

## **Summary**

### **Contemporary Legal Issues of Book-entry Securities in the Czech Republic**

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On 1 May 2004 a set of laws came into effect, newly regulating business activities on the capital market, collective investment and bonds. Among other novelties, the recodification introduced a new register of book-entry securities with a two-tier account structure that was to replace the outdated one-tier registering system kept by the Securities Centre. Five years later, the new register has not been yet activated due to the delays accompanying the creation of the central securities depository, a private legal person entrusted with maintenance of the register.

Since its adoption, the new regulation of book-entry securities and their registering has been criticised for inconsistency and legal lapses. Although some of the deficiencies were later amended, the regulation still contains many challenging issues to be dealt with. As most available legal commentaries examined the regulation only shortly after its adoption, not all their conclusions would now apply. The thesis aims to reflect the amendments and provide a complex analysis of the contemporary legal regulation of book-entry securities and the system of their registering in the Czech Republic.

The thesis is composed of four chapters, each of them dealing with a different aspect of book-entry securities. The first chapter describes the legal rationale of a security and the differences between physical, immobilised and dematerialised securities. The new legal definition of book-entry securities is also addressed together with complications the central depository might face when dealing with the securities dematerialized according to the cancelled regulation.

The second chapter concentrates on the registering system. It starts with a brief outline of the tasks central securities depositories traditionally perform in other jurisdictions, of indirect holding of securities and of the so-called beneficial ownership of investment instruments. Later, the nature and inner structure of the register of book-entry securities kept by the Securities Centre is analyzed. The thesis illustrates why the

register's one-tier account structure could not prevail in comparison with foreign systems where securities are ordinarily held on the books of various intermediaries between the investor and the participants of the central depository. After, the thesis scrutinizes the temporary provision pursuant to which the book-entry securities register is still maintained on the basis of the cancelled provisions of Act No. 591/1992 Coll., on Securities, as amended. It points out several interpretative problems arising out of the ambiguous wording of the provision.

In the third chapter, the focus of the thesis shifts to the new registering system introduced by Act No. 256/2004 Coll., on Business Activities on the Capital Market. Newly, the system applies not only to book-entry securities, but also to other investment instruments; it is nevertheless shown that the different nature of the respective registers has not always been sufficiently reflected by the governing provisions. Even though the system still adheres to the concept of a central book-entry securities register, the thesis observes a general decentralization trend which manifests itself not only in the range of persons authorized to keep one of the separate registers but also in the introduction of a multiple-tier account structure. Among the possible registrars, it is the central securities depository whose functioning and position on the capital market are studied in detail.

The fourth and final chapter introduces the reader to the choice of law problems arising in the context of securities traded in cross-border transactions. Starting with an analysis of the conflict-of-law issues pertaining to securities, the thesis proceeds to map the recent legislative initiatives aimed at harmonising the regulations of securities held with an intermediary on the European and international level. The attention of the thesis then shifts to the national legal framework and - in the absence of an explicit conflict-of-law provision - the author identifies the basis on which the law applicable to securities with a foreign element should be chosen.

In the conclusion the new concept of book-entry securities register is evaluated. It is shown that although the legislator incorporated some of the elements inherent to systems based on indirectly held securities, the central register still bears more resemblances to the register kept by the Securities Centre than to registers run by central securities depositories abroad. Thus, as for the approximation to the standards prevailing on the developed capital markets the author sees a greater potential in the

separate register of investment instruments which seems better fitted for intermediated securities.