommended. A draft resolution is a part of the invitation.

The minimum amount of votes present at the general meeting may be regulated in the Memorandum of Association in contradiction with law (the new regulation complies with the existing regulation, i.e. the general meeting may decide if there is one half of all votes present).

The Memorandum of Association may allow voting at the general meeting (or outside the general meeting) using the technical means. A member, who was not present at the general meeting, may execute his/her voting right in writing within seven days after the general meeting.

Decision-making per rollam (postal vote) is explicitly regulated by law upon the written approval of draft resolution delivered by a director within the time limit specified by the Memorandum of Association, otherwise within the time limit of 15 days.

Any person who disagrees with the general meeting resolution and is present at the meeting, shall file a protest. Filing a protest is a prerequisite for filing a motion to declare the general meeting resolution void by court.

Accounting

Under the new provisions, it will not be obligatory to create a reserve fund; provisions of the Memorandum of Association will be decisive. If a reserve fund is regulated by the Memorandum of Association, then its creation (and maintenance) will be obligatory for a company.

If provided so by the Memorandum of Association, it will be possible to pay out a share in profits to a person other than a member and in a form other than monetary; the same applies also for a settlement share.

Advances on a payment of the share in profits may be paid out from the year of 2014 (based upon the data from the financial statements prepared for these purposes).

Transfers of assets

Section 196a regulating transfers of assets and loans among companies in a group, shareholders or members of bodies was cancelled completely and it was substituted by the information duty of a director regarding his/her conflict of interest, and persons close to or controlled or influenced by a director with a company.

Report on relationships for the year of 2013

The report on relationships for the year of 2013 will be prepared in accordance with law effective for the year of 2013 as well as the application of relevant sanctions for the breach of duties in connection with the preparation thereof.

The report on relationships is no longer subject to the auditor's control.

Under the new provisions, other form than monetary payments in the interest of a holding company may be provided to a controlled company as consideration for harm done.

Contact

Jan Roub
Legal Director
Jan.Roub@accace.com

www.accace.com

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