

Abstract

A vacant membership interest is not an emerging concept in Czech law; disposition of vacant membership interest was regulated already by Section 113(5) and 113(6) of the then applicable Commercial Code. The legislative rules, however, were criticised for being incomplete and hence difficult to be applied: regulated as transferable to the company, the vacant membership interest could be transferred by the company to another company member or third party; if the membership interest was not transferred, the company was required to reduce its registered capital or distribute the vacant membership interest among the remaining company members. The newly enacted amendments have impacted a number of related concepts, introduced a liberalised company law regime and weakened the relationship between company members and companies. The calls on the government from the professional public to introduce a more flexible company law regime, give way to contractual freedom and expand the circumstances in which the company members have a right to withdraw from the company have been heard. The concept of vacant membership interest, now constructed on the principle of company member's representation, was completely revised. The rules introduced by the re-enacted Business Corporations Act are quite complex and detailed; with no gaps in the law likely to happen, the concept of vacant membership interest can be an attractive option.

This thesis aims to analyse the concept of vacant membership interest under the new regime – its legal nature, incorporation into law and correlation with other concepts and conditions – and shows that the current regime, which is diverting from the current approach to the concept of vacant membership interest, is other than optimal as it has introduced inconsistency and ambivalence. The thesis further examines the vacant membership interest in view of its content, ownership issues, related relations, determinative interests, and principles of corporate law.

A part of the thesis is dedicated to circumstances in which the membership interest becomes vacant: it shows the causes, situations and main issues, describes the general rules in relation to the terminated membership and points out to the fact that the legal regime is imprecise in this aspect and requires further interpretation.

In analysing the concept of vacant membership interest, the thesis further focuses on buy-sell agreements – a right to fair settlement and ability of the company to sell the vacant membership interest – and suggests that the vacant membership interest brings about a number of technical or rather practical issues. Not a desirable phenomenon, the vacant membership interest often creates an economic burden for the company in the form of requisite buyback. In this regard, the thesis

also analyses the purpose of regulating vacant membership interests and deliberates on whether the intended goal can be achieved under the current regime.

With the key factors in mind – compliance with company’s commitments and obligations, member’s legitimate interests, interests of creditors and other beneficiaries (heirs, employees, etc.) – the government is to set the buy-sell rules thoroughly to proportionally protect the interests of all the parties involved to prevent major inequalities and/or favouring any party. With a wide degree of contractual freedom, the rules, however, may as well be regulated by the company members themselves in the Memorandum and Articles of Association – as examined by this thesis.

The main part of the thesis focuses on disposition of the vacant membership interest. It considers the new rules for selling the vacant membership interest as well as the director’s powers to affect and regulate the process. By noting down an evident conflict of interest in circumstances where the former company member is (statutorily) represented by the company itself, the thesis finds the current regime other than functional. The requirement for reasonable price of the vacant membership interest is quite vague and can be interpreted in a number of ways; its meaning will have to be clarified by case law. By summarising the current findings, the thesis presents a number of ways this issue can be looked at.

The thesis was compiled in view of the re-enacted Business Corporations Act effective from 1 January 2021. It presents both the current and new regime and points out to the fact that most of the changes and modifications introduced under the new regime were made to correct obvious flaws (grammar, systematic, substantive) in the current legislation raised by the professional public, yet the amended Act – besides introducing new rules for making all membership interests vacant and presenting minor changes to the disposition of the vacant membership interest – brings nothing new.

Key words: a limited liability company, membership interest, vacant membership interest.