

Résumé

Authorized Capital of Stock Companies, its Formation and Protection

Czech legal regulations related to authorized capital stem from the European concept of the real formation and preservation of the authorized capital that leads particularly to providing minimum guarantee rate of the stock company to its creditors.

Authorized capital is an abstract number and it expresses the financial value of assets invested in the stock capital by its partners. The Commercial Code shall expressly stipulate the duty of authorized capital formation for the limited liability company as well as joint-stock company. The duty to form authorized capital at their formation may be indirectly permitted also for limited partnerships.

In professional literature, the three basic functions of authorized capital are traditionally listed. Guarantee function, authorized capital as profit and loss measure and authorized capital as a mean to specify partner's share in the company.

The concept of real authorized capital formation adopted by most European legal systems is based on achieving correspondence between the authorized capital and real capital and capital preservation through protective rules. Legislator's protective tools include the ban on return of deposits, ban on acquiring own company shares, compulsory reserve fund creation, financial assistance solely under specified conditions, and others. At the communitary level, the authorized capital is adjusted by the Directive No. 77/91/EEC. At present, reforms in communitary right of the society related also to a new alternative regulations governing authorized capital in share companies are being prepared and these regulations should be based on liberal legal regulations for authorized capital applicable within English and American legal environment with the concept of adequate capitalization.