

Contracting autonomy in construction of classes of shares and its limits

Abstract

This diploma thesis focuses on the topic Contracting autonomy in construction of classes of shares and its limits.

Giving today's trend of providing increasingly wider freedom to private persons to negotiate their rights and obligations differently from the law, this topic is still actual, whereas even opinions concerning individual partial issues are evolving. In addition, the topic is also actual with respect to already valid, yet ineffective, amendment to the Business Corporation act, which concerns shares and classes of shares as well.

The goal of this diploma thesis is to explain the issue of classes of shares and the limits to contracting autonomy of founders, respectively shareholders in their construction. Although several legal publications about the most of partial issues have been written, many issues are answered inconsistently, therefore there is uncertainty among recipients of legal norms concerning what they can, and they cannot negotiate.

Thesis is divided into three main parts (chapters) and several subchapters. System was chosen in a way the author of this thesis considers appropriate, so the described issues are explained continuously.

The first part of this thesis focuses on the concept of the share. Its definition is unquestionably fundamental for understanding issue of the classes of shares and the limits of their construction. It is the basis for subsequent chapters.

The second chapter contains the main issues of this diploma thesis. Firstly, it defines what is the class of shares and conversely defines what is not, because even these issues are not always answered consistently. Subsequent subchapters focus on individual classes of shares named by the law (i.e. the preference shares, the shares with different weight of votes, the founder's shares). The next part of the second chapter focuses on the limits that bound the founders, respectively shareholders in construction both named and especially unnamed classes of shares. The issues which rights can be attached to the shares and which rights can be removed from them are the most described. In conclusion of the second chapter several chapters focus on individual possible and impossible classes of shares that can be seen in practice or in theory. The list of unnamed classes of shares could be almost limitless, therefore only those which the author of this thesis considers appropriate and interesting to mention were chosen. Each unnamed class of shares is analyzed whether it is admissible, eventually under which conditions.

The third and the last chapter focuses on the amendment to the Business Corporation act. The amendment is valid since February 2020, while the amended Business Corporation act come into effect on 1. 1. 2020 (N.b. the thesis was last amended and closed on 15 March 2020). Thus, amendments of legal regulation that concerns also the classes of shares and its limits are separated into individual chapter. For example, the legal definition of the share or the appointment shares has changed.