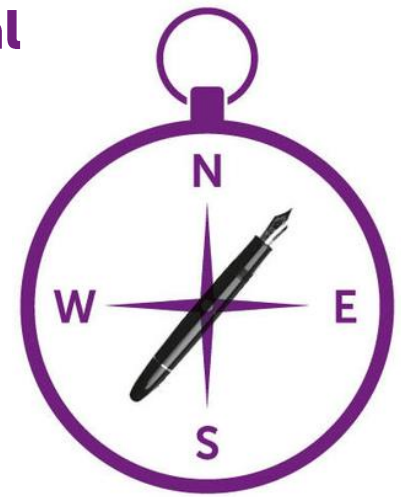


Amendment to the Commercial Corporations Act

The most fundamental changes

As of 1 January 2021, the amendment to Act No. 90/2012 Coll., On Business Companies and Cooperatives (the Business Corporations Act) will enter into force, which will bring a number of major and minor changes to the life of business corporations, for which it will be necessary to prepare.

Please note that business corporations are obliged to bring their articles of association into compliance with the imperative provisions of the amendment by no later than 1 January 2022.



Tightening the responsibilities of a member of a statutory body and other persons in a similar position

The liability of the members of statutory bodies is tightened in the event that they have contributed to the bankruptcy of the company by violating their duties

- the need to meet the cumulative conditions of a "repeated and serious" breach of duty is removed, i.e. they can be dismissed from the performance of function even in case of one serious breach
- suspension from office for up to 3 years
- suspension from the performance of function applies in all business corporations where the person is a member of the statutory body, unless the court decides otherwise for specific business corporations

The court may newly decide that a member of the statutory body is obliged to provide performance to the list of assets of a company up to the amount of the difference between the sum of debts and the value of the company's assets.

The responsibility for breaches of due care, non-competition and conflict of interest extends to persons who act as members of an elected body, even though they are not.

Easier establishment of the so-called "low-capital" companies

For newly established limited liability companies, the total amount of share capital of which does not exceed CZK 20,000, it will be possible to make a new cash deposit other than to a special escrow account maintained by the bank (e.g. directly to the deposit administrator).

Monistic joint stock companies

A management board elected by the general meeting which may have even just one member, will newly be the statutory of a joint-stock company with the so called monistic structure. The original statutory body, which was the statutory director, is abolished without substitution.

Possibility of establishing rights in rem to a ownership interest

The amendment institutes the possibility of establishing other rights in rem to a ownership interest than a lien. Typically, this will be a pre-emption right, a ban on alienation and encumbrance, etc. Such a right in rem then arises from a constitutive entry in the Commercial Register. However, due to a mistake of the legislator, it will not be possible to establish a ban on alienation or encumbrance as a right in rem for securities as of 1 January 2021.

Stricter rules on the distribution and payment of profits, advances or other own resources

The regulation of the limitation of profit distribution and the payment of own resources is being unified and tightened. The amendment also confirms the rule already established by case-law, that the regular financial statements prepared for the previous accounting period can serve as a basis for the distribution of profit until the end of the following accounting period.

Emissive right

The amendment makes it possible to stipulate the so-called emissive right in the memorandum or articles of association, i.e. the possibility to link a particular ownership interest or share with the right to appoint and remove "its own" executive, member of the board of directors, the supervisory board or the administrative board without agreement with other shareholders.

Recommendation

With regard to the approaching effective date of the amendment to the Business Corporations Act, we recommend in advance to carry out in particular

- review of articles of association and other related documents (rules of procedure of bodies, compliance programs, election rules for the election of a member of the supervisory board by the employees, contracts for the performance of a function, etc.) in order to reflect the necessary changes but also the possible improvements
- review of agreements between shareholders in order to reflect the necessary changes, but also the possible improvements
- inspection of entries in the Commercial Register and filing the required documents to the Collection of Instruments
- consideration of adjustment of the non-compete rules in view of their relaxation

For more information contact



Petra Kratochvílová
Principal Associate | Prague

T: +420 255 706 561

M: +420 725 903 477

petra.kratochvilova@eversheds-sutherland.cz



Jakub Verlík
Senior Associate | Prague

T: +420 255 706 556

M: +420 723 499 589

jakub.verlik@eversheds-sutherland.cz

eversheds-sutherland.cz

© Eversheds Sutherland 2020. All rights reserved.

Eversheds Sutherland, advokátní kancelář, s.r.o., ID No. 290 50 821, Pobřežní 394/12, Karlín, 186 00 Prague 8, Czech Republic, MS Praha, C 162938, is a part of Eversheds Sutherland, which operates worldwide through various separate legal entities. A complete description of the structure and a list of offices can be found at www.eversheds-sutherland.com.

This document and the information contained in it are for information purposes only and do not constitute legal advice in a specific matter. Eversheds Sutherland, law firm, s.r.o. is not responsible for any actions taken on the basis of the information contained in this document.