

Creation, termination and suspension of function of a member of a limited company body

Abstract

This thesis deals with the issues of creation, termination and suspension of function of a member of a limited company body and focuses on a relatively narrow aspect of the said topic related to the institute of codetermination in relation to the creation, termination and suspension of function of a member of a supervisory board of a joint stock company. Currently effective legislation contains significant gaps and it causes certain interpretation ambiguities and prevents the proper use of the institute of codetermination in practice.

The present work is mainly aimed at identification of problem points and analysis of the most important controversial issues of the current legislation in the field of codetermination and aspires to their comprehensive solution. The work also takes into account the legislative changes effective from January 1, 2021 and evaluates their potential benefits regarding elimination of the identified shortcomings.

The work is divided into four chapters. The first chapter contains the definition of the term codetermination and provides an overview of how this legal institution is regulated within the legal orders of selected foreign countries and at the European Union level. Following discourse is devoted to the historical development of the legal regulation of codetermination in Czech law and fundamental controversial issues related to the recodification of the private law and the subsequent amendments are presented herein.

The second chapter focuses on the methods of creation of the function of a codetermined member of the supervisory board. Considerable part is devoted to issues related to the election of a member of the supervisory board of a joint-stock company by employees, namely the organization of elections and the review of election results, with practical examples. It is followed by a narration regarding co-optation, substitution and appointment of a member of the supervisory board by a court and the assessment of admissibility of the use of the above methods of appointment in the case of a codetermined member of the supervisory board.

The third chapter presents an analysis of particular ways of terminating the function of a member of the supervisory board of a joint-stock company elected by employees. The issues of termination of the function by dismissal and resignation are discussed in detail, with regard to the specifics associated with the chosen focus of the thesis. The remaining part of the chapter

briefly describes other possible ways of terminating the function of the employee representative.

In the introduction to the fourth chapter, one can find an explanation of the concept of conflict of interest and the definition of the circle of persons whose interests may conflict with the interests of the business corporation and cause the informational obligation of a member of the business corporation body. The following text is focused on the scope and content of the informational obligation and the ways of its fulfillment provided for by law. The last part of this chapter deals with the issues of suspension of a function of member of a body which is in a conflict of interest, the emphasis is put on problematic aspects of legislation related to the suspension of a function of member of the supervisory board of a joint stock company.

Keywords: creation of function, termination of function, suspension of function, codetermination, supervisory board