

Investment Company with Variable Capital (SICAV)

The thesis elaborates on the Czech regulation of the investment company with variable capital (“SICAV”). It is divided into six chapters. In chapter one, the theory of collective investments and its practice in the Czech Republic is described, along with data of the use of SICAVs. Next, the legislation concerning SICAVs, and reasons for its introduction, are summarised. Chapter three includes the definition of Czech SICAV and its features as an investment fund and joint-stock company. In chapter four, the variability of its capital is discussed in broader context of the Czech law system, which is based on a different conceptual approach, and also the capital requirements of SICAVs are mentioned. Chapter five concerns with the obligatory division of assets of Czech SICAVs, leading to the last chapter describing the founders’ and investment shares, and rights of shareholders tied to them. The primary aim of the thesis, in context of an absence of any thorough publications on Czech SICAVs, is to provide a comprehensive description of the distinctive character of Czech SICAVs, and on this basis to point out the parts of legislation that are not set appropriately. In these cases, a specific interpretation of problematic parts of regulation is suggested, and in case it is not possible, the necessary adjustments are offered. The secondary aim of the thesis is to summarise the advantages and disadvantages of SICAVs in comparison with other admissible legal forms of investment funds.

The SICAV in the effective Czech regulation is separated into two considerably independent parts. On one side stands the investment part, connected with investment shares and investment assets and liabilities. Only these assets are invested in the proper sense of collective investments. The owners of investment shares are the investors *stricto sensu*, their interests are, as a rule, tied only to ownership rights. On the other side lies the operating, founders’ part of SICAV, connected with founders’ shares and assets and liabilities tied to day-to-day operations of the SICAV. These include the management and administration of an autonomous investment fund. The owners of founders’ shares are common shareholders, with ownership rights as well as rights to participate in the governance and control of the company. The two parts are strictly separated as to their assets and liabilities, and also from accounting and tax perspectives.

The thesis argues that this substantial separation is not reflected consistently in the whole of Czech SICAV regulation. The right to share the profits of management of the investment assets should belong only to the owners of investment shares. The calculation of the current value of investment shares should be based only on the net value of investment assets and the number of issued investment shares. Also, the requirements regulating the actual investing in the sense of collective investments should be applied only to the investment part of SICAV, whereas the regulation conserving the manager and administrator only to the founders’ part. Further, other rights than property rights of SICAV shareholders are regulated by the Business Corporations Act, which sets forth only general rules and does not take into consideration any similar conditions as those that are specific to current SICAV regulation. Particularly, neither the Business Corporations Act nor the Act on Investment Companies and Investment Funds do take account of the complete proportionate independence in the numbers of issued owners’ and investment shares and their possibly disproportionate values. In context of different, or directly contradictory, interests of the two types of SICAV shareholders, a tension may arise. It will have to be overcome by interpretation of the rules based on profound comprehension of the character of SICAV.