

Legal means of protecting minority members of a limited liability company in case of increase of share capital by making additional contributions

Abstract

This Master Thesis deals with legal means of protecting minority members of a limited liability company in case of increase of share capital by making additional contributions. The main objective is to explore and analyze legal remedies that are embodied in the Business Corporations Act. Primarily whether these remedies, in accordance with their protective purpose, ensure protection of minority shareholders against deterioration, and also functioning and possibilities of achieving the purpose for which the company was established is taken into account.

The main methods in the elaboration of this diploma thesis were bibliography research and research on case law, especially of the Czech courts, and the subsequent analytical method. With the help of abstraction and subsequent synthesis of the obtained information, the individual partial and main conclusions are generalized. Among the most used methods of interpretation are linguistic, systematic, logical, and teleological method.

This thesis is divided into four main chapters. Each chapter is internally divided into subchapters, which are then in some cases structured into individual points. The first two chapters provide a brief characteristic of the effective increase of share capital, the position of a member in a limited liability company, as well as the reasons and ways to protect this position. This part provides a suitable contextual basis for a proper understanding of the main issues.

The third chapter examines the issue of decision-making process in relation to the effective increase of share capital. As a result of this decision, the partnership agreement is changed. Above all this thesis explores the issue of the competence of general meeting to decide on the effective increase of share capital and the issue of the majority necessary to make such a decision. In this regard, emphasis is placed on the analysis of whether the decision interferes with the legal status of a minority shareholder and therefore if his consent is required. The matter of misuse of voting rights by the shareholder will be discussed in connection with the possibility of abusing the process of increasing the share capital to the detriment of a minority shareholder.

The final chapter concentrates primarily on the issue of the right to participate in the share capital increase. Most of this chapter deals with the legal and possible contractual arrangements of the shareholder's preemptive right to participate in an effective increase in share capital. It describes

in which cases the right belongs to the shareholders, the scope of the preemptive right, the possibilities of its modification or its exclusion, as well as the right to waive the preemptive right. As the contribution obligation can be assumed besides the exercise of the preemptive right with an effective increase in the share capital, the last part of this chapter examines the methods of protecting the position of a minority shareholder in these cases.

Based on the conducted analysis, it can be concluded that the setting of legal rules protecting the position of a minority member ensures that the change (deterioration) of the member's position can occur only with his consent. It does not matter whether his expression of will is omissive (the member does not exercise his right), or commissive (the member waives his right, or expresses consent with restriction of his right or exclusion of his right or expresses consent with the assumption of the contribution obligation by another member or a third party). However, affirmative expression of will is not required in cases in which it could jeopardize the further functioning of the company and the fulfilment of its purpose.

Legal remedies for the protection of the position of a minority member in the effective increase of the share capital of a limited liability company are to protect the position of a member in such a way as to ensure the protection of the position of a minority member without a functional threat to the company as a whole.

Keywords: minority member, effective share capital increase, limited liability company, preemptive right