

ABSTRACT

NITSCHNEIDEROVÁ, Zuzana: Shares, the subject matter of legal relationships. [Dissertation] / Zuzana Nitschneiderová. – Charles University in Prague. Faculty of Law; Department of Commercial Law. – The Doctor Study Programme: the Degree of Doctor of Philosophy (Ph.D.). – Prague : Law Faculty, Charles University, 2010. 179 pages.

The thesis seeks to examine the legal regulation of shares of joint stock companies. These shares are the subject matter of legal relationships that arise within civil law in particular. This thesis provides an overview and comparison of Czech and Slovak law governing shares and joint stock companies. Such legal regulations mainly stem from the Commercial Code, the Czech Act on Take-Over Offers, and the Czech Act on Changes to Companies and Cooperatives, Act on Securities, or the Czech Act on Entrepreneurship on Capital Markets. In the thesis I hope to offer a complex collection of opinions from Czech and Slovak jurisprudence authorities on selected provisions of the Commercial Code relating to joint stock companies.

The thesis is divided into seven sections. The first section is dedicated to the general legal regulation of shares. The second one deals with the existence of issued shares and describes the various changes to the shares. The third section addresses only the legal regulation of global shares. The fourth section deals with the limitation of share transferability, as it is governed by Section 156 of the Commercial Code. The limitation of transferability is (in this thesis, as well as in the Commercial Code) followed by a discussion of transfers of shares in the fifth section. The sixth section includes treasury shares. The seventh and final section deals with one of shareholder's general rights, that to file a petition with the court to declare the general meeting's decision null and void.

Each section contains practical case studies relating to specific subject matter addressed therein. The case studies represent situations with which I have dealt during provision of legal services and that are more or less typical for joint stock companies and their shareholders. The purpose of including the case studies was to provide the reader with supplemental information and to make the legal science more interesting and useful. I hope that it will prove interesting to see how these legal provisions can be applied in everyday life.

The thesis is focused on a comparison of the Czech and Slovak Commercial Codes and other related Acts in order to compare and contrast the features of each. The results are affected by a close historical and cultural relationship between our countries and by the European Union's legislation.

As regards the particular sections and their specific goals, the section "Shares" includes reviews of Sections 155 and 156 of the Commercial Code and the relevant provisions of the Securities Act. It describes different classifications of shares and securities and includes comments on general characteristics of the shares, including form (certified or uncertified), type (registered or bearer), and kind (ordinary or prior shares). The thesis also includes examples of the shares in order to show how to issue a valid share in accordance with Czech and Slovak law.

The first part of the section also includes a brief historical overview of several kinds of shares that we used several years ago in connection with privatization; the shares were golden shares and employees shares, but they have already been invalidated. Notwithstanding the kinds of shares defined by the actual Commercial Code, the statutes of a joint stock company can still dictate special conditions for the acquisition of shares and for shareholders. This also means that currently employees can be shareholders of a company based upon a special regime governed by the Commercial Code and the statutes of a company. Section one also deals with how the list of shareholders and the decisive day (both terms defined by the Commercial Code) are used in order to determine the person entitled to the shareholders' rights. The case study of the first section is focused on problems that may occur in issuing shares and on how to address invalid shares. The last part of the section contains brief information on how the nominal value of shares was converted from Slovak crowns to Euros in the Slovak Republic.

The second section is called "Changes to Shares". Changes to the shares are governed by the Commercial Code, but also by other special acts including the Act on Changes to Companies and Cooperatives, the Securities Act and the Act on Entrepreneurship on the Capital Market. The section is divided into subsections relating to (i) changes in the form of shares, (ii) changes in the type of shares, (iii) assembling and splitting shares, (iv) changes to the nominal value of shares, (v) changes to the kind of shares, and (vi) changes to the characteristic features of shares (such as name or registered office of the issuing company). The section describes the process of exchange of shares (particularly of certified shares) and the related process of declaring unreturned shares null and void. The last part comments on the special

rights of pledgees in the case of changes to pledged shares. Finally, the section includes a general overview of Slovak legislation relating to the changes to shares.

The third section is solely dedicated to global shares: their legal regulation and practical use.

The following section, “Limitation of Transfers of Shares”, comments on Section 156 of the Commercial Code. It thoroughly investigates the limitations of transferring shares by approval of a board of directors and by pre-emption right. It deals with the process of a shareholder’s request for approval, whether it is granted or refused, and its related consequences. An extensive part is dedicated to pre-emption rights, including an overview of the legal theory of pre-emption rights for shares. In the case of limitations of transfers of shares, there are essential differences between the Czech and Slovak legal regulations. This section contains two case studies. The first describes a situation in which shares were transferred without the approval of the board of directors when the statutes of the company limited the transfer of shares. The second describes a situation in which a shareholder asked for approval for the transfer of his shares and after it was refused he asked a company to buy the shares in accordance with the Commercial Code. However, the parties entered into a dispute about the price for the shares. The case study deals with the question of defining an appropriate price for shares. At the end of the section, there is a brief review of the establishment of a pledge of shares and of the public character of statutes of a company in connection with the public character of the limitation of transfers of shares and of pre-emption rights.

The following section exclusively addresses the transfer of shares that are not traded on public markets. It briefly deals with uncertified shares and focuses on transfers of certified shares, specifically registered shares. The section relates to share purchase agreements and endorsements, as they are governed by the Commercial Code. The case study presents a case in which a transfer of certified, registered shares was prevented by the seller.

The sixth section is focused on treasury shares and relating European, Czech and Slovak legislation. It describes various cases of the acquisition of treasury shares and the connected time and value limits, if any. The case study reflects a situation in which a company acquired and held its own shares and intends to enter into the process of decreasing the registered capital accordingly.

The seventh and final section focuses on one of the shareholders’ general rights: to file a petition with the court to declare the general meeting’s decision null and void. This section reviews in detail the conditions, terms and process of filing the petition. The case study

examines a case in which a shareholder filed such a petition with a Slovak court. The purpose of the case study is to point out differences between Czech and Slovak law in this regard. The end of the thesis is dedicated to the theory of the legal character of the general meeting's decision and briefly comments on the theory of non-existent (*nullus*) decisions of the general meeting.