

Law firm KAŇKA & ŠAFKA, advokáti s.r.o. wishes to inform you about select changes in legal regulations concerning capital business corporations (at present capital business companies) effective from 1st January 2014.

POSITION OF BUSINESS CORPORATIONS

Business corporations will continue to have a legal personality, but will no longer have a legal capacity (i.e., it won't be able to act). The members of its statutory body will act for it (i.e. not in its name). Members of the statutory body will therefore be in a position of a representative of the business corporation.



MEMBER OF STATUTORY BODY

It will be possible for a legal entity to be a member of statutory body (the only exception to that will be statutory director and the chairman of the board of directors).

Such legal entity shall however be obliged to appoint a representative – a natural person who will act on its behalf in the performance of the rights and obligations arising from its membership in the statutory body. If the representative is not determined it will automatically be a member of its statutory body.



CHANGE OF MEMORANDUM OF ASSOCIATION / ARTICLES OF ASSOCIATION

Please note the obligation to adapt / modify the content of the Memorandum of Association / Articles of Association so as to comply with the new legislation, before 30.6.2014. Breach of this obligation may lead to the termination of the business corporation by court and to its liquidation, unless the situation is remedied upon courts call.



AGREEMENT ON PERFORMANCE

- Please note a similar obligation in relation to agreement on performance (of executive head / of member of the Board). Once again, the content of such agreement must be adapted to comply with the new legislation before 30.6.2014. Breach of this obligation will be, that the performance (of executive head / of member of the Board) shall become free of charge.
- Please also note that all the components of remuneration that the member of a body is receiving for the performance of his function must be included in the agreement on performance. Approval of General Meeting is no longer sufficient, as was the case previously.



CONCURRENT FUNCTIONS

The recodification returns back to the legal regulation valid before 1.1.2012.

It will therefore be possible for a member of a body to also be in an employment relationship to the company, provided that he will perform a completely different activity from any activity that could be, even partially or marginally subsumed under business management.



EMPLOYMENT OF CLOSE PERSONS

If a person, who is considered to be a close person in relation to a member of a body will be employed in the business corporation, a General Meeting will have to approve the wage (as well as any other benefits) of such person, following a previous statement of a control body (if any).



RESPONSIBILITY AND LIABILITY OF MEMBERS OF BODIES

Please note the selected changes in the area of responsibility and liability of members of the bodies:

- In the case of responsibility for damage of a member of body, it will be newly required to pay a total detriment (i.e. including non-pecuniary damages) and to give over the benefits gained from such unlawful conduct.
- Provided that (i) a bankruptcy of the business corporation is possible (ii) the member of a body had to or could have known that it was possible (iii) he haven't done everything necessary and reasonably foreseeable to avert imminent bankruptcy, and (iv) bankruptcy occurs, then
 - the member of body is obliged to give up all benefits (rewards as well as other benefits) gained over last 2 years before bankruptcy,
 - member of the body shall be liable for the fulfillment of all obligations of the corporation, if so decided by court.

Please note that this applies also to former members, and not only to members of the statutory body, but also to members of control body, Management Board, the liquidator and it is deduced that is applicable also to the proxy.



PROFIT

It will newly be possible to pay out an advance on profit share. The condition is that (i) such advance payment shall not cause the bankruptcy of the business corporation, (ii) that it can be done on the basis of financial statement, when the amount of the advance shall not be higher than the sum of the profits for the current account period and retained earnings from previous years and other funds, lowered by accumulated losses and allocations to the reserve fund (if any), (iii) it will not be possible to use the reserve fund (if any) and assigned own resources for the payment.