Legal Regulation of Joint-stock Companies in the Bohemian Lands and its Changes during the Nazi occupation (1939–1945)

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On the eve of the Nazi occupation joint-stock companies accounted for a significant part of the economic structure of the Bohemian Lands.[1] Popularity of this specific legal form of business, allowing companies to accumulate capital resources on the widest scale and use them for projects usually beyond the capabilities of individuals, or the then prevailing legal forms of business (public company, limited partnership), while limiting the risk of its shareholders up to the amount of their capital stake, grew since the turn of the 19th and 20 th century. Share companies were increasing in importance in the context of the deepening concentration process and the growing interdependence of the economy. Between the wars, the economic crisis of the 1930s became another impulse that put increasing demands on the viability of economic operators, creating the prerequisites for their concentration and the transition to the form of a share company. By the end of the First Republic Era, joint-stock companies in the Bohemian Lands can be characterized as predominant, and in some economic sectors almost exclusive legal form of big business (industry, banking). Their importance in the context of the national economy as a whole appears to be crucial, both in terms of the capital accumulated in them, in terms of the number of concentrated labour forces, and their involvement in the international division of labour.

The joint-stock companies in the Bohemian Lands were significantly affected by the Nazi occupation. In the territory annexed to Germany, as well as in the territory of the later Protectorate of Bohemia and Moravia, they became the target of a systematic effort of the occupying power to control them and to exploit their potential in favour of Nazi Germany. The ultimate objective was their Germanization, i.e. the transfer of assets into German hands, in the case of joint-stock companies expressed as transfer of majority stakes or controlling blocks of shares. In order to achieve the stated objectives, the occupying power used a wide range of instruments, some of

1 This study was produced as part of the Czech Science Foundation (GAČR) grant project no. P 410/ 14-03997P "Bankovní, obchodní a průmyslové velkopodnikání v Protektorátu Čechy a Morava. Institucionální a majetkoprávní změna" [Banking, industrial and commercial large scale business in the Protectorate of Bohemia and Moravia. Institutional and proprietary change] solved at the Charles University.

which applied across the business sector regardless of the legal status of the economic operators concerned (trusteeship, commission agency, controlled economy authorities);[2] others were derived from the special legal regulation of joint-stock companies under the trade law and were thus quite specific.

It is from this vantage point that the following paper examines some selected aspects of the legal framework of business. It aims to analyse changes in the legal regulation of joint-stock companies in the Bohemian Lands during the Nazi occupation and to evaluate their consequences from the perspective of their own functioning, and also in the wider context of the advancement of the occupier's interests in the Bohemian and Moravian economy. The paper describes analogies and discrepancies between Czechoslovak and German stock law at the time of the constitutional changes in the autumn of 1938. It focuses on the regulations modifying the stereotypes inherent in the functioning of joint-stock companies and playing its role in the context of planned ownership changes. Included in the paper are regulations governing internal affairs in enterprises, i. e. administration and management of joint-stock companies (structure of the statutory bodies, competencies, and approval mechanisms), regulations affecting external company representation and regulations governing stock trading.

The issues of the "legal framework of business" and the development of "joint-stock companies", which are the subject of this paper, have largely been treated separately in the past research. Changes in the legislative framework of the business sector have been associated primarily with the construction of a controlled war economy in the academic literature (V. Průcha,[3] J. Balcar — J. Kučera[4]). Another subject of an in-depth analysis was a body of regulations governing specific "Jewish question" (Aryanization, exclusion of Jews from economic life)[5] and the Protectorate Labour

2 As for general characteristics of the Aryanization and Germanization instruments of economic operators in he Bohemian Lands see Alice Teichová, Instruments of Economic Control and Exploitation: the German Occupation of Bohemia and Moravia. In: R. J. Overy. — G. Otto — J. Houwink Ten Cate, Die Neuordnung Europas, NS- Wirtschaftspolitik in den besetzten Gebieten, Berlin 1997, pp. 83–108; Miloš Hořejš — Barbora Štolleová, "Arizace" a germanizace firem. In: Drahomír Jančík — Eduard Kubů (eds.), Nacionalismus zvaný hospodářský. Střety a zápasy o nacionální emancipaci/převahu v českých zemích (1859–1945), Prague 2011, pp. 519–533.

3 Václav Průcha et al., Hospodářské a sociální dějiny Československa 1918–1992, Vol. I. (1918–1945), Brno 2004, pp. 455–465; Václav Průcha, Základní rysy válečného řízeného hospodářství v českých zemích v letech nacistické okupace, Historie a vojenství 16, 1967, pp. 215–239.

4 Jaromír Balcar — Jaroslav Kučera, Von der Rüstkammer des Reiches zum Maschinenwerk des Sozialismus. Wirtschaftslenkung in Böhmen und Mähren 1938 bis 1953, München 2013.

5 For example Drahomír Jančík — Eduard Kubů, "Arizace" a arizátoři. Drobný a střední židovský majetek v úvěrech Kreditanstalt der Deutschen (1939–45), Prague 2005; Drahomír Jančík — Eduard Kubů, Zrůdný monopol. "Hadega" a její obchod drahými kovy a drahokamy za druhé světové války. In: Terezínské studie a dokumenty 2001, Prague 2001, pp. 249–307; Helena Petrův, Právní postavení židů v Protektorátu Čechy a Morava

Law.[6] Changes in the trade regulations have been dealt with cursorily in overview-based works (L. Vojáček — K. Schelle — J. Tauchen,[7] V. Urbanec[8]), without a desirable interpretation of their consequences in the wider context of the Nazi economic policy. As for the evolution of joint-stock companies, it is possible to draw on a number of case studies although the existing treatises, and this mainly applies to the period before November 1989, lack a more comprehensive analysis of a given entity in the spirit of the modern principles of business history, and they accentuate unilaterally selected issues, such as changes of production programmes, specific affairs involving the workers, and the like.[9] The significant shift within the research brought the extensive book by Jaromír Balcar dedicated to the development of three key enterprises of the interwar Czechoslovakia during the war — the engineering group ČKD, Spolek pro chemickou a hutní výrobu [Association for Chemical and Metallurgical Production] and Pražská železářská společnost [The Prague Ironworks]. Balcar works whith the concept of *corporate governance* and the new institutional economics and brings up, among others, a broad array of questions regarding the system of management and administration of industrial enterprises, regulation of relationships and responsibilities between corporate governance and internal and external supervisory and control mechanisms.[10] However, with regard to the chosen subject, those who have advanced the furthest are indisputably the team of economic historians D. Jančík — E. Kubů — J. Šouša — J. Novotný, exploring after the turn of the millennium the role of German joint-stock banks in the process of Aryanization and Germanization of the business sector in Bohemia and Moravia.[11] The team subsequently also addressed the topic of securities as a conceivable Aryanization and Germanization instrument.[12]

(1939–1941), Prague 2000; Jaromír Tauchen, Princip zvláštnho zákonodárství jako jeden z principů fungování státního aparátu nacistického Německa. In: Právní a ekonomické problémy VI., Brno 2008, pp. 108–114 and other.

6 Jaromír Tauchen, Práce a její právní regulace v Protektorátu Čechy a Morava (1939–1945), Prague 2016.

7 Ladislav Vojáček — Karel Schelle — Jaromír Tauchen et al., Vývoj soukromého práva na území českých zemí, Bd. II, Brno 2012, pp. 704–719.

8 Vítězslav Urbanec, Příspěvek k dějinám akciových společností v českých zemích, Prague 2005, pp. 31–35, 48.

9 Cf. František Janeček, Největší zbrojovka monarchie. Škodovka v dějinách, Prague 1990; Vladimír Karlický et al., Svět okřídleného šípu. Koncern Škoda Plzeň 1918–1945, Plzeň 1999; Jiří Matějček — Josef Vytiska, Vítkovice — železárny a strojírny Klementa Gottwalda, Prague 1978 etc.

10 Jaromír Balcar, Panzer für Hitler — Traktoren für Stalin. Groβunternehmen in Böhmen und Mähren 1938–1950, München 2014.

11 Drahomír Jančík — Eduard Kubů — Jiří Šouša. Unter Mitarbeit von J. Novotný, Arisierungsgewinnler. Die Rolle der deutschen Banken bei der "Arisierung" und Konfiskation jüdischer Vermögen im Protektorat Böhmen und Mähren (1939–1945), Studien zur Sozial- und Wirtschaftsgeschichte Ostmiteleuropas 21, Wiesbaden 2011.

12 Drahomír Jančík, Metody germanizace českého hospodářského prostoru v období německé okupace na příkladu Báňské a hutní společnost, Acta oeconomica Pragensia: vědecký sborník Vysoké školy ekonomické v Praze 16, 2008, no. 1, pp. 53–65; Eduard Kubů, Ger-

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LEGAL REGULATION OF JOINT-STOCK COMPANIES IN THE BOHEMIAN LANDS ON THE TRESHOLD OF CONSTITUTIONAL CHANGES

The legal regulation of joint-stock companies in the Bohemian Lands consisted, in principle, in the era of the First Republic, of regulations incorporated into the Czechoslovak legislation from the pre-war era, notably the General Commercial Code (1863) and the Stock Regulation (1899). The regulations included the formation of joint-stock companies (subscription of share capital, granting a concession by the government), their administration (definition of the rights and obligations of the statutory bodies, i.e. the board of directors/management board, general meeting, and accountant comissioners /supervisory board), economic organization (balance sheet, profit, reserve funds), formal requirements for shares, dissolution and transformation of joint-stock companies.[13] Although the system was already regarded as outdated in the period discourse and did not correspond to the deep transformation of the business environment and the importance of the joint-stock business within the economy, it was not in principle modified. More significant interventions in the interwar period only resulted in specific adjustments concerning the joint-stock banks adopted in 1924.[14]

The period criticism, mediated for the Czechoslovak public by Cyril Horáček, Karel Kizlink and Jiří Hejda, inter alia,[15] was levelled at the management of joint-stock com-

manizace a "odžidovštění" Západočeského báňského akciového spolku (Westböhmischer Bergbau-Aktien-Verein), Acta oeconomica Pragensia: vědecký sborník Vysoké školy ekonomické v Praze 16, 2008, no. 3, pp. 110–119; Jiří Novotný — Jiří Šouša, Instrument germanizace velkého podnikání v protektorátu Čechy a Morava?: k vývoji Pražské burzy pro zboží a cenné papíry a jejímu fungování při obchodování akciemi v letech 1939–1945, Acta oeconomica Pragensia: vědecký sborník Vysoké školy ekonomické v Praze 16, 2008, no. 1, pp. 74–87; the outcome of the grant project of Ministry of foreign affair ČR (project nr. RB/19/02) „Arizace a germanizace cenných papírů jako instrument k potlačení židovského a českého elementu ve velkopodnikatelském hospodářství protektorátu Čechy a Morava a Říšské župy Sudety".

13 The structure of the joint-stock company was specifically studied by Jaroslav Pošvář, chief ministerial inspector at the ministry of the Interior. In June 1933 he published a practical handbook summing up and commenting on the regulations and the basic judicature in view of their practical application. Jaroslav Pošvář, Akciová společnost podle norem platných v historických zemích, Prague 1933. See also František Rouček, Československé právo obchodní I., Prague 1938, pp. 45–46; Arnošt Wenig, Příručka obchodního práva platného v Čechách, na Moravě a ve Slezsku, Brno 1922–1924. In the historical retrospective L. Vojáček– K. Schelle — J. Tauchen a kol., Vývoj soukromého práva, pp. 689–703; Karel Eliáš, Akciová společnost. Systematický výklad obecného akciového práva se zřetelem k jeho reformě, Prague 2000, pp. 77–80.

14 L. Vojáček — K. Schelle — J. Tauchen et al., Vývoj soukromého práva, pp. 693–694; Jiří Novotný — Jiří Šouša, Změny v bankovním systému v letech 1923–1938. In: František Vencovský et al., Dějiny bankovnictví v českých zemích, Prague 1999, pp. 240–241.

15 Cyril Horáček, O zákonné úpravě podnikání akciového, Prague 1928; Jiří Hejda, Hospodářská funkce akciové společnosti. Rozšířený obsah přednášek proslovených

panies and the related decision-making mechanisms. Under the existing legislation, the dominant role of the general meeting was preserved as the highest corporate body representing the "shareholders' will" and deciding on all important company acts. These included, among others, the approval of the annual statement of accounts, the resolution on the distribution of net profits, the approval of the board of directors, the approval of amendments to the articles of association (including the conditions for an increase or decrease in the share capital), the resolution on the dissolution of the company. The general meeting was usually convened by the board of directors whose function was executive and representative and stemmed directly from the mandate given by the general meeting.[16] The shareholders had a right to add items proposed by them on to general meeting agenda, as well as to initiate (in writing, with a statement of purpose and reason) the holding of an extraordinary general meeting.[17] The general meeting decided on the election and appointment of the board of directors and determined its remuneration, and was entitled to revoke its mandate at any time. The ability of the general meeting to pass resolutions was conditional, depending on the nature of the resolution, on the representation of a certain amount of share capital at the general meeting, the principle being that each share constituted a voting right. The strong position of the shareholders in the legal structure of the joint-stock company was reflected in the provisions concerning the annual statement of accounts for the shareholders to have access to the annual report with the balance sheet and the profit and loss account; the entire approval process could be almost indefinitely prolonged (requesting an explanation etc.). The control mechanisms in the existing legislation, both internal and external, were described as insuficcient. Criticism was directed at the accountant comissioners (predecessor of the supervisory board), who carried out rather formal checks only (their fee was usually based on a percentage of the net profit).[18] The role of the so called government inspectors was considered very passive and the room they had for manoeuvre defined by law was very limited. The licensing system, i.e. the official approval of the establishment of new companies, and the official approval of all changes in the articles of association by the ministry of the interior, in public, gave the impression of the credibility of the company, but in fact it was only a formal matter (ensuring conformity between the articles of association and the letter of the law).[19]

v České národohospodářské společnosti v Praze ve dnech 18. listopadu 1929 a 20. ledna 1930, Prague 1930; Karel Kizlink, Vývojová tendence práva akciových společností v době nejnovější, Vědecká ročenka právnické fakulty Masarykovy univerzity v Brně, V/1926, pp. 189–235 and VI/1927, pp. 210–252.

16 Hejda has defined succinctly the relationship between a shareholder and the company management as one between a mandator and a mandatary. J. Hejda, Hospodářská funkce akciové společnosti, p. 55.

17 To table a motion to call an extraordinary general meeting and to add an item on the agenda it was necessary to hold 1/10 of the share capital. See J. Pošvář, Akciová společnost, pp. 89–93.

18 C. Horáček, O zákonné úpravě podnikání akciového, pp. 8.

19 "No government inspector has ever saved a joint-stock company from bankruptcy", Ibidem, pp. 8–9.

The original legal regulation of joint-stock companies, placing the shareholders' interest at the centre, was based on the assumption that the interests of the shareholders are identical with those of the joint-stock company as such. As Jiří Hejda argues plausibly, by the turn of the 1930s, in the increasingly dense "organic tangle of capitalism", this equation had become somewhat imbalanced. The interest of an accidental shareholder desirous of the highest possible dividend, the interest of a speculator closely watching the development of the stock exchange for the best possible sale, or the interest of competing shareholder seeking only to gain a competitive advantage, could be diametrically opposed and often differed from the interest of his own company, ensuring the stability of the company's development and its long-term sustainability.[20] Diversification of interests in the shareholders' ranks also greatly facilitated the spread of the so-called indirect shareholding where the shares in a company were owned not by individuals but by corporations whose interests were subsequently derived from links to other corporations, especially banks and concerns. Doubts about the setting up of decision-making mechanisms in a joint-stock company also raised the question of the professional competence of shareholders, in whose hands, according to the relevant legal regulations, lay all its "fate", but in practice, they often took only an occasional interest in the company's operations or evinced no interest at all.[21]

As a result of the situation in which the legal regulation of joint stock companies obviously did not correspond to the modern trends in the development of the economy, there was a demand for a comprehensive reform of the stock law. Across the legal and national economy circles, both at home and abroad, questions were asked about the function of the shares, the new definition of the rights and duties of the company's bodies, the protection of the small shareholders, and the publicity. At the level of the structure of the company bodies, efforts were made to balance the relative ratio of forces between the shareholders and the bodies to uphold not only the interests of the shareholders in respect of the joint-stock company and its bodies, but also the interests of the company as a whole against the particular interests of the shareholders. The position of the executive authorities should be sufficiently "strong", it should be left with the necessary initiative and the freedom of independent decision-making in the management of the company, even to defend the company's interests against the shareholders themselves. In essence, these requirements responded to the ongoing structural changes in joint-stock companies, where, as a result of their "depersonalization", the role of the board of directors as a body delegated by the general meeting (here is the symptomatic influence of banking management)[22] and the company's professional management (directorship). Although in many other countries the similar tendencies between the wars materialized in the form of new laws,

20 J. Hejda, Hospodářská funkce akciové společnosti, pp. 39–47.

21 Ibidem, pp. 41–42. Cf. K. Kizlink, Vývojová tendence, V/1926, p. 226.

22 Hejda considered the intermingling of bank capital and concern participation as the principal factors in the "new" development of the management board within a joint-stock company. The banks' influence consisted in share holding and could be multiplied in consequence of company financing (bank as a creditor). See J. Hejda, Hospodářská funkce akciové společnosti, p. 44; C. Horáček, O zákonné úpravě podnikání akciového, p. 7.

which in the legal construction specified a wide range of unresolved or insufficiently solved aspects, they were not legally anchored in inter-war Czechoslovakia. Czechoslovakia thus entered from the point of view of the legal regulation of the joint-stock companies into the occupation phase with rather outdated system.

ANNEXED BORDERLANDS: MANDATORY TRANSFER OF JOINT-STOCK COMPANIES INTO THE GERMAN SHARE LAW REGIME

The importance of the attempts to reform the stock law in the era of the First Republic gains a new dimension in the context of the occupation of the Bohemian Lands in the autumn of 1938. The joint-stock companies located in the territory annexed to Nazi Germany gradually passed, fully in line with the process of integrating these areas into the legal system of the German Reich, into the German stock law regime. A decree of 3 December 1938 (RgBl. 209) extended the validity of the provisions of the German Stock Corporation Act [Aktiengesetz] from 1937 to Sudeten German joint-stock companies and limited partnerships on shares newly entered in the Commercial Register, to companies whose headquarters were newly transferred to/from Sudetenland, and to companies which entered into a merger with another joint stock company which was already subject to the German law.[23] Two months later, an ordinance of 9 February 1939, extended the validity of the German Stock Corporation Act broadly to all Sudeten German joint-stock companies. An integral part of the transformation of the Sudeten German companies was a transition to the Reich opening balance sheet [RM-Eröffnungsbilanz].[24]

German stock law, which was fully re-codified in January 1937[25] exhibited many differences in comparison with the First Republic stock law. Under the German law, the form of a joint-stock company was reserved only for large enterprises with a min-

23 Erste Verordnung zur Einführung handelsrechtlicher Vorschriften in den Sudetendeutschen Gebietten vom 3. Dezember 1938. In: Aktiengesetz mit Amtlicher Begründung, Einführungsgesetz, Durchführungverordnungen und Einführungsverordnungen für das Land Österreich und sudetendeutschen Gebiete, Berlin 1939, p. 295.

24 As it was earlier in Austria, the companies in Sudetenland had to declare the opening balance sheet in Reich marks (RM). The switch to RM-Eröffnungsbilanz was to take place as of 1 November 1938 at the earliest and as of 1 January 1940 at the latest. Until the official declaration of the new balance the share capital of German joint-stock companies was converted at the official rate 1 K = 0.12 RM. According to data in Compass, by the end of 1940 there were in Sudetenland 164 joint-stock companies — 86 had switched to RM-Eröffnungsbilanz (share capital RM 384 million), and 78 companies had not switched to RM (483 million crowns). By the end of 1941 the process accelerated. Of the total number of 150 joint-stock companies 113 published RM-Eröffnungsbilanz (RM 510.7 million), as against 37 companies whose capital was still reported in crowns (215 million crowns). Compass. Finanzielles Jahrbuch. Österreich — Sudetenland, Wien 1942, p. 1199; Compass. Finanzielles Jahrbuch. Österreich — Sudetenland, Wien 1943, p. 1199.

25 Concerning the recodification see Aktien Recht im Wandel, Walter Bayer — Mathias Habersack (Hg.), Bd. I, Tübingen 2007, pp. 619–669; Kamil Staněk, Poválečný vývoj německého

imum share capital of newly created companies being set at RM 500 000 (for existing companies it was set as the minimum existing capital; for companies with share capital below RM 100 000 the obligation was to transform or dissolve the company by the bridging date, 31.12.1940)[26]. At the same time, the minimum nominal value of the share was set at RM 1 000, which was clearly targeted against small shareholders and fragmented holdings in general. In accordance with the Nazi ideology, the state's strong influence was enshrined in the general diction of the German law in the spirit of upholding the interests of the nation and the Reich. In the establishment of companies, the so-called normative system continued to exist (i.e., the statutory requirements did not require special approval by the state administration), but the state acted as a protector of public interest throughout the life of the company, and if the company damaged its public welfare [Gemeinwohl], the state authorities, specifically the Ministry of economy [Reichswirtschaftsministerium], had the power even to dissolve the joint-stock company.[27] Practically in all important provisions, the State and its authorities had the power to deviate from the regulations.

In comparison between the two legal systems (Czechoslovak and German), there were fundamental differences in the structure of the bodies of the joint-stock company, especially concerning the rights and responsibilities of the general meeting [valná hromada under the Czechoslovak law, Hauptversammlung under the German law], board of directors/management board [představenstvo/správní rada under the Czechoslovak law], and board of directors/supervisory board [Vorstand/Aufsichtsrat under the German law].[28] Referring to the efforts to reduce "management's dependence on the mass of irresponsible shareholders"[29] and to solve the power

práva akciových společností, Master's Thesis, Faculty of Law, Masaryk University, Brno 2011, pp. 11–21.

26 Einführungsgesetz zum Gesez über Aktiengesellschaften und Kommanditgesellschaften auf Aktien vom 30. Jannuar 1937. In: Aktiengesetz mit Amtlicher Begründung, Einführungsgesetz, Durchführungverordnungen und Einführungsverordnungen für das Land Österreich und sudetendeutschen Gebiete, Berlin 1939, pp. 143–153.

27 Gesetz über Aktiengesellschften und Kommanditgesellschaften auf Aktien (Aktiengesetz) vom 30. Jannuar 1937. In: Aktiengesetz mit Amtlicher Begründung, Einführungsgesetz, Durchführungverordnungen und Einführungsverordnungen für das Land Österreich und sudetendeutschen Gebiete, Berlin 1939, pp. 137–138.

28 While under the Czechoslovak law the board of directors [představenstvo] and management board [správní rada] were usually identical, under the German law there were two separate bodies: the board of directors [Vorstand] and the supervisory board [Aufsichtsrat]. Despite some differencies, the German supervisory board [Aufsichtsrat] as the body elected by the general meeting was analogous to the management board [správní rada] under the Czechoslovak/Protectorate commercial law. There was no resemblance between the supervisory board [Aufsichtsrat] under the German law and the supervisory board [dozorčí rada] under the Czechoslovak law.

29 Amtliche Begründung zum Gesetz über Aktiengesellschaften und Kommanditgesellschaften auf Aktien vom 30. Jannuar 1937. In: Aktiengesetz mit Amtlicher Begründung, Einführungsgesetz, Durchführungverordnungen und Einführungsverordnungen für das Land Österreich und sudetendeutschen Gebiete, Berlin 1939, pp. 154–245.

struggles that threatened society and the general economic life, the general meeting [Hauptversammlung], i.e. the original bearer of all the fundamental decisions of the company, was weakened in German law and its own management strengthened. The general meeting [Hauptversammlung] in the German corporation law was limited to approving changes in the articles of association, revoking, merging or rebuilding the company, appointing and dismissing the supervisory board [Aufsichtsrat], appointing and dismissing the special inspectors [Abschlussprüfer, Sonderprüfer], and decisions on profit sharing.[30] Shareholders were given general information as regards the development of the company, but the level of shared information has been left to the board of discretion. As regards company management, the general meeting could only intervene in cases explicitly required by the board of directors and its opinions were entirely non-binding on the board of directors. Wider powers could not be delegated to the general meeting through the articles of association.

The management of the company (both in the sense of "Leitung" and "Geschaftsführung", including the approval of the annual statement of accounts), as well as its representation, was entrusted to the board of directors [Vorstand]. Under the German Stock Corporation Act from 1937 the board of directors was designated as the central body of the company, and its tasks in the performance of its functions were to reconcile the interests of the company and its "Gefolgschaft" with the interests and needs of the people and the Reich.[31] The potential significance of this provision was captured by Zdeněk Keprta in the "České právo" when he asked and answered a question about the German board of directors [Vorstand]: "How will the board uphold these interests (i.e. interests of the company and state) if they collide? Probably in favour of the state."[32] The chairman of the board, whose opinion was considered decisive in any deliberate decision-making, was endowed with special powers if the board had been elected as a multi-member board. In addition, the law was interpreted in the sense that its authority will not be the chairman of the board of directors to apply only in the case of equality of votes, but "in all cases where there is an opinion different from his". As a non-democratic principle was also regarded the fact that the chairman of a German joint-stock company was not elected as a member of the board of directors [Vorstand], but appointed by the supervisory board [Aufsichtsrat] as "the most reliable person".[33] In the period interpretation the chairman of the board of directors "embodied all power in society", perceived in analogy with the Führer [Leader].

30 "It need not be stressed that is a very welcome fig leaf for the board of directors enabling it to do whatever it wants without the shareholders' knowledge." Zdeněk Keprta, Demokratický princip ve vnitřním zařízení akciových společností (Dokončení), České právo. Časopis Spolku notářů česko-slovenských, XX., 1938, č. 8, p. 89.

31 Gesetz über Aktiengesellschften und Kommanditgesellschaften auf Aktien (Aktiengesetz) vom 30. Jannuar 1937. In: Aktiengesetz mit Amtlicher Begründung, Einführungsgesetz, Durchführungverordnungen und Einführungsverordnungen für das Land Österreich und sudetendeutschen Gebiete, Berlin 1939, pp. 137–138.

32 Z. Keprta, Demokratický princip, p. 90.

33 Ibidem, p. 90.

The board of directors [Vorstand] of a German joint-stock company was elected for a maximum of five years by the supervisory board [Aufsichtsrat], but in the exercise of its activity it remained largely independent of this board. By law, the supervisory board [Aufsichtsrat] could not deal with matters reserved to the board of directors [Vorstand], in relation to the board of directors it could not be made the superior body, and, last but not least, the board of directors' independence was secured by a provision allowing the supervisory board to recall members of the board of directors only in serious cases. The supervisory board was responsible for overseeing the company's business management (in particular, reviewing the annual statement of accounts, propose profit distribution and annual report), and informing the general meeting in this regard. The number of members of the supervisory board [Aufsichtsrat] was limited by law: the German Stock Corporation Act from 1937 principally provided for a three-member board, the highest number of members was subsequently determined by the share capital, i.e. for companies with a share capital of up to 3 million RM the supervisory board was limited to 7 persons, with a share capital of up to 20 million RM to 12 persons, and with a share capital of more than 20 million RM to 20 persons. The law also stipulated that a member of the supervisory board may not be a person who performs such a function in 10 or more other public joint-stock companies or limited partnerships, and it granted the Reich minister of justice the right to make dispensations to that effect.[34]

The application of the German stock law in Sudetenland resulted in a comprehensive restructuring of the local companies. Setting the minimum value of the share capital and the share nominal value supported the concentration process.[35] A symptomatic phenomenon was the creation of new "Sudeten German" companies. These consisted of until then independent business entities or branches, which, due to the constitutional changes in 1938 found themselves "behind the borders" or didn't fit the German stock regulations. A typical example is the Sudetenländische Bergbau-Aktiengesellschaft [Sudeten German Mining Joint-stock Company] headquartered in Most and established at the beginning of 1939, which controlled mines and metallurgical plants originally in the hands of the Czechoslovak state and other Czechoslovak companies.[36] Similarly, the Sudetenländische Zucker-Gesellschaft [Sudeten

34 In contrast to the ongoing Czechoslovak trade law, the German Stock Corporation Act from 1937 used the term „Konzern" [a concern] and „Konzernunternehmen" [a company belonging to a group]. Gesetz über Aktiengesellschaften und Kommanditgesellschaften auf Aktien (Aktiengesetz) vom 30. Jannuar 1937, p. 4; Ibidem, Amtliche Begründung zum Gesetz über Aktiengesellschaften, pp. 160–161.

35 The contrast between the minimal nominal share value in Czechoslovakia and in Germany was significant. Pošvář specified in the joint-stock company handbook in 1933 a minimum 200 crowns per share (in exceptional cases 100 crowns per share), while under the German stock law it was RM 1000 per share. J. Pošvář, Akciová společnost, p. 42; cf. Gesetz über Aktiengesellschaften und Kommanditgesellschaften auf Aktien (Aktiengesetz) vom 30. Jannuar 1937, p. 2.

36 A company with a share capital of RM 80 000 000 divided into 80 000 shares (1000 RM each) belonged to the concern Reichswerke Hermann Göring. See Compass. Finanzielles Jahrbuch. Österreich — Sudetenland, Wien 1942, pp. 1321–1323.

German Sugar Company], which was legally linked to a sugar factory in Most of 1925, increased in importance disproportionally as a result of purchases of refineries and sugar factories from Czechoslovak companies.[37]

A number of Sudeten German joint-stock companies show that the reorganization of statutory bodies under German stock law was far from being a formal change. The determination of the maximum number of members of the supervisory board as well as of the board of directors' concept, in some cases consisting of one person, led in practice to considerable leverage of senior management. Restructuring the bodies of joint-stock companies and their hierarchical construction correlated with the application of the "Führerprinzip" [Leader principle], which was a characteristic building block of Nazi law in general.[38] Alongside the principle outlined at all levels of corporate governance, corporate culture, that is, the patterns of conduct and practices that have so far existed in the corporate society, changed sharply. Suggested changes in the functioning of joint-stock companies fit into the wider context of business environment changes that have characterized the growth rate of government intervention. If the system of controlled economy, through a wide variety of organs, restrained, or completely negated, the autonomy of the entrepreneur's will (regulation of production, distribution/trade and consumption), the reception of the German stock law ensured an adequate change within the companies (state control, Führerprinzip).

PROTECTORATE OF BOHEMIA AND MORAVIA: JOINT-STOCK COMPANIES AT A CROSSROADS BETWEEN TWO LEGAL SYSTEMS

While joint-stock companies located in the territory annexed in the autumn of 1938 to the German Reich followed compulsorily the regime of German stock law, the situation was different in the second Czechoslovak Republic and later in the Protectorate of Bohemia and Moravia. Given the autonomous status of the Protectorate the principle of legal continuity was to be maintained, which meant at the level of the commercial law the factual maintenance of the regime of the General Commercial Code, plus a stock regulation from the end of the 19th century. A profound transformation of the business environment was largely caused by a rigorous redefinition of the economic relationships and functions in consequence of the introduction of a controlled economy system[39] without corresponding changes in the legal structure of trading com-

37 A company with a share capital of RM 3 400 000 divided into 3 400 shares (1000 RM each), Compass. Finanzielles Jahrbuch. Österreich — Sudetenland, Wien 1942, pp. 1387–1388.

38 Viktor Knapp, Problém nacistické právní filosofie, Prague 1947, pp. 121–125.

39 A general prerequisite for ensuring the German influence in the protectorate economy was the subordination of autonomous administration to the newly established German authorities. Concerning the development of Reichsprotector's office see Barbora Štolleová, Between Autonomy and the Reich Administration. Economic Department of the Reich Protector's Office (1939–1942), Prager wirtschafts- und sozialhistorische Mitteilungen = Prague Economic and Social History Papers 2016, 24, no. 2, pp 50–69.

panies, including joint-stock companies. To exert German authority in enterprises, both on the personnel and the capital level, primarily the existing guidelines were to be respected, some to be complemented with mechanisms enabling their temporary rescission (without changes in the legal structure as such).

Principal instruments allowing for flouting of the existing system of commercial law which were very much used in joint-stock companies included the institution of "trusteeship". Appointments of trustees for abandoned enterprises, or in cases where the public interest so demanded, originally made under Protectorate Government Ordinance No. 87 of 21 March 1939, came within the competence of the Protectorate authorities,[40] but the German occupation authorities soon took steps to limit the Protectorate authorities' powers.[41] Of key importance was the Reich Protector's Ordinance of 21 June 1939 on Jewish property,[42] which enabled him to appoint for Jewish enterprises so called "treuhänders", and to dismiss trustees and receivers appointed under the Protectorate regulations. The treuhänders acted in conformity with the rights and obligations laid down by the Reich Protector and reported directly to him on their activities.[43] The actual definition of a Jewish company was very flexible, so that the Ordinance could be applied to a wide gamut of economic operators. In the case of a joint-stock company the decisive factor could be for example the presence of a single "Jew" on the management or supervisory board or holding one quarter of the capital.[44] In some cases the appointments were not made by the Reich Protec-

40 Administration of abandoned companies through interim trustees (appointed by the district or land council) was the subject of the Government Ordinance of 14 October 1938. Helena Petrův, Právní postavení židů v Protektorátu Čechy a Morava (1939–1941), Prague 2000, pp. 49–50, 55; cf. Vládní nařízení č. 87 ze dne 21. 3. 1939 o správě hospodářských podniků a o dozoru nad nimi, Sbírka zákonů a nařízení [hereinafter as Sb. z. a n.] Protektorátu Čechy a Morava 1939, pp. 461–462; Vládní nařízení č. 234 ze dne 14. 10. 1938 o zatímní správě opuštěných hospodářských podniků a závodů, Sb. z. a n. státu československého 1938, pp. 1059.

41 These aims were pursued with measures taken by heads of civil administration in Bohemia and Moravia. The practical effect was limited and the measures did not immediately result in systematic removal of original trustees. Eduard Kubů, Die Verwaltung von konfisziertem und sequestriertem Vermögen — eine spezifische Kategorie des „Arisierungs-Profits": Die Kreditanstalt der Deutschen und Ihre Abteilung „F". In: Dietrich Ziegler (Hg.), Geld und Kapital. Jahrbuch der Gesellschaft für mitteleuropäische Banken- und Sparkassengeschichte 2001, Banken und „Arisierungen" in Mitteleuropa während des Nationalsozialismus, Stuttgart 2002, pp. 178–179.

42 Nařízení Říšského protektora v Čechách a na Moravě o židovském majetku ze dne 21. června 1939, Verordnungsblatt des Reichsprotektors in Böhmen und Mähren 1939, pp. 45–48.

43 The Reich Protector's Office classified several types of treuhänders according to purpose. For more details of the overall typology and the receivers' and treuhänders' rights and obligations see E. Kubů, Die Verwaltung, pp. 177–185.

44 In the case of a legal entity, one or more persons called to represent themselves by law or one or more members of the statutory bodies (the administrative and supervisory board) were Jewish, or if the Jews participated decisively in the capital or exercised vot-

tor (or by the Oberlandrat as the lower lewel of German administration within the protectorate), but by the Secret State Police (Gestapo), NSDAP, or a Reich commissar for handling enemy property,[45] which resulted in confused situations as well as frequent demarcation disputes. Whatever the trustee's official title or position was, from the perspective of running a company the consequences of "trusteeship" were similar. They involved immediate suspension of the rights of company owners, partners or statutory bodies and their transfer to a receiver. As a result, standard resolution mechanisms in joint-stock companies were suppressed (general meeting, management board) and replaced with the trustee's authority.[46]

Manoeuvring within the bounds of the economic regulations logically brought to the foreground the handling of capital shares as the primary instrument for controlling joint-stock companies. The Protectorate legal regulation, in which the relatively strong influence of the shareholders on the company management was conserved, evidently created auspicious conditions for the start of the Germanization process through changes in the shareholding. If we consider the differences between the Protectorate and the German stock law, it is conceivable that from the perspective of Germanization the preservation of the original Czechoslovak law was more advantageous for the occupation power than immediate transition to the regime of the German stock law. Transition to the German Reich regime only appeared desirable the moment when the "German" influence in the company management was factually assured (transition to the German stock regime strengthened the positions of the existing management and fostered its independence of the shareholders). This might be also understood as one of the causes of the different approach towards joint-stock companies in the annexed borderlands where the occupation power presumed that most of the enterprises were already in "German" hands and that in the Protectorate where German capital interests were overall lower.

Trading in shares in the Protectorate Bohemia and Moravia was subject to a number of regulations. The measures primarily aimed to compile detailed shareholding records so that selected capital stakes could be transferred to the state or to particular interest groups. The duty to report shareholdings was first imposed in response to the constitutional changes in October 1938. The Czechoslovak National Bank or more

ing rights (judged as of 17 March 1939). A decisive share in the capital meant that more than one quarter of the capital belonged to Jews. A decisive participation in the voting rights meant that the votes of the Jews amounted to one half of the total number of votes. A branch of a Jewish enterprise was always considered to be a Jewish enterprise, a branch of a non-Jewish enterprise was considered a Jewish enterprise if its director or one of several managers were Jews. In the definition of a Jewish enterprise there was a completely free interpretation, stating that an enterprise is considered Jewish if it is "in fact under the controlling influence of Jews." The interpretation of paragraph 7 of the Neurath regulation was, with minor changes, quoted in the commentary by H. Petrův, quoted above, pp. 62–63

45 Nařízení o nakládání s nepřátelským majetkem ze dne 15. 1. 1940, Verordnungsblatt des Reichsprotektors in Böhmen und Mähren 1940, pp. 28–36.

46 J. Procházka, Procesní a materiální účinky komisařského vedení, České právo. Časopis Spolku notářů českomoravských, XXIII, 1941, č. 4, p.25.

precisely, a special commission set up by the bank, was granted considerable powers to decide about future deals in capital stakes.[47] A special measure of the National Bank reserved the right to later purchase offered securities.[48] Checks on shareholdings were tightened after the establishment of the Protectorate, this time fully in the context of the occupation authorities' efforts seeking Aryanization and Germanization of the economic operators. Initially, reporting duty was imposed for capital stakes in Jewish hands (ordinances on Jewish assets, including a series of implementing provisions);[49] capital stakes in companies located abroad were identified under special regulations.[50] Efforts were made to identify linkages within concern structures according to a decree issued by the prime minister on 15 May 1941, when it was announced that special sample surveys were being conducted on existing and newly created concerns and capital stakes in enterprises.[51]

In a sense the trends culminated in the passing of the Government Ordinance of 9 May 1942 (revised in part by decrees of the ministry of economy and labour of June 1942 and July 1943), under which all individuals and legal entities headquartered in the Protectorate were duty bound to report holdings of shares and "colonial holdings" quoted on any stock exchange within the Third Reich.[52] In principle,

47 The Ordinance made it compulsory to report shareholdings, primary share investments and other capital holdings with registered capital in excess of 5 million crowns if the stake exceeded 5% of the registered capital and/or the sum of one million crowns. Vládní nařízení č. 232 ze dne 14. 10. 1938, kterým se obmezuje nakládání s kapitálovými účastmi, Sb. z. a n. státu československého 1938, pp. 1057; Opatření stálého výboru č. 239 ze dne 18. 10. 1938, kterým se obmezuje nakládání s kapitálovými účastmi, Sb. z a n. státu československého 1938, pp. 1062–1063. Vládní nařízení č. 196 ze dne 8. 5. 1940, jímž se zrušuje opatření Stálého výboru z dne 18. října 1938, č. 239 Sb., kterým se obmezuje nakládání s kapitálovými účastmi, s předpisy je provádějícími, Sb. z. a n. Protektorátu Čechy a Morava 1940, p. 486.

48 Opatření Národní banky Československé o výhradě práva pozdějšího převzetí nabídnutých cenných papírů, Sb. z. a n. státu československého 1938, p. 1228.

49 Especially Čtvrtý prováděcí výnos k nařízení Reichsprotektora in Böhmen und Mähren o židovském majetku ze dne 7. 2. 1940, Verordnungsblatt des Reichsprotektors in Böhmen und Mähren 1940, pp. 45–47.

50 Vyhláška ministra financí (82) ze dne 13. 1. 1942, kterou se uveřejňuje opatření Národní banky pro Čechy a Moravu v Praze o hlášení účastí v cizině, Sb. z. a n. Protektorátu Čechy a Morava 1942, pp. 88–90.

51 Vyhláška předsedy vlády ze dne 15. 5. 1941 o statisice koncernové a kapitálových a zájmových účastí na podnicích, Sb. z. a n. Protektorátu Čechy a Morava 1941, p. 996. Further background to the surveys see V. Vilinskij, Koncernové šetření Ústředníího statistického úřadu, Statistische Rundschau.Statistický obzor 1943, XXIV, no. 3–4, pp. 59–84.

52 Reports were made back to 1 January 1939. Vládní nařízení ze dne 9. 5. 1942 o hlášení některých cenných papírů, Sb. z. a n. Protektorátu Čechy a Morava 1942, pp. 858–860. Within the Heydrich's reform of the public administration the agenda of joint-stock companies (originally handled by ministry of interior) was transferred under the ministry of economy. Změna v úřední příslušnosti ve věcech akciových společností, Právní prakse 1941/1942, VI., no. 6, p.188; For wider context see J. Novotný — J. Šouša, Instrument germanizace, pp. 82–83.

the Ordinance applied to the exchange value of securities in excess of one million crowns, but the protectorate minister of economy and labour was authorized to demand reports below this threshold, demand reports on unquoted securities and grant dispensations. What is material in the context of examining the concern structures is that the regulation authorized the minister of economy and labour, by agreement with the minister of justice, to order joint-stock companies and limited partnerships to include securities acquired after 1 September 1939 in their annual reports.[53]

Changes in ownership were made according to special provisions regulating transfers of Jewish and enemy assets, or resulted from standard more or less forced business operations on the stock exchange or outside it. Overall, checks on securities deals were tightened. First of all, with regard to the financial market practices in Germany, the functioning of the Prague Stock and Merchandise Exchange was regulated.[54] Government Ordinance No. of 27 March 1941 reserved purchases and sales of shares to financial institutions holding a foreign currency permit or acting as intermediaries and dealing outside them was forbidden.[55] A decree of the ministry of finance issued in December of that year even stipulated that all transactions involving ordinary shares and mining company stocks listed on a German Reich stock exchange be concentrated in the Protectorate solely on the Prague Stock Exchange. However, subsequent decrees mitigated this measure somewhat in view of the interests of German banking institutions.[56]

In terms of the operations of joint-stock companies in the Bohemian Lands during the occupation, provisions regulating "corporate headquarters" [sídlo] became a matter of great importance. The location of corporate headquarters decided in fact under which legal system (Protectorate or Reich German) companies would operate. As for joint-stock companies, which often had before the enforcement of the constitutional changes subsidiaries, plants, agencies and the like, on both sides of the newly fixed border, the choice of corporate headquarters (and the ensuing transfer to the appropriate legal regime) offered itself as an effective instrument to facilitate the control over individual companies on the part of the state, and by extension, as an instrument for finalizing their Germanization.

The issue of corporate headquarters was first addressed following the constitutional changes in the autumn of 1938. A Czechoslovak Government Ordinance No. 266 of 4 November 1938 imposed on trading companies the obligation to define their corporate headquarters solely as a place where the head office was or its main part. Granting of dispensations to joint-stock companies, partnerships limited by shares

53 Vládní nařízení ze dne 9. 5. 1942 o hlášení některých cenných papírů, Sb. z. a n. Protektorátu Čechy a Morava 1942, pp. 858–860.

54 J. Novotný — J. Šouša, Instrument germanizace, pp. 78–81.

55 At the same time it was stipulated that securities officially listed on the Prague Stock and Merchandise Exchange could not be traded outside at prices higher than that on the day when the deal was made (or the preceding day). Vládní nařízení č. 137 ze dne 27. 3. 1941 o obchodu s cennými papíry, Sb. z. a n. Protektorátu Čechy a Morava 1941, pp. 562–564.

56 J. Novotný — J. Šouša, Instrument germanizace, pp. 82–83.

and limited companies was subject to the consent of the ministry of industry and trade by agreement with other ministries.[57]

After the establishment of the Protectorate, moves of corporate headquarters between the ceded borderlands and the interior of the Bohemian Lands were initially effected in the same way as move from one state to another. Moving corporate headquarters to the protectorate was like the establishment of a new company, and if corporate headquarters were moved to the ceded borderlands, the company was formally dissolved. As time went by, however, these practices were considerably relaxed as we know from the fact that the authorities did not create any special bureaucratic obstacles to transfers of corporate headquarters. At length, a significant change was brought about by Government Ordinance No. 199 of 6 June 1940, which even formally simplified the process of moving corporate headquarters between the Protectorate of Bohemia and Moravia and other parts of the German Reich. Moves of corporate headquarters between the Protectorate and the Reich territory were now effected without formal dissolution and did not necessitate the state's approval, which was ordinarily demanded for all alterations of joint-stock companies' articles of association. A somewhat strange situation developed though it was not absurd from the perspective of the Nazi interests. While moving corporate headquarters between the Protectorate and the Reich territory was in fact reduced to a mere notification to the commercial register, moving corporate headquarters within the Protectorate territory was still subject to the established administrative procedure, making it more of an administrative burden.[58]

Although the reception of the German stock law did not take place in the Protectorate, minor modifications of the economic regulations indicate a gradual approximation to the principles underlaying the German law. A case in point is Government Ordinance No. 26 of 21 December 1939, which allowed the board of directors [představenstvo] (in case of a joint-stock company usually equivalent to the management board [správní rada]), to resolve independently to modify the articles of association in line with the changes in the constitutional order, unless a competent statutory body (in a joint-stock company, general meeting [valná hromada]) resolved them by the set deadline of two months.[59] The ordinance was published in a wider context of Germanization measures helping to formally establish German in the Protectorate economic environment as the official language (e.g. favouring German when

57 Vládní nařízení č. 266 ze dne 4. 11. 1938 o sídle kupců (obchodníků), obchodních společností a výdělkových a hospodářských společenstvech (družstev), Sb. z. n. státu československého 1938, pp. 1101–1102.

58 Vládní nařízení č. 199 ze dne 6. 6. 1940 o přeložení sídla hospodářských podniků z území Protektorátu Čechy a Morava do jiných částí Velkoněmecké Říše nebo z těchto na území Protektorátu Čechy a Morava, Sb. z. a n. Protektorátu Čechy a Morava 1940, p. 487. For further interpretation see Jos. Rauftl, O překládání sídel akciových společností z území Protektorátu Čechy a Morava do jiných částí Velkoněmecké říše nebo z těchto na území Protektorátu Čechy a Morava, pp. 47–49.

59 Vládní nařízení č. 26 z dne 21. 12. 1939 o úlevách při usnášení některých změn společenských, společenstevních a spolkových stanov a o názvech některých peněžních ústavů a zařízení, Sb. z. a n. Protektorátu Čechy a Morava 1940, pp. 31–32.

dealing with the authorities, obligation to include German particulars in company documents),[60] though its importance can be interpreted simultaneously as interference with the standard decision-making mechanisms of joint-stock companies. The general meeting, representing in the original Czechoslovak business law the highest body of a joint-stock company which wielded all the decision-making powers, was noticeably receding into the background.

A similar effect was produced by Protectorate Government Ordinance No. 141 of 22 April 1942, which followed the Reich example in the regulation of profit sharing and payments to partners in capital companies and introduced a tax on dividends. A room for manoeuvre was created in the context of setting the maximum limit for payments of dividends[61] to allow companies to change the amount of their share capital by simplified procedure. Changes of the share capital and the consequent changes of the articles of association were reserved for companies' managing organ (in joint-stock companies the board of directors [představenstvo] or the management board [správní rada]). Only the chairman of the board, who also compiled the statement of accounts, was authorized to table changes in the share capital and the articles of association. If his proposal was backed by three quarters of the members of the board, it was passed without being presented to the general meeting. The ministry of economy and labour then issued a certificate.[62]

60 Company names and articles of association included such reformulated particulars as domicile, currency symbol (K), nationality of the members of the board of directors and other corporate bodies. The First-Republic 'nostrification' clause, which required that a majority of the members of a board of directors have Czechoslovak nationality and domicile in the territory of Czechoslovakia was characteristically replaced. The clause was now either omitted or reformulated as "Protectorate and Reich citizenship", and "domicile in the Protectorate Bohemia and Moravia and in the territory of the German Reich", which could facilitate, given the generalization of the co-option practice, a disproportionate number of Reich Germans in the statutory bodies. Government ordinance No. 268 of 30 April 1941 imposed on firms the obligation to make entries in the companies register in German or at least in German. Another example is a change of the language used in joint-stock companies' securities that was to be made by 31 Dezember 1943. Printed in the two languages, the position of the German text was specified either above the Czech text or to the left of it. Vládní nařízení č. 268 ze dne 30. 4. 1941 o jazykové úpravě zápisu firem do obchodního nebo společenstevního rejstříku, Sb. z. a n. Protektorátu Čechy a Morava 1941, pp. 1363–1364; Vládní nařízení č. 26 z dne 21. 12. 1939 o úlevách při usnášení některých změn společenských, společenstevních a spolkových stanov a o názvech některých peněžních ústavů a zařízení, Sb. z. a n. Protektorátu Čechy a Morava 1940, pp. 31–32; Stanislav Janďourek, Jazyková úprva cenných papírů akciových společností, České právo. Časopis Spolku notářů českomoravských 1942, XXIV., no. 2, pp. 9–10.

61 Jan Stoklasa, Podíl na zisku a dávka z dividend u kapitálových společností ve smyslu vlád. nař. č. 141/1942 Sb., Právní prakse 1941/1942, VI., no. 9–10, pp. 288–290. Vládní nařízení č. 141 ze dne 22. 4. 1942 o rozdělování zisku v některých kapitálových společnostech a o změně jejich společenského kapitálu, Sb. z. a n. Protektorátu Čechy a Morava 1942, pp. 780–788.

62 Jan Stoklasa, Úprava společenského kapitálu u kapitálových společností v smyslu vlád. nařízení č. 141/1942 Sb., Právní prakse 1942/1943, VII., no. 2–3, pp. 45–50; Stanislav Janďourek,

Extant minutes of meetings also indicate that in joint-stock companies' everyday activities they delegated, and more frequently than before the war, the statutory powers of the collective body, the general meeting, to the board of directors/management board. The undermining of the function of the general meeting, and hence the principle of democracy in joint-stock companies, went hand in hand with a limitation of their transparency. Under an Ordinance of 31 August 1942, the minister of justice was authorized, with regard to conditions and in order to maintain public order, to restrict access, generally or in specific cases, to public books, registers or lists kept by courts.[63] An Ordinance of 2 September 1942 empowered him, with similar justification, to stipulate for individual companies or groups of companies derogations from statutory provisions and provisions of articles of association concerning the posting of the annual statement of accounts and making certain entries in the companies register. The minister of justice was authorized to grant concessions on compiling the annual statement of accounts and profit and loss account, and in specific cases reporting to creditors on companies' capital assets, matters of the board of directors, or commercial books and documents.[64]

These trends came to a head with Ordinance No. 134 of 23 May 1944 restricting general meetings of joint-stock companies and limited partnerships, whose obligation to hold general meetings during the specific was period was temporarily suspended.[65] The measure was justified in the context of cost cutting during the period of total war; from the viewpoint of functioning of joint-stock companies it could have far-reaching consequences. Not holding a general meeting meant delegation of this body's power to the board of directors/management board [představenstvo/správní rada], which approximated its function to the function of the bodies, as defined in the German stock law [Vorstand/Aufsichtsrat]. Refraining from general meetings meant an automatic extension of the term of office of the bodies elected by the general meeting and helped to generalize the coopting practice where the board of directors (management board) was personally changed without the shareholders' formal consent. The board of directors assumed the authority to carry resolutions without the participation of the general meeting on the annual accounts and sharing of the net profit.[66] Holding of a general meeting was specifically required only for a change or establishment of a joint-stock company, changes of the articles of association, increases and decreases of the share capital, dissolution or merger of a joint-stock com-

Řízení při úpravě společenského kapitálu některých kapiálových společností, České právo 1942, XXIV., no. 6, pp. 37–38.

63 Vládní nařízení č. 315 ze dne 31.8.1942 o nahlížení soudních veřejných knih a rejstříků, Sb. z. a n. Protektorátu Čechy a Morava 1942, pp. 1617–1618.

64 Vládní nařízení č. 312 ze dne 2. 9. 1942 o osvobození od dodržení obchodněprávních předpisů, Sb. z. a n. Protektorátu Čechy a Morava 1942, pp. 1609–1611.

65 Nařízení ministra spravedlnosti č. 134 ze dne 23. 5. 1944 o omezení valných hromad akciových společností a komanditních společností na akcie, Sb. z. a n. Protektorátu Čechy a Morava 1944, pp. 619–622.

66 Ibidem.

pany, its transformation into a limited company,[67] change of insurer, and in matters concerning the opening balance [Eröffnungsbilanz].

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Legal regulation of joint-stock companies in the Bohemian Lands during the Nazi occupation evolved on a touchline between the original Czechoslovak and the German stock law. This clash between two legal systems which were in essence distinctly different was significantly reflected in the functioning of joint-stock companies, their management and their decision-making mechanisms. While in the ceded borderlands the local enterprises soon followed the German stock law regime, which meant an immediate reinforcement of the joint-stock company management, and concurrent harmonization of the interests of the state and the economic operator, the principle of legal continuity was maintained in the Protectorate Bohemia and Moravia. Maintenance of the Czechoslovak commercial law regime cannot be interpreted here merely in view of the formal autonomy of the Protectorate. The occupation power succeeded in effectively exploiting the existing legal framework in its favour, and in the case of stock trading the original Czechoslovak law even created more favourable conditions for the start of the Germanization process. An instrumental role in this was played by the definition of "corporate headquarters" of joint-stock companies, which became a transmission mechanism between the regime of the Protectorate and the German stock law. Moving of corporate headquarters between the Protectorate and the other Reich territory was greatly simplified and usual formalities demanded for moving corporate headquarters within the Protectorate territory were not required. Although in the Protectorate adherence to the German stock law did not happen, minor modifications of the economic regulations are convincing evidence of approximation to the German Reich model. The most noteworthy feature is the weakening of the position of the collective body, the general meeting, and the strengthening of that of the board of directors/management board, which culminated in 1944 with suspension of the obligation to hold a general meeting. It is worth noting that the outlined changes in the proportions of the joint-stock company bodies followed in a sense trends started before the war, and thus they should not be interpreted exclusively in the context of the Nazi policy and application of the Führerprinzip.

67 The transformation into a limited company [s. r. o.] was later forbidden. Nařízení ministra spravedlnosti č. 228 ze dne 7. 10. 1944 o opatřeních v oboru soukromého práva (První nařízení k provedení totálnho válečného nasazení v oboru soukromého práva v Protektorátu Čechy a Morava), Sb. z. a n. Protektorátu Čechy a Morava 1944, pp. 1083–1086.