

8. A COMPARISON OF THE MOST SIGNIFICANT BRITISH AND CZECH COMPANY & PARTNERSHIP FORMS WITH REGARD TO THE LEGAL SYSTEMS IN WHICH THEY OPERATE - RESUMÉ.

As the title suggests, this thesis focuses on a comparison of the most important company forms in the British and Czech law with particular regard to the legal systems in which they operate – i.e. the continental legal system and the common law system.

The Czech legal system ascribes all companies a common name and defines them as „companies“ whilst British law uses two distinct terms and differentiates between partnerships and companies, not only by name but also via regulating them by separate laws and statutes. As one might expect when comparing different legal systems, the problems of terminology and definition are apparent all the way through one's work because there are legal institutions known by the same name in both legal systems but having either a very different meaning as to the substance or having a similar but not identical connotations.

The picture with Czech and British legal system is even more complicated because both of them belong to a different type of legal culture, and therefore do not consider the same sources of law as formally legally binding. Czech legal system, for example, does not consider common law and judicial decisions of higher courts formally legally binding law and so does not adhere to the strict rule of precedent in the way British legal system does. This discrepancy between Czech and British legal system has, of course, a significant practical impact on the resulting regulation of companies and partnerships in both countries. This is because whilst in the Czech Republic the law is found mostly in statutes and widely formulated all encompassing codes of law, in the Great Britain, there are significant areas of law governed by judicial decisions. This is particularly so in cases of typical British partnerships as their statutory regulation is relatively succinct. Although statutory regulation of British companies is much more detailed, there are, nevertheless, still many significant areas of company law regulated by judicial precedent, example of which is the issue of lifting the corporate veil, firstly considered in a famous British case: *Salomon v Salomon & Co.*³⁷⁵

³⁷⁵ *Salomon v Salomon & Co Ltd* [1897] AC 22.

On the other hand, it should be born in mind that the UK statutes and enactments enjoy superiority over common law. This position stems from the UK principle of parliamentary sovereignty and dates back to 1689. Certain degree of convergence of the Czech and British legal system is also the consequence of the European community laws and regulations applicable throughout all the Members States. In the area of company law, this is particularly true of the system of so-called company law directives that have brought British company law more in line with the laws of their continental counterparts.

As far as the law of British partnerships is concerned, there are 3 distinct British forms of partnerships in place in comparison to 2 forms of partnerships available in the Czech Republic. English and Welsh partnership law does not consider its typical partnerships (i.e. *general partnership* and *limited partnership*) to be legal persons with personality different from their members. This sharply contrasts with Czech and Scottish position which ascribes these partnerships legal personality and allows them to „hold property, assume legal rights and obligations [as well as] to sue and be sued.“³⁷⁶

British *general partnership*, being the first form of partnership introduced into the UK law by **Partnership Act 1890**, is similar to the Czech company known as „*veřejná obchodní společnost (v.o.s.)*“, that is also a kind of a partnership which needs to have at least two members, do business with a view of profit and be comprised of members whose personal liability for all the debts and obligations of the partnership is unlimited (**§ 76(1) of the Czech Commercial Code**), similarly as in the UK (**PA 1890, ss. 1(1), 4 and 9**).

Second type of British partnership, *a limited partnership*, is similar to the Czech company known as „*komanditní společnost (k.s.)*“ that is also comprised of at least 2 persons doing business with a view of profit and being at the same time two different types of members, one with limited and one with unlimited liability for all the debts and obligations of the partnership business (**§ 93(1) of the Czech Commercial Code**), likewise as in the UK (**LPA 1907, s. 4(2) and PA 1890, s. 1(1) together with LPA 1907, s.7**).

³⁷⁶ Porovnaj Law Commission, Partnership Law (Law Com. No. 283, Cm 6015; Scot Law Com. No. 192) (London: Stationary Office, 2003), str. 7. Čo sa týka právnej úpravy ČR, porovnaj § 56 odst. 1 ObchZ a napríklad tiež výklad v Štenglová, I., Plíva, S., Tomsa, M. a kol. Obchodní zákoník. Komentář. 11. vydání. Praha: C. H. Beck, 2006, str. 187-191.

The similar approach of Czech and British legal system is also apparent from the fact that in both jurisdictions, legislators make references to the applicability of general law of partnerships to the limited partnerships, except so far as they are inconsistent with a general law of partnerships (compare § 93(4) of the Czech Commercial Code with LPA 1907, s. 7).

The third form of a partnership available under the UK partnership law is *limited liability partnership*, that combines features of both partnerships and companies and is regulated by LLPA 2000, LLPR 2001 as well as by certain provisions of CA 2006, IA 1986 and other enactments, modified at times to suit its particular needs. Although Czech legal system does not provide for incorporation of the same form of partnership, it is recommended in the thesis for this to happen, given the practical benefits of this form of incorporation for large professional partnerships, such as barristers, architects and auditors.

In reference to British company forms, it should be noted that these are, similarly as their Czech counterparts, largely statutory regulated, although there are still areas of British company law regulated by judicial decisions. Both Czech and British statutes ascribe legal personality to these companies that will be different from the legal personalities of their members (compare § 56 odst. 1 of the Czech Commercial Code with CA 2006, ss. 14, 15 and 16). Whilst the British law recognizes 3 most significant companies, Czech legislator regulates only two. As far as companies regulated under CA 2006 are concerned, one can speak about the UK companies (instead of merely British companies) because as of 1st October 2009, the British company law regulation in CA 2006 extends to Northern Ireland (CA 2006, s. 1284).

A British company form, not currently available under Czech law, is a *private unlimited company* with share capital and unlimited liability of all its members. A somewhat similar Czech company had been available in the past and was known as „*komanditní společnost na akcie*,“ although it had been comprised of two different sorts of members, one with limited and one with unlimited liability for the debts of the company.

The second type of company available under the UK law is a *private company limited by shares or guarantee*. This kind of a company can be formed in both jurisdictions and is available also for other purposes than doing business with a view of

profit, in which case it would be known in the UK under the name of a *private company limited by guarantee*. In the case of its second subtype – i.e. *private company limited by shares* (not guarantee) – one can speak of the most favourite business vehicle available to entrepreneurs under the UK law. Similarly in the Czech Republic, the somewhat similar form of a company belongs to one of the most favourite forms of the Czech business vehicles.

British *private company limited by shares or guarantee* is said to be similar to the Czech company known as „*společnost s ručením omezeným (s.r.o.)*” a comparison not entirely apposite but nevertheless also confirmed by European Community law,³⁷⁷ that applies Directives designed for Czech *s.r.o.* and their continental equivalents also to the UK private companies limited by shares, although it could be argued that the UK company is somewhat different from its European counterparts. The perceived difference stems from the fact that in the cases of a *private company limited by shares* (not guarantee) the company's share capital is divided into a number of *shares* and each member can hold more than one share - which contrasts with the regulation of the Czech *s.r.o.*, in which each member can own only one business share, transferability of which is somewhat burdensome (compare § 115 of the Czech Commercial Code). Furthermore, a number of members in the UK *private company* is not subject to any restrictions which contrasts with the Czech *s.r.o.*, in which there is a maximum limit of 50 members imposed. In this regard, it could be said that the UK *private limited company* is somewhat similar to the last type of the Czech company known as „*akciová společnost*.”

It must be however born in mind that this later form of a Czech company is designed for larger business projects and often comprised of a large body of members that makes it more akin to the UK *public company limited by shares or guarantee*, especially when the vast majority of UK private companies have 4 or less members.³⁷⁸ It can therefore be concluded that *s.r.o.* and *private limited companies* do have a similar function in both legal systems.

³⁷⁷ Article 1 of the Twelfth Company Law Directive 89/667/EHS (on single-member private limited-liability companies) dated 21.12.1989, 89/667/EHS, OJ 1989 L395/40.

³⁷⁸ Modern Company Law for a Competitive Economy: Developing the Framework (URN 00/656) (London: DTI, 2000) para. 11.6.

The UK *public company limited by shares or guarantee* is similar to the Czech company form known as „*akciová společnost (a.s.)*.“ Similarly as the Czech *a.s.* and British *private company limited by guarantee*, it can also be used for pursuing other activities than doing business with a view of profit.

The most significant difference between the *UK public company limited by shares or guarantee* and *private company limited by shares or guarantee*, is that the latter is not allowed to offer its shares to the general public nor to have them listed or trade them on regulated markets (CA 2006, s.755 together with 756), whilst the former can. The possibility to offer shares to the section of a public, however comes at a price of further disclosure, greater administrative demands as well as further regulation by Community law, FSMA 2000 and rules made under it, commonly known as **Listing Rules**. The Czech *a.s.* are also subjected to further administrative requirements and more burdensome legal regulation if offering their shares to the section of a public.

The greatest dissimilarity between the Czech *a.s.* and the UK *public limited company* is a result of a different organisational structure within the two companies. This is because the Czech company (*a.s.*) „divides its Board of Directors into two separate, formally distinct bodies, known as management board („*představenstvo*“) and supervisory board“³⁷⁹ („*dozorčí rada*“). In contrast with this approach, British company law does not require a formally separate board structures for inspecting the activities of the Board of Directors, and therefore in the vast majority of cases, the Board of Directors will operate in the UK as a single body, comprising both executive and non-executive directors.

In conclusion, it is suggested that British partnership & company forms are loosely similar to their Czech counterparts, with some of them being more akin to the Czech legal regulation than the others. Although the Czech and British rules of partnership & company law appear to be generally similar, it is submitted that their resulting projection into practice, at places, significantly differs. This is not surprising given the formation of the Czech and British law in distinct legal traditions (*civil law tradition* as oppose to *common law tradition*) as well as in different cultural, societal and economic backgrounds.

³⁷⁹ Gower, L. C. B., Davies, P. L. Gower and Davies' Principles of Modern Company Law (8th edition, Sweet & Maxwell, London 2008), str. 14.