

Název, abstrakt a klíčová slova v anglickém jazyce

Classes of Shares in Limited Liability Companies

Abstract

The Business Corporations Act has brought a number of innovations to Czech company law and has also opened up questions that almost no-one raised while the previous legal regulation was effective. Although many institutes already existed under the Civil Code of 1964 and the Commercial Code, the practice did not use the possibilities provided by the old regulation. Indeed, even the legal doctrine did not address many issues. One of these institutes is the institute of classes of shares. The dissertation is devoted to the creation of different classes of shares.

The main research methods used when drafting this dissertation were selective literature research and analytical method, including comparative analysis. The method of abstraction and synthesis of acquired pieces of knowledge was used for generalizing the conclusions of the research goal. As regards the interpretation methods, a grammatical, logical, systematic, historical, teleological and comparative interpretation was used. Especially German, but also Austrian and Swiss laws were taken into account in the comparison and Anglo-American law in the passage concerning preference shares.

The main research goal of the thesis was to analyse the possibilities of the Business Corporations Act when creating different classes of shares in limited liability companies. It can be stated that the regulation on the classes of shares in limited liability companies contained in the Business Corporations Act is very flexible. It allows founders as well as shareholders during the existence of the limited liability companies to set up internal relationships between shareholders according to the needs of the business they are dedicated to, according to the appropriate distribution of rights and responsibilities, their relations, the way they finance the company etc. The regulation allows the shareholders to respond to market developments and the current situation of the company. For example, by appropriate setting of rights and obligations of shareholders, it is possible to reserve decision-making powers to a narrow circle of shareholders, which can be particularly useful in family companies. Other setting of the share content can serve as a tool against hostile takeovers or as a protection tool from the competition. Furthermore, by issuing new and investor-attractive shares, the company may seek to raise new capital and to save the company from bankruptcy or a bad economic situation. The regulation of the Business Corporations Act can be considered as a modern and attractive one.

Apart from the introductory and conclusion parts, the dissertation is divided into six parts. Each part is further divided into chapters and these are further internally structured up to three other levels.

The first part is devoted to general issues related to classes of shares in limited liability companies. It briefly defines the share and class of share in a limited liability company and class of share in a joint-stock company. In relation to the classes of shares in a joint-stock company, it is also discussed that, despite the wording of sec. 276 of the Business Corporations Act, the classes of shares may be created by the modifications of obligations. Finally, the meaning and purpose of the selected rules regulating the classes of shares are explained, which is important for further considerations as to which differences in the shareholder's legal status result in the creation of a separate class of share in limited liability companies.

The subject of the second part is the analysis which of the differences in the legal status of the shareholder lead to the creation of a separate class of share in limited liability companies and which do not. Differences in the legal status of the shareholder arising from the content of the share, differences relating to the shareholder and differences arising from the share as the object of ownership are discussed. Finally, differences in the legal status of shareholders are classified to those that establish a separate class of share and to those that do not establish a separate class of share in limited liability companies.

The third part of the thesis focuses on the principles and limits of the creation of classes of shares. First of all, the principle of the autonomy of the will is discussed as the main principle of creating the classes of shares in limited liability companies. Then the limits to the autonomy of the will are identified when creating the classes of shares in limited liability companies. These are the rules protecting the creditor, the rules governing the essential characteristics of each form of company, the rules governing the basic and minimum powers of the company bodies, as well as the rules governing the minimum content of the share that forms the core of the share. The institute of good manners is then dismantled as a limit to softening the excessive hardness of the law. Finally, the relationship of the principle of equal treatment to the creation of classes of shares is analysed. This principle does not constitute a material corrective when creating classes of shares. This principle is expressed in a formal sense - it is applied to changes in the classes of shares during the duration of the company when it protects the shareholders from the Company's interventions into the shareholder's legal status. In relation to these interventions, the distinction between immediate and mediated intervention was distinguished, whilst the immediate interventions were further divided into direct and indirect interventions. At the same time, the principle of equal treatment protects the shareholders from immediate, but direct as well as indirect

interventions. The principle of equal treatment in the formal sense is reflected in sec. 171 (2) of the Business Corporations Act and sec. 417 of the Business Corporations Act, and these rules must be therefore interpreted in this sense. Taking into account the principle of equal treatment, the author concluded that the consent of each concerned shareholder is necessary when creating the classes of shares in joint-stock company by modifications of obligations; sec. 417 (2) of the Business Corporations Act shall not apply. On the other hand, the consent of the shareholder of a limited liability company concerned in accordance with sec. 171 (2) of the Business Corporations Act may, in exceptional cases, be dispensable.

The fourth part is the most extensive passage of this dissertation and contains an analysis of possible modifications of the rights attached to shares in limited liability companies by the force of law. For each right, the legal regulation is briefly presented, then it is examined whether it is possible to issue the share without the right in question, summarizing the opinions of the existing legal theory. And finally, other modifications to the right in question which establish a separate class of share are introduced. An overview of these modifications is always exemplary. Following the analysis of the removability of rights, the rights attached to shares in limited liability companies by the force of law are classified into two groups – removable rights and inalienable rights. Inalienable rights cannot be withdrawn from the shareholder, nor limited in substance, even if all shareholders agree. These rights by virtue of their legal nature resist the autonomy of the will. These are the rights that form the core of the share, the minimum rights that shareholder needs to have to continue to be a shareholder. On the other hand, removable rights are rights that can be withdrawn from the shareholder under condition that the rules reflecting the principle of equal treatment in the formal sense are respected. In a limited liability company (usually) only with the consent of the shareholder [sec. 171 (2) of the Business Corporations Act]. In a joint-stock company with the consent of the shareholders concerned, which has the form of a special resolution of the General Meeting [sec. 417 (2) of the Business Corporations Act]. At the end of this part it is analysed that it is possible to remove the removable rights attached the share by the force of law even cumulatively.

The fifth part of the dissertation is devoted to the rights that may be attached to shares in limited liability companies above the legal standard. First of all, it is discussed that it is possible to attach to shares rights that are not related to participation in a company. Subsequently, the possibility to issue shares with the right to appoint members of elected bodies of the company is analysed. The author concludes that it is permissible to issue shares in a joint-stock company with the right to appoint members of the supervisory board. The possibility to attach to the share in a joint-stock company the right to appoint members of the board of director is according to the

author debatable. It depends on whether the sec. 448 (2), first sentence of the Business Corporations Act (in accordance with the § 456 of the Business Corporations Act), shall apply to members of the board of directors. If so, the right to appoint a member of the board of director can be to attach to a share in a joint-stock company. On the other hand, the author is not of the opinion that the right to appoint members of the managing board and the right to appoint a statutory director can be attached to shares in a joint-stock company. Regarding the members of elected bodies of a limited liability company, the author considers it permissible to attach to the right to appoint directors and members of the supervisory board to a share. Finally, this part gives several examples of other rights that may be attached to shares in limited liability companies and which results in creating separate classes of shares.

The subject of the sixth part of the dissertation are the duties of the shareholder. Firstly, it is analysed whether a share in limited liability companies can be issued without obligations that are attached to a share by the force law, i.e. without the obligation of loyalty and liability (in a limited liability company). The author concludes that this is not possible. Furthermore, it is analysed which other obligations it is possible to attach to shares in limited liability companies and thus create separate classes of shares.

The conclusion summarizes the findings of the analysis of research questions and emphasizes the partial conclusions that are important with regard to the research goal of the work.

Klíčová slova: Share in a Limited Liability Company, Share in a Joint-Stock Company, Classes of Shares