

Freedom of contract and its limitations in incorporating juridical acts of capital companies

Abstract

The thesis on subject of Freedom of contract and its limitations in incorporating juridical acts of capital companies is divided into two parts, general and special part.

General part of this thesis focuses mainly on general limitations of freedom of contract in contract law. Freedom of contract is one of the primary principles of private law. Generally, the manifestation of freedom of contract on the constitutional level is the principle that allows to deviate from a statute with a juridical act unless it is forbidden by law. This core rule of freedom of contract in private law is stated in the provision sec. 1 (2) of Civil Code: “Unless expressly prohibited by a statute, persons can stipulate rights and duties by way of exclusion from a statute”. In this provision we can also find the main limitations of freedom of contract: explicit prohibition in a statute, prohibition of stipulations contrary to good morals, public order or the law concerning the status of persons, including the right to protection of personality rights.

Due to the main principles of private law (the principle of the autonomy of will and freedom of contract) private legal rules are generally considered to be directory. The legislator thus provides a wide scope for the recipients of legal rules to form their mutual legal relations through predominantly directory legal rules. Mandatory legal rules are those that prohibit persons to deviate from them. Although the problematics of the distinction between directive and mandatory statutory provisions is considered rather theoretical, it is crucial for any legal practise. Therefore, in its general part, this thesis also deals with finding a general starting point for distinguishing between directory and mandatory statutory provisions.

Freedom of contract is manifested mostly in private law obligations, as the name of this principle implies, especially in multilateral legal relations, i.e. contracts. Although incorporating juridical act of capital companies is in the provision sec. 3 (3) of Business Corporations Act referred to as a contract it is in many respects specific to common types of contracts. Most importantly, its binding effect for third parties who were not its contractors is essential for assessing the possibility of derogating from the statutory provision. Therefore,

the general conclusions about the limitations of freedom of contract cannot be applied without further ado. It must be subjected to a broader analysis and applied directly to the incorporating juridical acts - a special part of this thesis focuses on this issue.

The aim of this thesis is to find generally accepted starting points for assessing freedom of contract and its limitations and then to apply these conclusions on incorporating judicial acts of capital companies.

Key words

freedom of contract, directory and mandatory legal rules, memorandum of association