

Termination of office of the member in a governing body of a limited company (Vacation of Company's Directors)

This paper examines the process of resignation of members of the organs of a company. It considers both protection of the member and the company. In the first part it analyzes several issues concerning the interpretation of section 66 of the Commercial Code on the basis of judicial decisions. It focuses on the following issues: the purpose of statutory provisions; ways to notify the resignation; on which day the resignation should have been discussed; who is obliged to summon the meeting and what consequences follow the breach of this duty.

The Supreme Court has ruled that the protection of a company and its director is equally important. Resignation can be notified either at the meeting or delivered to the company. The director is obliged to do whatever may be reasonably required of him to ensure the organ concerned is given a real opportunity to discuss the resignation. If the director does not fulfill their duties and the resignation is not discussed, their tenure will not end. The end of the tenure cannot always be conditioned by convening the general meeting or placing the discussion of the resignation on the agenda. If a director cannot be rightfully required to summon the general meeting, their tenure will end on the day when the regular general meeting should have been held at the latest. This should be very rare in case of executive directors.

The second part examines directors' resignation after the recodification of the Czech civil law due to come into effect on 1. 1. 2014. The process of resignation is regulated by the new Business Corporations Act in s. 59 (5) and may be altered in articles of association or in a director's service contract. The statute forbids a director to resign their office in a time inappropriate for the company. The paper explores possible remedies of a breach of this duty. It suggests that the resignation might be voided, in certain circumstances, by a timely notice by the company but not by its members. Further it deals with a possible conflict between contradictory clauses contained in the articles and the service contract. It concludes that the terms in the articles must generally prevail supposed they had existed before the service contract. The terms in a service contracts cannot be however substantially altered by a later amendment of the articles without director's consent.