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A BRIEF GUIDE ON

THE OFFICE OF A MEMBER OF THE STATUTORY BODY OF A BUSINESS CORPORATION | MEMBER OF THE BOARD OF DIRECTORS

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INTRODUCTION

Dear Members of the Board of Directors, Clients, and Business Partners,

In our many years of experience in the legal profession, we understand that regardless of the size or line of business of a company, all members of the board of directors face a range of duties and corresponding responsibilities.

Our team specialising in corporate law has been partnering with statutory bodies for more than twenty years. In addition to day-to-day assistance with the preparation of all types of corporate documents and analyses of related duties, we have long provided practical training and other consultancy advice to clearly explain the functioning of statutory bodies.

It is precisely because of the considerable complexity and comprehensiveness of regulation of the duties of statutory body members that we have decided to prepare this brief guide. Its aim is to provide a clear and one-stop overview of the functioning of statutory bodies, the duty of due managerial care, control mechanisms, concerns, profit distribution and other basic attributes that every member of the board of directors encounters. Finally, we add a very simple calendar of corporate obligations that statutory body members face each year.

Whether you are a newly elected or an experienced member of a statutory body, we hope that this guide will make it easier for you to perform your office.

On behalf of the whole team, we wish you the most successful period while performing your office!

David Neveselý & Ondřej Florián
partners responsible for the corporate law team

CONTENT

COMMENCEMENT AND TERMINATION OF OFFICE

When establishing a joint stock company, shareholders may choose between two systems of the internal structure of a joint stock company. The first system is the so-called **monistic system**, for which the law requires the establishment of only one body within the management of the company, namely the administrative board. The second system is the so-called **dualistic system**, for which the law requires the establishment of two bodies, namely a board of directors and a supervisory board. Because of the various differences between the individual systems, this guide focuses only on the dualistic system.

In the dualistic system, the board of directors is the statutory body. By law, the board of directors has three members and constitutes a collective body, which determines the way their will is formed (see page 8 for more details). Individual members are elected and recalled by the company's general meeting, but the articles of association may delegate this power to the supervisory board or directly to a shareholder. In addition, shareholders may provide for the number of members of the board of directors or the supervisory board in the articles of association differently from the law, so that the board of directors and the supervisory board may, for example, consist of a single member only.

The office of a member of the board of directors is commenced upon election, i.e. upon the effectiveness of a resolution of (typically) the general meeting or of the sole shareholder. However, the resolution may also determine a later date of the commencement of the office. Therefore, the office is not commenced by the moment of registration of a member of the board of directors in the Commercial Register.

The office may be terminated in several ways. A member of the board of directors may resign from his/her office on his/her own initiative. In such a case, the office terminates on the date on which the resignation is discussed by the body that elected the member, i.e., typically the general meeting, unless otherwise provided in the articles of association.

A member of the board of directors may also be expelled by the court (see page 14 for more details).

Last but not least, a member of the board of directors may also be recalled by the supreme body (the general meeting or the sole shareholder) or by another body that appointed him/her to the office. In this case, too, the recall becomes effective upon adoption of the resolution. As in the case of commencement of the office, the resolution to recall someone from the office may also determine a later effective date of the removal.

The body that is authorised to elect members of the board of directors is legally obliged to elect a new member of the board of directors within two months if the office of one of the existing members has terminated. If the absence of a member (or several members) of the board of directors renders the board of directors unable to perform its function, the court may appoint the absent members of the board of directors, even without a motion, for a period until new members are duly elected. In extreme cases, the absence of a sufficient number of members of the board of directors may lead to the dissolution of the company by the court and its consequent liquidation.

Members of the board of directors have a statutory term of office of three years. However, the articles of association may provide for a different length of the term of office. Upon expiry of the term of office, the office of a member of the board of directors terminates. Therefore, if a member of the board of directors is to continue his/her office after expiry of the term of his/her office, he/she must be re-elected in a timely manner.

IN EXTREME CASES, THE ABSENCE OF A SUFFICIENT NUMBER OF MEMBERS OF THE BOARD OF DIRECTORS MAY LEAD TO THE DISSOLUTION OF THE COMPANY BY THE COURT AND ITS CONSEQUENT LIQUIDATION.

CHANGE IN THE TERM OF OFFICE

If the supreme body decides on a change in the length of the term of office, such change may also affect the term of office of the current member of the board of directors.

If the change introduces a longer term of office, the term of office of the serving member of the board of directors will also be extended; however, the member of the board of directors must consent to this as well as at the time of their election, otherwise the extension of the term of office does not apply to them. No specific form is needed for the consent; hence, implied consent is sufficient.

Analogically, if the term of office is shortened, the current term of office will also be shortened. However, if the term of office is shortened to such an extent that the period for which the member has already served precedes it, the decision will result in the recall of the member from their office. In case of such shortening, the member of the board of directors will be recalled from office upon the date of effect of the decision at the earliest. The office of a member of the board of directors may not be terminated retroactively.

When changing the term of office of the members of the board of directors, it is therefore always necessary to consider the impact of the change on the current situation and, if necessary, to take into account the term of office of the current members of the board of directors in the decision to change the articles of association.

ACTIVITIES OF THE STATUTORY BODY

Business management

The statutory body is responsible for the business management of the company. However, the law does not provide for a definition of the term "business management". The answer to the question of what is meant by business management has been provided only by the Supreme Court's decision-making practice. The Supreme Court has concluded that business management means the organisation and management of the company's day-to-day business activities, in particular decisions on the operation of the company's business and related internal affairs of the company. According to the Supreme Court, it is irrelevant whether the business activities are carried out by the board of directors, an authorised member of the board of directors himself/herself or a third party authorised by the board of directors.

Simply put, business management is the day-to-day decision-making about the performance of the company's business activities. It is essential that business management is the exclusive scope of the powers of the board of directors. No one may give instructions to the board of directors regarding business management (i.e., not even the general meeting or the sole shareholder) and the board of directors should not itself comply with such instructions without its discretion. The exceptions are the formal request for giving an instruction sent by the board of directors to the general meeting (or the sole shareholder) and the so-called concern instructions.

A formal request for an instruction on the business management does not fully discharge a member of the board of directors of his/her duty to act with due managerial care in its entirety. The concern instructions are discussed in detail on p. 19.

NO ONE MAY GIVE INSTRUCTIONS TO THE BOARD OF DIRECTORS REGARDING BUSINESS MANAGEMENT.

> THOROUGH ARCHIVING OF DECISIONS OF THE BOARD OF DIRECTORS MAY SAVE ITS MEMBERS FROM A POTENTIAL OBLIGATION TO COMPENSATE FOR DAMAGE.

Representation of the company

The process of representation of the company can be divided into two basic phases, namely (i) the phase in which the will of the company is formed, and (ii) the phase in which such will materializes into a specific act on behalf of the company.

Formation of will

The will as to how to act on behalf of the company is formed within the board of directors. The act itself is, in principle, only the implementation of the decision of the statutory body. In business management matters, the board of directors decides by a majority as a collective body. The board of directors should keep thorough records of its decisions and archive them. In case their potential liability for damage is assessed, the archiving of relevant records may typically be the very thing that will enable the board of directors to demonstrate that it has acted with due managerial care. As a rule, it will be the board of directors (or only one of its members) being in the position of a defendant that will bear the burden of proof. Thorough archiving may thus save members of the board of directors from being held liable for the damage caused, as they might not otherwise be able to prove that their actions were correct.

Acting on behalf of the company

Acting on behalf of the company means the acting of authorised persons on behalf of the company in legal relations with third parties – acting vis-a-vis third parties. The basic rule of acting on behalf of the company is that each member of the board of directors is authorized to represent the company individually.

However, the specific manner of acting must always be in accordance with the manner of acting entered in the Commercial Register.

The articles of association may provide for a different manner of representation of the company. One such option may be, for example, the two-man rule, when at least two members of the board of directors must act jointly on behalf of the company.

In some cases, the manner of representation of the company is provided for directly by law. For example, in civil court proceedings, the company is represented by the chairman of the board of directors or one authorised member.

Acting contrary to the above

What is relevant is whether there has been an act contrary to the will-forming process or contrary to the rules of acting on behalf of the company. If a member of the board of directors has acted on behalf of the company without a prior decision of the statutory body, this may constitute a breach of the duty of due managerial care.

However, if a member of the board of directors acts in a manner contrary to the manner of acting on behalf of the company, it is possible that he/she will be bound by such an action in place of the company. The company will thus not be bound at all and will not, for example, be obliged to perform under the contract. However, the company may also approve such acting without undue delay (typically by correcting the originally incorrect manner of its representation).

FOR THESE REASONS, OUR CLIENTS USE OUR SERVICES, WHICH CONSIST NOT ONLY OF THE CORRECT AND COMPLETE PREPARATION OF DOCUMENTS BUT ALSO OF ARCHIVING THEM AND MAINTAINING A FILE OF DECISIONS OF THE BOARD OF DIRECTORS, WHETHER IN PHYSICAL OR SECURE ELECTRONIC FORM.

WE OFFER A COMBINATION OF COMPREHENSIVE CONSULTING IN WHICH WE WILL PREPARE YOU FOR THE GENERAL MEETING, COMPLETELY ORGANISE IT FROM THE PREPARATION STAGE, THROUGH THE DRAFTING OF THE INVITATION TO THE ACTUAL IMPLEMENTATION OF THE GENERAL MEETING AND, IF NECESSARY, DEFEND AND JUSTIFY THE GENERAL MEETING IN COURT. WE INCORPORATE MODERN TECHNOLOGY AND THE STATE-OF-THE-ART PROCEDURES IN CONDUCTING GENERAL MEETINGS – BE IT VARIOUS TECHNICAL TOOLS, DIGITISATION OF THE ENTIRE GENERAL MEETING AND DECISION-MAKING OUTSIDE THE GENERAL MEETING (ESPECIALLY IN THE FORM OF PER ROLLAM), ALL UNDER THE GUIDANCE OF AN EXPERIENCED ATTORNEY.

ORGANISATION OF GENERAL MEETINGS

Every company has to hold a general meeting at least once a year. The general meeting can, however, become an easy tool used to abuse rights by anyone who has been given the opportunity through undue organisation and conduct of the general meeting. Only a duly organised and conducted general meeting will allow for proper "corporate life" and will also be able to succeed in a judicial review should any shareholder wish to apply for one.

The proper convocation and organisation of the general meeting is part of the board of directors' members' duty to act with due managerial care. We recommend not to underestimate the drafting of the invitation, the decision on the choice of the right venue and time for the general meeting, and the decision on the presence of persons at the general meeting to ensure its due course.

AGREEMENT ON PERFORMANCE OF OFFICE, REMUNERATION

All performance by a joint stock company for the benefit of a member of the board of directors for the performance of his/her office must be provided under an agreement on the performance of the office concluded between the company and the member of the board of directors and with the consent of the general meeting or the sole shareholder.

Agreement on performance of office

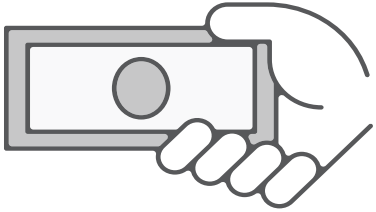
An agreement on the performance of the office is a contractual relationship between the company and a member of the board of directors. It provides for the rights and obligations of the parties. Primarily, it may serve to specify certain obligations of a member of the board of directors, the manner of performance of his/her office, but also to provide for the manner and amount of remuneration of the member of the board of directors for the performance of his/her office.

It is not an employment agreement and the conclusion of the agreement on the performance of the office does not establish an employment relationship. Therefore, the employment law principles do not automatically apply here. However, certain rules typical of the employment relationship may be expressly provided for (e.g., severance pay, certain benefits, etc.).

The agreement on the performance of the office must be in writing. It is approved by the general meeting (or the sole shareholder). If not approved, the performance of the office is for no consideration. The agreement on performance of the office may be approved both before and after its conclusion. However, until approval, a member of the board of directors is not legally entitled to remuneration.

> ALL REMUNERATION PAYMENTS SHOULD BE SPECIFIED IN THE APPROVED AGREEMENT ON THE PERFORMANCE OF THE OFFICE. OTHERWISE, THIS COULD CONSTITUTE THE UNJUST ENRICHMENT OF THE MEMBER OF THE BOARD OF DIRECTORS.

CLIENTS ARE ADVISED TO NOT UNDERESTIMATE THE AREA OF REMUNERATION AND CONCURRENCE OF FUNCTIONS. THE AGREEMENT ON THE PERFORMANCE OF THE OFFICE IS A KEY DOCUMENT WITH MANY BENEFITS FOR THE BODY MEMBER. OUR MANY YEARS OF EXPERIENCE ENABLE US TO THOROUGHLY AND CORRECTLY SET UP THE MUTUAL RELATIONS BETWEEN THE COMPANY AND A MEMBER OF THE ELECTED BODY OR TO THOROUGHLY REVISE THE ALREADY SET RELATIONS. THIS PROVIDES SUFFICIENT LEGAL CERTAINTY FOR BOTH PARTIES, WHO THUS AVOID THE RISK OF LATER LITIGATION, E.G., OVER THE SCOPE OF BENEFITS DRAWN OR THE SCOPE OF THE DUTIES OF A MEMBER OF THE ELECTED BODY.



Remuneration

Any remuneration payments that a member of the board of directors receives from the company for the performance of his/her office should be specified in the approved agreement on the performance of the office or, at the very least, should be approved by the body approving the agreement on performance of the office. Otherwise, this could constitute the unjust enrichment of a member of the board of directors. The company could (and, according to law, must) then enforce such payments back from the member of the board of directors.

For these purposes, remuneration is considered to be any benefit, whether monetary or non-monetary, received by a member of the board of directors from the company in connection with the performance of his/her office. This may be a fixed monthly remuneration payment (similar to a wage or salary), but also the provision of a company car or telephone for private purposes, various types of insurance and supplementary insurance, obtaining a share in the company, e.g. through a managerial programme, a profit share, participation securities or enabling their acquisition by a member of the board of directors or a person close to him/her, etc.

ESOP as another remuneration option

One of the alternatives and a possible addition to the remuneration of a member of the board of directors in a company is the introduction of a management incentive plan (ESOP, i.e. Employee Stock Option Plan).

The creation of an appropriately set management programme provides increased motivation for members of the board of directors in an effort to steadily increase the performance of the entire company. With the right ESOP setup, a member of the board of directors is primarily motivated to ensure that in the long run, the company achieves good and steady results, as opposed to unsustainable short-term growth that can, on the contrary, deplete the company.

A management programme can take various forms, from the provision of a management bonus set on the basis of the fulfilment of given criteria under the service agreement, through the issue of innominate securities ensuring, for example, the possibility of obtaining a share in the company's profits, to the option of acquiring an ownership interest in the company if predefined conditions are met.

There are many different approaches to implementing a management programme and the specific approach is always selected based on the individual case. Nowadays, management programmes have definitely become a standard part of managing the board of directors' members, as well as their expectations and their remuneration.

BY PROPERLY SETTING UP A MANAGEMENT INCENTIVE PLAN, MANAGERS ARE MOTIVATED IN A WAY THAT LEADS TO ENHANCED PERFORMANCE OF THE ENTIRE COMPANY. THIS IS SUCH A CRUCIAL STEP IN THE LIFE OF A CORPORATION THAT SIMPLE BOILERPLATE SOLUTIONS CANNOT BE APPLIED. WE TEND TO LOOK FOR TAILOR-MADE SOLUTIONS FOR OUR CLIENTS, WHICH WE HAVE TESTED IN OVER 20 YEARS OF OUR PRACTICE, NOT ONLY IN COOPERATION WITH OUR CLIENTS, BUT ALSO ON OURSELVES.

THAT THE OFFICE IS FOR NO CONSIDERATION DOES NOT EXHAUST THE RISKS. CASE LAW HAS ALSO DEALT WITH CASES WHERE UPON ELECTION TO THE STATUTORY BODY THE CONCURRENT EMPLOYMENT AGREEMENT IMPLICITLY TERMINATED, ITS EFFECTIVENESS WAS INTERRUPTED, ETC. IT IS THEREFORE NECESSARY TO EXAMINE EACH CASE INDIVIDUALLY.

Concurrence of functions

When performing the office of a member of the board of directors, care must be taken to avoid the so-called prohibited concurrence of functions. This means a situation where a member of the board of directors has concluded an employment agreement for a position which job description overlaps with the description of the office of the member of the board of directors.

Typically, this situation can arise in positions such as sales director, CEO or CFO, etc. However, the specific job description of the position must always be assessed.

Such a situation is undesirable. The office of a member of the board of directors cannot be performed under an employment relationship. In addition, as the employment agreement will generally not be approved by the general meeting or the sole shareholder in these cases, the performance of the office will often be for no consideration.

That the office is for no consideration does not exhaust the risks. Case law has also dealt with cases where upon election to the statutory body the concurrent employment agreement was implicitly terminated, its effectiveness was interrupted, etc. Difficulties may also arise with the correct determination of health and social insurance premiums. It is therefore necessary to examine each case individually.

However, it is not excluded that a member of the statutory body has concluded an agreement on the performance of the office and at the same time an employment agreement for the performance of his/her work activities which will not overlap with the office of a member of the board of directors in terms of content.

Therefore, we recommend that upon election to the office of a member of the statutory body, an agreement on the performance of the office be concluded and the existing employment relationship (if any) be appropriately modified according to the will of both parties.

DUTIES OF A MEMBER OF THE STATUTORY BODY

When performing his/her office, a member of the board of directors has many various duties, but the most specific of these, and probably the most important for the member of the board of directors, is the duty to act with due managerial care.

Duty to act with due managerial care

Due managerial care means that a member of the statutory body must act with the necessary loyalty and care and always act on an informed basis and in the defensible interests of the company when taking business decisions.

In this regime, a member of the board of directors is not evaluated for the outcome but for the effort. It therefore depends on whether he/she has acted loyally, diligently, on an informed basis and in the interests of the company. If the answer is positive (and, as the case may be, the member of the board of directors can prove that these criteria are met in court), he/she will not be liable for the damage caused.

Due managerial care is a comprehensive concept that cannot be fully explained in a short paragraph. In general, however, concerning loyalty, a member of the board of directors should always put the interests of the company before those of the shareholders or even his/her interests. As far as expertise in general is concerned, a member of the board of directors does not have to be an expert in every conceivable field, but he/she must make the right judgment as to when it is appropriate to call for expert assistance.

A MEMBER OF THE BOARD OF DIRECTORS DOES NOT HAVE TO BE AN EXPERT IN EVERY CONCEIVABLE FIELD, BUT HE/SHE MUST MAKE THE RIGHT JUDGMENT AS TO WHEN IT IS APPROPRIATE TO CALL FOR EXPERT ASSISTANCE.

DUE MANAGERIAL CARE IS A VERY COMPREHENSIVE AND DIFFICULT TOPIC, BUT ONE THAT IS ABSOLUTELY ESSENTIAL TO THE PERFORMANCE OF THE OFFICE OF AN ELECTED BODY. TO THIS END, WE ORGANISE SEMINARS FOR CLIENTS TO EXPLAIN THE PRACTICAL ASPECTS OF THEIR DUTIES AND HOW TO DEAL WITH THE RISKS ARISING FROM THEIR OFFICE.

Sanctioning mechanisms related to due managerial care

If a member of the board of directors breaches the duty of due managerial care, he/she must return to the company the benefit he/she has received thereby. If he/she causes any damage to the company by this breach of duty, he/she is obliged to compensate for it. If he/she fails to compensate for the damage caused, he/she may even be liable to the company's creditors for debts that they fail to recover from the company to the extent that the member of the board of directors has not compensated for the damage. Thus, persons outside the company may also claim certain performance from him/her.

The court may also prohibit a member of the statutory body from performing the office of a member of the statutory body for up to three years if he/she repeatedly or materially breaches his/her duties.

If a member of the statutory body contributes to the company's insolvency by breaching his/her duty, the court may order him/her to return the benefits received under the agreement on performance of office for up to two years in arrears and, in an extreme case, to pay debts up to the amount for which the company's existing assets are insufficient.

Similarly, the remuneration of a member of the board of directors may be reduced if he/she has contributed to the unfavourable profit or loss of the company by performing his/her office.

This basic list of consequences can then also be extended in the agreement on performance of the office.

Conflict of interest

When performing his/her office, a member of the board of directors may have a conflict between his/her interests and the company's interests. In general, the company's interest should prevail. However, if he/she complies with the conflict-of-interest rules, he/she may, under certain conditions, also promote his/her own interest to the detriment of the company.

A member of the board of directors has a direct conflict of interest if he/she plans to enter into a contract with the company. In such a case, he/she is obliged to inform the board of directors and the supervisory board in advance. The general meeting (the shareholder) may prohibit the conclusion of the agreement.

In other cases where there is not a direct conflict of interest, but a member of the board of directors has an indirect conflict of interest or becomes aware that a conflict of interest may occur, he/she is also obliged to inform the board of directors and the supervisory board if any, otherwise the general meeting (the sole shareholder). The supervisory board is then obliged to inform the general meeting (the sole shareholder) about the conflict of interest of the member of the board of directors.

In response to a conflict of interest, the supervisory board or the general meeting (sole shareholder) may in some cases suspend a member of the board of directors from performing his/her office or prohibit the conduct in question. Acts taken in a conflict of interest without meeting these conditions may be ineffective or bind the executive director himself/herself instead of the company.

> IN GENERAL, A MEMBER OF THE BOARD OF DIRECTORS SHOULD PUT THE COMPANY'S INTERESTS FIRST. HOWEVER, IF HE/SHE COMPLIES WITH THE CONFLICT-OF-INTEREST RULES, HE/SHE MAY ALSO PROMOTE HIS/HER OWN INTEREST TO THE DETRIMENT OF THE COMPANY UNDER CERTAIN CONDITIONS.

Obligations related to shareholders' right to explanation

When performing the office of a member of the statutory body, it must be taken into account that shareholders have certain rights to information (explanation). Compared to shareholders in an LLC, however, this right is significantly limited.

A shareholder of a joint stock company is entitled to request and receive at a general meeting the explanations of matters which are directly related only to the matters discussed at that general meeting or which are necessary for the exercise of shareholder rights thereat.

The statutory body of a joint stock company may refuse to provide an explanation only if it could cause harm to the company or the persons controlled, if it is inside or confidential information, or if the shareholder requires information that is publicly available.

Qualified shareholder

The law recognizes shareholders who have a higher shareholding in the company than others and grants them special rights. The law sets out the precise limits which a shareholder's shareholding in a company must reach in order for the shareholder to be considered qualified. A shareholder must hold shares whose aggregate nominal value represents at least 1%, 3% or 5% of the company's share capital, depending on its absolute amount.

Special rights granted to qualified shareholders include, for example, the right to request the board of directors to convene a general meeting or to include a particular matter on the agenda of the general meeting that has already been convened. A qualified shareholder may also claim on behalf of the company damages from a member of the board of directors or payment of the issue price from another shareholder.

BUSINESS GROUPS

The issue of business groups is an integral part of the world of business corporations. It is important for a member of the board of directors to recognize whether and at what level of a group the corporation is. From this assessment, the member of the board of directors must normally draw the consequences for himself/herself and his/her duties. "However, for all levels, a member of the board of directors is obliged to act with due managerial care."

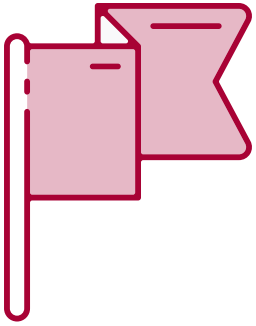
The level of intensity of integration into a business group can be expressed as follows:

HOWEVER, FOR ALL LEVELS, A MEMBER OF THE BOARD OF DIRECTORS IS OBLIGED TO ACT WITH DUE MANAGERIAL CARE.

Influence

In the first level of business groups, a distinction is made between influential and influenced entities. Both natural and legal persons may become influential entities. Only a business corporation may be an influenced entity.

In this case, the main focus is the influence of the influenced entity in a decisive and significant manner. As the terms themselves suggest, this will often be a one-off influence. The hallmark of influence is factual completion, i.e., that the influence has already occurred. If the influence causes damage to the influenced entity, the influential entity is obliged to compensate the influenced entity for the damage. The influential entity may be exempted from this obligation under certain conditions, but on the other hand it may also be liable to creditors for the damage caused. The influential entity may be an entity with a direct share in voting rights, a beneficiary under shareholder agreements, but also, for example, a significant creditor, business partner, etc.



Control

In the second level of business groups, the law distinguishes between controlling entities, which may be both natural and legal persons, and controlled entities, which may only be business corporations. A controlling entity is an entity which may exercise decisive influence in the company, e.g., a majority shareholder. Unlike influence, the mere potentiality of such a state is sufficient to fulfil the characteristics of control. That is, the controlling entity may directly or indirectly exercise decisive influence in the business corporation. The statutory body of the controlled entity must prepare, inter alia, a report on relations in which the control is specifically described.

Concern

A concern does not have legal personality and therefore cannot have rights and obligations under Czech law. Also in this case, there are two types of entities, namely, dependant entities and dominant entities. A concern is established where the dependant entity (or more than one such entity) is subject to single management by the dominant entity or entities.

The advantage of the existence of a concern is the potential to discharge oneself of the obligation to compensate for damage caused by the board of directors (or a member of the board of directors) and the possibility of the dominant entity to give instructions to the board of directors regarding business management (and, within those instructions, to discharge itself of liability for damage).

Discharging itself of the obligation to compensate for damage

In order for the dominant entity to discharge itself of the obligation to compensate the dependant entity for damage, the following formal requirements must be met:

- concern affiliation is published on the website;
- the damage has occurred in the interest of the concern;
- the damage has been or will be adequately compensated within the concern within a reasonable period of time;
- no insolvency of the dependant entity will occur as a result of the actions of the dominant entity toward the dependant entity.

CLIENTS ARE ADVISED TO FAMILIARISE THEMSELVES THOROUGHLY WITH THE CONCERN LAW REGULATION. THE ASSESSMENT OF THE POSSIBILITY TO CARRY OUT AN INSTRUCTION AND THE POTENTIAL LIABILITY FOR CARRYING IT OUT MAY HAVE SIGNIFICANT CONSEQUENCES FOR A MEMBER OF THE BOARD OF DIRECTORS.

ALTHOUGH A MEMBER OF THE BOARD OF DIRECTORS OF THE CONTROLLED ENTITY IS OBLIGED TO PREPARE A REPORT ON RELATIONS WITHIN THREE MONTHS, OUR PRACTICAL EXPERIENCE IS THAT MEMBERS OF THE BOARD OF DIRECTORS OF MANY COMPANIES NEGLECT THIS OBLIGATION.

Instructions regarding business management within the concern

The body of the dominant entity may give instructions regarding business management to the bodies of the dependant entity if such instructions are in the interest of the concern. However, such an instruction regarding business management does not discharge a member of the statutory body from the obligation to act with due managerial care.

However, a member of the board of directors of the dependant entity may discharge himself/herself of liability for damage if he/she proves that the requirements for giving a concern instruction have been met and at the same time that he/she could have reasonably foreseen that any damage to the dependant entity resulting from the instruction would be settled within the concern.

In doing so, there must be circumstances for which the member of the board of directors reasonably believes that the damage will be settled with adequate consideration and within a reasonable period of time.

Report on relations

A member of the board of directors of a joint stock company that is the controlled entity is legally obliged to prepare a written report on relations within three months of the end of an accounting period.

The report on relations will include, as a minimum, the structure of the relations between the controlling entity and the controlled entity, the role of the controlled entity within those relations, the manner and means of control, an overview of the acts taken in the last accounting period in which the controlling entity was involved, an overview of the contracts concluded between the controlled entity and the controlling entity, and an assessment of the advantages and disadvantages of control.

If the company prepares an annual report, the report on relations is part of it and is subject to audit.

DISTRIBUTION OF THE COMPANY'S PROFIT

Making a profit is usually the primary objective of establishing a joint stock company. However, there are rules for its distribution that a member of the board of directors should know and follow. This is primarily because it is ultimately the member of the board of directors who decides on the actual payment of a profit share to shareholders.

Determination of the amount to be distributed

The law imposes the obligation to deposit in the Collection of Deeds the proposals of the board of directors on the disposal of the company's profit or loss. This should be submitted by members of the board of directors to the general meeting (the sole shareholder), and as early as at this stage members of the board of directors should already know what amount of the profit or loss they can dispose of and how.

To that end, the law prescribes the obligation to draw up financial statements, which must be submitted to the general meeting for approval within six months of the end of the accounting period. Furthermore, the law contains several "capital tests", which should be applied by a member of the board of directors to determine the maximum amount he/she can propose to be distributed as a profit share. It is certainly worth noting that in the context of joint stock companies, it is not possible to decide not to distribute profit unless the company has sufficient reason to do so.

IN PARTICULAR, WHEN PROPOSING HOW TO DISPOSE OF THE PROFIT OR LOSS, CLIENTS MUST TAKE CARE THAT THE PROPOSED RESOLUTION SUBMITTED TO THE GENERAL MEETING MUST BE JUSTIFIED VERY THOROUGHLY.

Non-distribution of profits to shareholders and earmarked funds

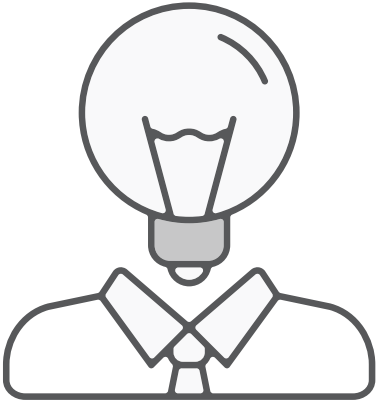
The right to receive a dividend is one of the fundamental rights of shareholders. In principle, a joint-stock company should distribute the generated profit to its shareholders. In this respect, a joint-stock company, as a legal form of a capital company, is subject to a slightly stricter approach than a limited liability company, which is subject to a much more benevolent approach to (non-)distribution of profits.

In general, a joint-stock company is supposed to distribute profits unless there are significant reasons for not doing so, or other special rules, typically set out in the articles of association or a special law. Significant reasons for not distributing profits will be highly individual for each company and its situation; hence, particular reasons must always be specifically identified and their importance duly justified.

As has already been mentioned, the actual distribution of profits may be laid down in various ways in the articles of association. One possibility may be the distribution of profits or part thereof into an earmarked capital fund established by the articles of association. This is another situation where the profit (or its part) is not distributed to the shareholders while their right to dividends has not been violated.

The provisions of the articles of association on the allocation of profits to the earmarked funds comply with the statutory conditions based on which the board of directors may allocate profits to the earmarked fund only if the articles of association lay down the amount of money to be allocated to the earmarked fund, or specify the part of profits to be allocated to it, as well as the purpose for which the fund is established. Unless the articles of association lay down the above rules, no profit may be allocated to such earmarked fund. Similarly, the articles of association must contain the rules for the allocation of profits to the fund and may not leave the decision up to the board of directors.

The board of directors should therefore always make sure whether the articles of association provide for the allocation of profits or part thereof to earmarked funds and how (if at all) this arrangement will affect the distribution of profits and other own resources to shareholders.

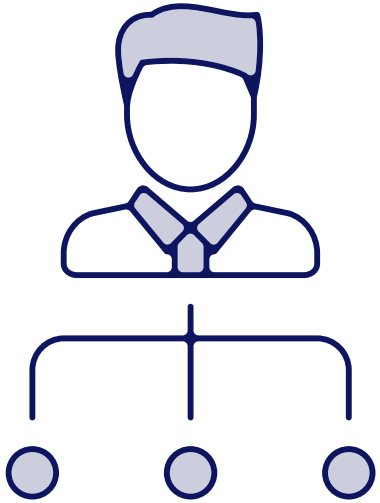


Obligations before profit payment

As mentioned above, following the resolution of the general meeting (the shareholder) on profit distribution, it is up to the board of directors to assess whether to pay out the profit. Even within this decision, the statutory body must exercise a certain degree of discretion. First, an insolvency test must be prepared, and the company must not pay out a profit share if this would cause it to become insolvent.

As part of this phase, the statutory body should also consider whether it will pay out the profit less the withholding tax to each shareholder, and where and when it will send the relevant amounts. Even if the general meeting (the shareholder) has decided on the distribution of the profit, the statutory body is responsible for its final correct payment.

FIRST OF ALL, AN INSOLVENCY TEST MUST BE PREPARED, AND THE COMPANY MUST NOT PAY OUT A PROFIT SHARE IF THIS WOULD CAUSE IT TO BECOME INSOLVENT.



REGISTER OF BENEFICIAL OWNERS

In particular, we would like to point out that the statutory body should also take care throughout the existence of the company to ensure that a correctly identified beneficial owner is entered in the Register of Beneficial Owners pursuant to the relevant statutory provisions.

In addition to various public law penalties that may also result from an incorrect entry in the Register of Beneficial Owners, the consequence is also a prohibition on the company to pay out a profit share to a person who should be registered as a beneficial owner or to a person who has not registered its beneficial owner. Such persons may not even exercise voting rights in the company.

CALENDAR OF CORPORATE OBLIGATIONS

OBLIGATION	EXPLANATION	FREQUENCY / NOTE	DEADLINE
Preparation of financial statements	The company is obliged to prepare a formal record of the financial activities carried out in the previous accounting period. The bodies are obliged to draw up the relevant business reports.	Once a year.	
Filing a corporate income tax return	Obligation to the tax office. Please note that the company may have multiple tax obligations.	Once a year.	3 months after the end of the tax period. 6 months in the case of the obligation to have the financial statements audited.
Preparation of the report on relations	The statutory body of the controlled entity will prepare a written report on relations.	Once a year.	3 months after the end of the accounting period.
Convening a general meeting	The statutory body is obliged to convene a general meeting at least once a year (to discuss the financial statements, see below).	At least once a year. However, the obligation to convene a general meeting may arise more frequently.	So that the financial statements can be discussed no later than 6 months after the end of the accounting period.
Discussion of the annual financial statements	The general meeting is obliged to discuss the financial statements.	Once a year.	6 months after the end of the accounting period.
Disposal of the profit or loss	The statutory body should annually propose how the profit or loss will be disposed of.	Once a year.	Depending on whether a general meeting is convened.

OBLIGATION	EXPLANATION	FREQUENCY / NOTE	DEADLINE
Obligation to publish relevant corporate documentation	The company is obliged to deposit the following documents in the Collection of Deeds:		Without undue delay.
	a) financial statements, unless they are part of the annual report;		Within 30 days of (i) the auditor's verification and upon (ii) approval of financial statements and of annual report by the relevant body.
	b) auditor's report on verification of financial statements;	Under the terms of the Accounting Act.	
	c) annual report;	Companies that are obliged to have their financial statements audited.	
	d) proposal for distribution of profit or other own resources or settlement of loss, and its final form, if not already included in the financial statements;		
	e) report on relations.	If the company is a controlled entity.	

OBLIGATION	EXPLANATION	FREQUENCY / NOTE	DEADLINE
	f) articles of association, any amendments thereto (each time a new consolidated version);		
	g) decisions on appointment and removal of members of the board of directors;		
	h) other documents which must be deposited in special cases.		
Record keeping	The board of directors is responsible to the company for the proper keeping and storage of accounting records. The company keeps the following records:		
	a) financial statements and annual report for 10 years;		
	b) accounting documents, ledgers, amortisation schedules, inventory lists, chart of accounts for a period of 5 years;		

OBLIGATION	EXPLANATION	FREQUENCY / NOTE	DEADLINE
	c) accounting records by which accounting units document the keeping of accounts, for a period of 5 years;		
	d) employee records;		
	e) tax records for a period of 3 years;		
	f) list of shareholders;		
	g) minutes of the sessions of the supreme body, including all annexes, for the entire period of its existence (+ after dissolution, if applicable);		
	h) other corporate records.		

NOTICE

We hope that this guide has provided you with a useful basic overview of the selected rights, obligations and rules that are relevant to the performance of the office of a member of the board of directors. Due to the complexity and comprehensiveness of the issue of the performance of the office of a member of the board of directors, we have limited ourselves to a very brief explanation of some related selected issues. The calendar of corporate obligations in this guide is just a basic list of all obligations. In fact, there will be many more obligations depending on the company's scope of business, its size and other factors. This guide is not and cannot be a comprehensive legal opinion on the matter or legal advice on any of the areas discussed.

The areas described are only a brief summary of the issues involved. Nor can this guide be a substitute for legal advice on any particular matter covered in it. Moreover, each case must normally be assessed individually. We therefore recommend that you seek specific legal advice from a specialist in the relevant field. We are ready to assist you in this respect at any time.

This guide does not cover the business, technical, financial or tax aspects of performing the office of a member of the statutory body.

This guide does not address the issue of the intertemporal aspects of individual obligations, risks and claims. This guide has been prepared under Czech law and does not take into account the law of any other jurisdiction. If any issue indicated in this guide relates to any jurisdiction other than the Czech Republic, a qualified lawyer from the relevant jurisdiction should be consulted for specific advice. This guide is up-to-date reflecting the legal status effective as of 1 March 2024.

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