quired in advance of the general meeting has been substantially increased. The management of the participating companies must now publish a plan describing the transaction at least one month prior to the general meeting. Most importantly, the plan must indicate the exchange ratio for the shares and contain a valuation of the assets and liabilities of the participating companies. Such valuations must be supported by at least two expert opinions. The plan, including the two expert valuations, must then be reviewed and confirmed by another two independent experts for each of the companies involved. It is doubtful whether the same two experts can act on behalf of more than one of the companies involved. Prior to preparing the report, each expert must obtain an auditor's opinion on the company's accounting as of the valuation day.

As any merger, consolidation, division or transformation comprises a contribution in kind of the assets of the wound-up entities to the new or surviving entities, the new rules regarding contributions in kind must also be observed. This requires the involvement of additional experts and appraisers.

The statutory bodies and the experts are jointly and severally liable for any damages resulting from an incorrectly determined exchange ratio if the respective person failed to act with professional care. The shareholders have the right to inspect and to request copies of the plan, the expert opinions, annual financial statements for the last three business years and, if necessary, the interim financial statements prepared on the occasion of the transaction at the latest one month prior to the general meeting.

While these requirements, in particular the involvement of numerous experts on different and partially overlapping levels, appear to be rather burdensome even for transactions between non-affiliated parties, they are certainly overly complicated for transactions between affiliated parties. Nevertheless, the Code does not allow the shareholders to waive, even unanimously, any of the strict form requirements which have now been introduced.

Minority shareholders

In addition to establishing more sophisticated pre-transaction procedures to allow the minority shareholders to make an informed decision, the amendments have also strengthened the participation rights of the minority shareholders in the new or surviving companies. Now no shareholder in a joint stock company or a cooperative can be squeezed out against his will as a consequence of a merger, consolidation, division or transformation. On the other hand, if the shareholder does not wish to become a shareholder in the successor company, he has a redemption right against the successor company. The redemption fee is calculated on the basis of the net business assets of the dissolved company. It remains to be seen whether the courts will extend these minority rights also to shareholders or partners in limited liability companies and partnerships.

If a shareholder in a joint stock company suffers a loss due to merger, consolidation or division, he has a compensation right against the successor entity. The compensation equals the difference between the market value of the shares of the wound-up entity and the successor entity and may consist of cash or additional shares in the successor entity. As regards transformation of joint stock companies, any shareholder who did not vote for the transformation or did not attend the general meeting has the right to request the successor company to pay him his share of the net assets of the company.

Creditor protection

The creditor protection remains fragmentary. In the case of division each of the new companies is liable for the obligations assigned to them. The liability is limited to the amount of the net business assets passed from the divided company. Only if the resolution does not specify to which successor company a certain obligation is assigned, all successor companies are jointly and severally liable. In addition to these rules, only the joint stock companies-related provisions grant specific protection and information rights to creditors. Any joint stock company must thereby send the draft resolution to all known creditors no later than one month prior to the general meeting which is to decide on the merger, consolidation, division or transformation. Creditors with open claims whose collection may become doubtful due to the transaction have the right to have their claims properly secured by any and all of the legal successors of the dissolved company.

Summarising the above, it can be said that the amendments are an important first step in introducing a satisfying regime of minority shareholder and creditor protection. However, compared with other modern jurisdictions the rules are still fairly rudimentary and leave many questions open.

CZECH REPUBLIC

Purchase of Shares

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Introduction

According to the recently amended Commercial Code there are various new provisions aimed at increased protection of the minority shareholders of a joint-stock company in the Czech Republic. Apart from the right granted to shareholders having shares or interim certificates with a nominal value exceeding 10 per cent of the capital stock of the company, which can be described as direct minority rights, indirect rights to the minority shareholders have been introduced, which follow from the majority shareholders' obligations. Among such obligations, a reporting duty in cases foreseen by the Code, and an obligation to make an offer to purchase the shares from the minority shareholders will be of particular interest to any investors intending to acquire shares in a Czech stock-company.

Reporting duty

Conditions

Any person (individual or legal entity), acquiring one tenth or more of the voting rights attached to the shares of a stock-company, whose shares are publicly tradable, shall notify this fact in writing to the company and the Securities Centre, keeping the registration of all uncertificated (booked) shares, as well as their owners. If that person, after having made such notification, increases his voting rights by a further 20th or

more, or reduces them by a 20th or more, he shall be obliged to notify any such change to the Securities Centre and to the company itself.

However, the reporting duty shall not apply to an owner of uncertificated shares whose voting rights are only determined by the number of such shares.

Content of the notification

The said notification must include:

- the firm name and seat/address;
- participation in voting rights of the company;
- the date on which the person acquired such participation or when the person's participation fell below the aforestated 10 per cent of the voting rights.

Time limit and consequences of delay

The reporting duty must be fulfilled within three days after the voting rights in question were acquired. As a result of a default to fulfil the reporting duty, that person may not acquire further shares in the company, unless the required notification is dispatched to the Securities Centre. It is further impermissible to exercise the voting rights while in default, and for an additional year from the date the reporting duty was breached, unless the General Meeting complies with the request of such shareholder that the prohibition on his voting be cancelled.

Exceptions

The above-stated reporting duty will not apply to a shareholder who is a controlled person, provided that the reporting duty was fulfilled by the controlling person at the time of fulfilling his own reporting duty, and to an owner of uncertificated shares, if his voting rights are only determined by the number of such shares.

Mandatory public offer to purchase shares

Conditions

Any shareholder, who acquires a holding (either on his own or jointly with other persons through their concerted conduct) in publicly tradable shares carrying voting rights amounting to, or exceeding one half, or two thirds, or three quarters of the total nominal values of all company's shares carrying voting rights, is obliged to make a public offer to purchase the remaining company's publicly tradable shares carrying voting rights within 60 days from the day when such shareholder acquires or exceeds any of the said holding.

For this purpose, preference shares whose voting rights are excluded under the articles of association are regarded as shares to which voting rights are not attached, even if under the law voting rights might be temporarily attached to them.

Exceptions

The above-stated obligation will not apply to the Czech Republic, state organisations, Czech National Bank, legal successor assuming all rights and obligations of a shareholder who has already fulfilled his obligation, and to shares acquired by the creditor for the purpose of securing his claims, or shares administered by a securities dealer or an investment company for other persons, or which are acquired by a securities dealer for the purpose of sale to another person. The afore-mentioned exceptions seem to create practical problems, since some of the Czech majority shareholders are attempting to avoid their obligation to make public offer with reference to the administration (custody) of the shares for others, in particular their daughter companies, which can hardly be refuted. Consequently, it is at least questionable whether this provision will be able to secure the minority shareholders' rights, as intended.

Cancellation of public tradability of shares

If the General Meeting of the company adopts a resolution on cancellation of public tradability of shares, then within 30 days of the effective day of such resolution the company must present a draft of a share purchase agreement to the shareholders, who did not vote for the cancellation or who did not attend the General Meeting. In addition, the resolution must be reported to the Ministry of Finance and to the organiser of the public market on which such shares are traded (eg stock exchange) without undue delay as well as to publish the resolution in a manner prescribed by law and the articles of association for convening the General Meeting. After its publication such mandatory public offer may not be amended, and, moreover, such offer may then not be cancelled. Moreover, the shares must be purchased no later than one month after the day when the validity of the proposal has expired. Should the company not fulfil its obligation within the prescribed terms, it must conclude the share purchase agreement without undue delay, once asked to do so by the shareholders, unless the shareholders have not asked the company within 60 days following the day of the company's default.

Practical issues connected with the public offer

Because of lack of experience with the offers, it is difficult to predict how the new law will be interpreted in practice. Various questions are raised in this respect, for instance whether the shareholders who have not made use of the offer can be contacted and different purchase prices be offered to them irrespective of the purchase price contained in the previous offer, how many and how often offers can be made etc. It is further felt by some foreign investors that there should be certain vehicles obliging minority shareholders to offer their shares. Despite some risks involved, in addressing these issues one might conclude that where something is not expressly prohibited, should be allowed. From this angle the new law could be considered to be the right starting point.