

## **Distribution of profit and other capital in commercial capital company**

### **Abstract**

The right to receive dividends is one of the fundamental rights of each shareholder of a capital company. Even though it stems from the very nature of a capital company that its shareholders will often wish to exercise solely their right to receive dividends, and not their right to participate in the management of the company, it is obvious that even capital companies may be established for purposes other than that of achieving profit alone. At the same time, companies, which were established solely for the purpose of achieving profit may wish to postpone the realization of profit for various reasons. Therefore, it is important for the law to be flexible enough to accommodate these needs while still providing adequate protection to creditors and minority shareholders of the company.

Generally speaking, the Czech legal regulations governing the distribution of profit and other capital strike the balance between these competing interests fairly well. On the other hand, the rules contained in the Business Corporations Act are surrounded by a number of interpretational problems and uncertainties, e.g. because the applicability of the Czech Supreme Court jurisprudence issued in relation to the former Commercial Code has been called into doubt, or because of the introduction of new legal instruments such as the insolvency test. Luckily, however, those uncertainties have for the most part been resolved either by way of interpretation by legal authorities, or by way of jurisprudence of the higher courts.

The only substantial deficiency, which may be held against current Czech legal regulation in this field, especially when compared to foreign law, is the lack of comprehensive rules on the avoidance of disguised distribution of profit. However, even in this respect, the latest jurisprudence of the Czech Supreme Court suggests that some progress is being made: the Supreme Court appears to be aware of the issue and is taking steps with a view to providing remedies.

**Key words: distribution of profit, distribution of other capital, disguised distribution of profit**