

The Exercise of the Voting Right in a Joint-Stock Company

Abstract

The submitted thesis analyses the voting right of a shareholder and the exercise of the voting right in a joint-stock company. In the last few years, a tendency to encourage the engagement of shareholders and to broaden the scope of decision rights of shareholders can be seen. Nevertheless, some authors underestimate the importance of the shareholders' right to vote and conclude that real decision-making power lies with the management or administrative board. The main hypothesis to be proven or rebutted is that the shareholder's voting right is not insignificant and vesting decision-making power in shareholders can have a positive influence on the effectiveness of the management of the company notwithstanding the broad liberty of the shareholder to both freely exercise and dispose of the voting right (the shares) and notwithstanding the existence of deviations from the principle of proportionality.

The thesis aims to examine the voting right in its complexity, in contrast to the prevailing approach of contemporary Czech jurisprudence, and to contribute to academic knowledge with original arguments and conclusions. This goal is achieved by extensive use of foreign legal sources, mainly French and Belgian literature and case law, since the Czech legal system mostly takes inspiration from German and Austrian legal sources.

With the exception of the introductory part and conclusion, the thesis is composed of three chapters. The first chapter focuses on the nature and meaning of the shareholder's voting right. Apart from defining the concept of the voting right in several dimensions, the main question is the extent of the shareholder's freedom during exercise of the voting right (the limits of exercise) and in whose interest the voting right is or should be exercised. To answer these questions, the division of decision-making power in a company between the shareholders and the management or administrative body is explored, along with a historical overview. Next, it is examined why the voting right lies with shareholders (and not any other group of stakeholders) and what the purpose of the voting right is. The substantive content of the company interest is studied, as well as the fiduciary duty of the shareholder during voting (or abstaining). Finally, the means of protection of the company and other shareholders against the abuse of shareholder's voting right are analysed.

The second chapter focuses mainly on the number of votes conferred to the shareholder (the shareholder's voting power) and its possible modifications. The number of votes can be

proportionate to the sum paid up as subscription price of the shares or it can differ due to the use of control enhancing mechanisms (shares with preferential rights or without voting right, pyramid structures, or a voting cap), the suspension of the voting right or waiver of the voting right. Also, the effects of cumulative voting on the shareholder's voting power are explained. Throughout the chapter, it is questioned whether Czech company law respects the "one share, one vote" principle (principle of proportionality).

The third, and last, chapter focuses on the exercise of the voting right not only by the shareholder, but also by third parties. To this end, attention is first given to the means of attendance at the general meeting of the company and exercise of the voting right (or voting per rollam) by the shareholder and his representative. The possibility and the limits of the shareholder's commitment to exercise of the voting right in a prescribed manner (typically by concluding a shareholder agreement) are inspected. Similarly, the possibility and means of transfer of the voting right to a third party are examined (by power of attorney or by conclusion of a contract that directly enables the third party to exercise the voting right). The question of admissibility of reward or compensation for the shareholder (vote buying) is explored.