

The participation and position of a member of an unlimited liability company,

Abstract

This doctoral thesis examines the participation and position of a member of an unlimited liability company (in Czech veřejná obchodní společnost), which is a topic that has been largely unexplored in theory. At the same time, unlimited liability companies as a legal form are seldom used for running a business in practice. As a result, there are only a very few judicial decisions addressing these issues. For these reasons, the author considers the exploration of this topic helpful and beneficial.

The introductory part of the thesis contains an analysis of the unlimited liability company as a separate legal person, its characteristic features and factors specific to this legal form. This is followed by an extensive analysis of the member, the prescribed requirements for taking the position of a member and an analysis thereof, as well as a list of persons who are not granted the right. The fourth part provides a comprehensive analysis of the interest constituting the member's participation in the unlimited liability company, the ownership of the share and the specific aspects of an interest in an unlimited liability company, including dealing with the interest. The thesis also studies the creation of a member's interest by distinguishing between the derivative form and the primary (original) form. The most extensive part of the thesis deals with the member's rights and obligations associated with the holding of an interest in the unlimited liability company and hence the position of a member. The rights and the obligations are divided into separate comprehensive chapters, namely into proprietary rights and obligations, and non-proprietary rights and obligations. Considering its scope, the thesis does not address the termination of a member's interest in the company.

The purpose of the doctoral thesis is to describe the legal regulation governing unlimited liability companies from the perspective of the Companies' Act and the Civil Code, including a comparison with the previously applicable Commercial Code. In this context, the thesis points to the deficiencies and interpretation difficulties that have been brought or failed to be removed by the recodification of civil law, and, at the same time, suggests a solution to remedy the deficiencies. It also examines directory provisions of the law and their potential modifications in the company's memorandum of association and de lege ferenda considerations.