

This dissertation looks at selected matters covered by the statutory provisions on the shareholders protection as set out in the Commercial Code. It focuses mainly on the matters contained in Section 196a of the Commercial Code, Section 193 (2) of the Commercial Code, and on the issue of financial assistance. In addition, this dissertation deals with the legal protection of shareholders under the Business Corporations Act which is to take effect on 1 January 2014, and provides a brief outline of how these matters are regulated under certain foreign laws. As well, it provides a comparison with the legal regulations of the European Union.

This dissertation is comprised of three sections, each having several parts. The parts are further divided into articles.

Section 1 analyses the statutory provisions on the protection of shareholders as given in the Commercial Code, and is divided into four parts. The introduction, given in Part I, focuses on the protection of shareholders under the Commercial Code in the general sense. The remaining three parts concentrate on the above said selected statutory provisions. In each of those three parts, I attempt to discuss the key purpose of the provisions, describe how they developed including respective amendment (novelizations) of the Commercial Code and, in this context, also to provide information on where the Czech legal regulation found its source of inspiration.

Part II of Section 1 provides an enquiry into the intracompany transaction rules laid down in Section 196a of the Commercial Code, from the time of their incorporation in the Commercial Code through Act No. 142/1996 Coll. until today. I mention also the interpretative problems associated with such provision. The sources of inspiration for the transaction rules given in Section 196a of the Commercial Code were found in the German law on joint stock companies and also in the EU law, namely in the Second Directive, as amended. The rules set out in Section 196a of the Commercial Code are applicable not only to joint stock companies, but also to limited liability companies. In the following articles of Sections 1, I analyse in further detail individual paragraphs of Section 196a, focusing in particular on the requirements thereof, i.e., the requirements under paragraphs 1 and 2 of prior consent of the General Meeting to a loan or credit agreement or a gratuitous assets transfer and observance of terms customary in business dealings (arms length basis); the requirements under paragraph 3 to have the value of the

transferred or acquired assets determined by an expert appraisal in cases where assets are acquired or transferred for payment of an amount corresponding to at least one tenth of the subscribed registered capital as at the day of such acquisition or transfer and to have the consent of the General Meeting if such transaction happens within three years of the formation of the company. As well, prior consent of the General Meeting is required when providing security for liabilities under paragraph 5.

In this regard, I provide a specification of the persons that are subject to the rules laid down in Section 196a of the Commercial Code, the consequences arising from failure to satisfy the requirements mentioned above, and the exemptions to such requirements. Nevertheless, legal experts often differ in their opinions on the consequences of failure to meet the requirements.

Having regard to the fact that Section 196a (3) of the Commercial Code was inspired by the law of the European Union, namely by the Second Directive, as amended, an outline thereof is also given in this dissertation. As far as the requirement for an expert appraisal is concerned, this dissertation shortly describes how the expert proceeds in determining the value of the assets subject to transfer. Furthermore, I analyse the effects of different experts being appointed by each party and of situations where the assets are transferred for a price different than determined by the expert appraisal, as well as the consequences of such transfer or acquisition. Furthermore, the dissertation briefly deals with the purchase price adjustment in time. The rules given in Section 196a of the Commercial Code are applicable also in relation to the provision of license to intangible assets, while the rules concerning the provision of services are different.

Certain exemptions from the application of the provision on transfer or acquisition of assets between related parties are discussed in more detail in the article relating to Section 196a (4) of the Commercial Code. Namely, these exemptions include transactions within the ordinary course of business; acquisition or transfer at the initiative or under the supervision or surveillance of a state authority; acquisition or transfer on a regulated European market or a foreign market similar to a regulated market or within a Czech or foreign multilateral trading system.

Section devoted to the provisions of § 196a paragraph 5 describes conditions under which the

company may provide security for liabilities of its related parties.

Section 196a (6) of the Commercial Code, which has been incorporated in the Commercial Code recently, deals with reasonable application of the provision on acquisition of property in good faith. This dissertation provides a further analysis of this matter.

The next part of Section 1 looks at Section 193 (2) of the Commercial Code which sets restrictions for transactions where the value of the assets being acquired or transferred during a single accounting year exceeds one third of the company's equity under the conditions listed in the said provision. Such transfers are made subject to approval by the Supervisory Board, or in some cases, by the General Meeting of the company. Again, the dissertation analyses the purpose of the provision and its development. I also point out the deficiencies of such provision. As well, I examine the consequences of failure to observe the rules and the exemptions.

The last Part of Section 1 looks at the issue of financial assistance, in relation to both limited liability companies and joint stock companies. It mentions the key functions and purpose of financial assistance, and of the rules allowing for financial assistance. Again, I have touched on the origin and history of financial assistance in the Czech Republic as regards certain foreign laws and the laws of the EU as well. I provide a listing of and analyse in more detail individual conditions for the provision of financial assistance, separately with regard to limited liability companies and joint stock companies, and specify the consequences of failure to satisfy such conditions, as well as the exemptions to such conditions. I also point out the deficiencies of such provisions. Furthermore, I provide a brief outline of situations where financial assistance is provided by a company to a controlled party, as well as other situations under the Commercial Code to which the provisions on financial assistance are applicable.

The next Section deals with how the above said matters are newly regulated under the Business Corporations Act.

The matters which are currently covered by Section 196a of the Commercial Code are more or less governed by two parts of the Business Corporations Act. Firstly, by Section 255 in relation

to which I analyse the personal, time-related and factual restrictions given therein. Secondly, the said matters are covered by the provisions concerning conflict of interests. Again, I analyse the requirements to be met, the consequences of failure to do so and the exemptions to the said rules. In addition, I provide a comparison of the future Czech legal regulation with the provisions of the Second Directive.

The Business Corporations Act does not contain the rules set out in Section 193 (2) of the Commercial Code. Therefore, mentioning this, I provide a follow up on the matter of financial assistance as it is regulated by the Business Corporations Act. It is necessary to say that compared to the current situation, the provisions on financial assistance as given in the Business Corporations Act are not fundamentally different. Once again, I consider useful to compare the new financial assistance regulations with the EU law.

The last Section looks into how the selected matters are addressed in certain foreign laws, including the laws of selected neighbouring countries - Germany, Austria, Slovakia, and the British law. In addition, in relation to Section 193 (2) of the Commercial Code, I briefly analyse the laws of the Poland, Netherlands, Hungary and Luxembourg.

This dissertation has been made based on the legal status as at 1 December 2013.