

Property structure of SICAV from the perspective of corporate law

Abstract

This thesis focuses on selected property aspects of a joint stock company with variable capital (SICAV), which are analysed from the perspective of corporate law. Specifically, the thesis deals with the institutes of the assets and liabilities (*jmění*) and capital of a SICAV. A SICAV is a special type (subtype) of joint stock company which can only act as an investment fund. Its regulation can therefore be found in the Investment Companies and Investment Funds Act (*zákon o investičních společnostech a investičních fondech*). It does not, however, lose the characteristics of a "regular" joint stock company; therefore, the Business Corporations Act (*zákon o obchodních korporacích*) and, where applicable, the Civil Code (*občanský zákoník*) apply in cases where Investment Companies and Investment Funds Act does not provide otherwise. This two-tiered subsidiarity of the SICAV legal regime gives rise to some interpretative ambiguities, which are discussed in the thesis. The thesis also provides a general interpretation of the concept of assets and liabilities and capital.

First, the thesis discusses the institution of the SICAV's assets and liabilities. This can be broken down into two subsets, namely investment and non-investment ('founder') assets and liabilities, depending on whether a particular asset or liability derives its origin from the SICAV's investment activities or not. Investment assets and liabilities may be further subdivided into sub-funds. The most important practical implication of this division is the principle of separate satisfaction of creditors, which is represented by the principle that a creditor's claim arising in connection with one subset of assets and liabilities of the SICAV can be satisfied only by assets (property) belonging to that subset of assets and liabilities.

The concept of capital (*základní kapitál*) of a SICAV and its differences from the capital of an 'ordinary' joint stock company are analysed as next. The capital of a SICAV is divided into two basic components. The subscribed share capital (*zapsovaný základní kapitál*) is represented by the funds that are contributed to the SICAV following the subscription of the founder shares (*zakladatelské akcie*). These funds are then part of the non-investment assets and liabilities. Funds contributed to the SICAV by individual investors (subscribers to investment shares) are then part of the investment assets and liabilities and constitute investment capital. However, the subscribed share capital and investment capital together do not fully exhaust the concept of the capital of a SICAV, since it must be taken into account that

the capital of a SICAV is equal to its fund capital (net asset value; *fondový kapitál*). Thus, a distinction is made between capital in the qualitative sense (the sum of the subscribed share capital and the investment capital) and capital in the quantitative sense, which is equal to the fund capital (net asset value).

The formation and (to a certain extent) maintenance of the capital of a joint stock company is generally secured under corporate law by means of various instruments for the protection of capital. Due to the different concept of the capital of SICAV, many of these instruments are excluded from use in SICAV in their traditional form, whether this is expressly derived from the provisions of the Investment Companies and Investment Funds Act or is to be inferred by interpretation. Their meaning and purpose is fulfilled by the special instruments of protection of the capital of SICAV brought about by fund regulation, which is part of private law. Nevertheless, some of the traditional corporate instruments do apply in SICAV.

Klíčová slova: SICAV, joint stock company with variable capital, subfund, capital of SICAV, assets and liabilities of SICAV