

TRANSPARENCY OF SHAREHOLDERS IN THE CZECH REPUBLIC

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Abstract

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The recodification of commercial and civil law in the Czech Republic has resulted in a new concept for the legislation relating to securities. Significant changes have also been made to the legislation covering shares. The new legislation concerns not only the actual form of shares, but also their circulation. The aim of this article is to highlight the most important changes in the legislation relating to bearer shares, especially bearer shares in paper form, and to assess these changes from the viewpoint of their impact on the transparency of joint stock companies and uncontrolled circulation of shares. This assessment will be based on an appraisal of the importance of bearer shares for capital business in the Czech Republic and the effects the new legislation is expected to bring about. The article will also consider possible alternatives in the behavior of shareholders (investors) who prefer to remain anonymous.

Keywords: Civil Code, securities, bearer shares, transparency of joint stock companies, the identity of shareholders

1 INTRODUCTION

From 2014 the recodification of civil law in the Czech Republic will bring about some significant changes to the legislation covering securities. These serious and quite extensively discussed changes relate to the form of securities (Civil Code, 2012). Also discussed in the context of this change are the regulations governing the issue of shares and the permissibility of anonymous shares due to problems with transparency and the ownership structures of joint stock companies. There is rational justification for why this matter is subject to so much discussion. Adequate shareholder protection and transparency is one factor that may raise interest in getting involved with trading corporations and on the Continent this may provide at least a partial substitute for a developed capital market.

From 1. 1. 2014 in the Czech Republic it will no longer be possible to issue bearer shares in paper form. According to the Business Corporations Act, bearer shares will only be permissible as book-entry or immobilized shares (The Act of Business Corporations, 2012)

This recodification of the legislation governing securities is based on the current legislation and its theoretical foundations. Therefore, let's first take a brief look at how securities are defined nowadays in the Czech Republic and what concept is being favored for their legislation. We will then concentrate on the new legislation governing shares and will highlight the basic changes by comparing it with the existing system.

Firstly, it should be pointed out that at present there is no general legal definition of securities, leaving considerable space for legal theory to come into play. This theory traditionally defines the security as a deed associated with a subjective right, a right which cannot be exercised or transferred without that deed. The security legitimizes the exercising of the right, which is not possible without the deed. This situation means that the subjective right is incorporated into the deed, and from then on shares the fate of that deed (Dědič J., Pauly J., 1994). According to J. Dědič, the security currently has a number of purposes, particularly for legitimation, conversion and guarantees (Dědič J., Pauly J., 1994a).

Certain symptoms of this traditional definition are also evident in some legislation. One example is the Code of Civil Procedure (1963), in the section on redemption procedure. This states that a deed that has been lost or destroyed may be redeemed. The legislation materializing this right developed gradually. The legal concept of the security has also seen some developmental twists and turns, as is evident from amendments to the Securities Act. This law explicitly states that it does not introduce a general definition of the security and until the year 2000 securities were governed by an exhaustive list (Securities act, 2000). From 2001 this group of securities was expanded, as this was deemed the predominant group while also allowing the term securities to include deeds declared as securities by the law (Securities act, 2001). In 2002 this postscript was revoked, implying that the legislature expressly allows unnamed securities (Securities act, 2002). This made it possible for a list of securities to be created. This conclusion is also implied by the decision of the Securities Commission (2002) and statements issued by ČNB (2007).

Acceptance of a variant which enables securities to include unnamed securities, i.e. deeds which the law does not explicitly class as securities, may also be found in jurisprudence. This has mostly concluded that such securities are governed by the general provisions of the law on securities and in special matters by the analogous norms governing named securities, which are similar. Support for an open list of securities in the Czech legal system may be seen, for example, in publications by P. Kotáb and M. Bakeš (2009) or J. Kotásek, J. Pokorná and P. Raban (2009). The professional community is also interested in unnamed securities as regards how such securities can be recognized. In this case, legal theory is based on the assumption that if the law does not cover securities they may be inferred from a contract, i.e. an agreement between parties that fulfillment will apply only to the payee of the deed, while the debtor is bound by the context of the deed. It is essential that the content of the deed makes it clear that it is a security, and the agreement must also specify this accordingly. According to Dědič and Pury (1994), the basic general definition of the security is based on its legitimation and transfer function. They consider a security to be a written expression of intent (scriptural declaration) associated with a subjective right in such a way that such a right may only be exercised together with a disposition containing a scriptural declaration (Dědič J., Pauly J., 1994; Pauly J., 1998; Dědič J., Štenglová I., 1997; Pelikánová I., 2003; Čech P., 2011; Elek Š., 2002; Vondráček O., 2012).

Although the Securities Act (1992) assumes that securities may be transferred in other ways than in the traditional manner on the basis of special legislation or an agreement between the parties, this is an exception to the rule. The traditional concept sees the security as a written declaration by

the debtor containing the appropriate obligation, while that obligation is inseparably linked to that written declaration.

2 MATERIALS AND METHODS

The new Civil Code (2012) no longer differentiates between the different securities. In the legal sense of the word, the term securities only means paper securities, while book-entry securities are not considered to be securities in the legal sense. Considering the fact that the current legislation states that the acquirer of bearer shares in paper form assumes the title to those shares through the mere act of their being transferred and is not obliged to register them in any public registry, it is practically impossible to trace that person. Therefore, the new legislation (Civil Code, 2013; Business Corporation Act, 2013) requires that when the title to bearer shares is transferred, the entry listing the owner must also be amended in the central depository in the case of book-entry bearer shares, or with the bank in the case of immobilized bearer shares. The identification of the owner of these shares may then be used by a number of specific bodies, e.g. bodies active in criminal proceedings, public contracting authorities and other subjects defined by the law (Pavelka J., Jahodová I., 2003).

For further analysis of the legislation governing bearer shares, it seems appropriate to highlight at least the fundamental characteristics of share-related legislation in the context of special laws, particularly the Business Corporations Act (Civil Code, 2012; Business Corporation Act, 2012).

The new legislation governing shares will assure more liberal conditions for the business of joint stock companies and also for the status of shareholders. In addition to this, greater flexibility is also expected. The Business Corporations Act allows shares with so-called special rights to be issued, besides the ordinary and preference shares covered by the law and in use today. Joint stock companies are entitled to issue multiple types of shares, with which various different rights are associated. The advantage of this concept is that it gives shareholders the opportunity to set their role or position in the company right from the very beginning, with a good degree of flexibility. This option will obviously not be used if there are varying voting rights or varying shares in profit. The legislation relating to shares with so-called special rights is not based on any detailed definition. Due to this, joint stock companies have a fair amount of latitude for configuring the legal status of shareholders with special rights. The law only gives selected examples of these shares and also mentions special shares, which are expressly prohibited. The law mentions so-called voting shares, which may be issued with various voting weights. Likewise, shares linked to a varying, fixed or subordinate share in profit may also be issued. In contrast, the Business Corporations Act expressly

prohibits interest shares with the right to receive interest, regardless of the company's financial results. Joint stock companies may also issue what are referred to as tracking shares. Companies can reap the advantage of these shares particularly when increasing or decreasing their registered capital. In this case, it will not be necessary to issue new shares every time the capital is adjusted; however, the company will no longer be entitled to simultaneously issue shares with a nominal value.

The new version of the legislation has resulted in a fundamentally new concept for bearer shares. These shares may only be issued as book-entry or immobilized shares. This change has been supported by the conviction that bearer shares in paper form present a risk. Objections to these shares are based on, amongst other factors, these particular characteristics:

- They are easy to fake and may be destroyed or lost.
- Companies have to bear the costs of keeping them with a bank or notary.
- Unlike transfers of book-entry shares, transfers of paper shares are generally more costly, more hazardous and take more time.
- A considerable proportion of foreign companies which have had paper shares in the past have converted them to book-entry shares in order to remain competitive.
- The owners of book-entry shares, in comparison with the owners of paper shares, are easy to trace. Book-entry shares may only exist on the securities account in a depository (e.g. with a bank, securities trader or investment company).

In the context of the outlined changes in the legislation governing securities, and especially paper shares, what will continue to be of interest is, on the one hand, whether conditions are in place to assure that the new shares legislation has

the desired effect, and on the other, what positive or negative consequences these legislative changes may be expected to bring.

3 RESULTS AND DISCUSSION

3.1 How to View the Problem of the Existence or Non-existence of Bearer Shares in Paper Form?

The current laws and legal theory in the Czech Republic allow for two different forms of securities – paper and book-entry. Securities have been issued in paper form by more than 96% of joint stock companies, while the absolute majority of the owners of Czech joint stock companies (53.5%) prefer bearer shares (bonds) in paper form, which in the Czech context allows the true owners to remain anonymous, while 42% of companies have registered shares in paper form. Only fewer than 5% of joint stock companies have issued book-entry shares. Most of these are companies which have participated in coupon privatization or have later listed themselves on the exchange or OTC market (ČEKIA, 2013).

From the figures given in Tab. I it is clear that the Czech Republic is characterized by a large proportion of joint stock companies with an opaque ownership structure.

The results of analyses carried out by the ČEKIA agency in December 2012, which compared the structure of domestic joint stock companies according to the type and form of shares they issue, show that entrepreneurs in the Czech Republic were not concerned about a ban on bearer shares in paper form and, as in previous years, tend to prefer anonymous shares, particularly due to the fact that they are easily transferrable and incur

I: Structure of shares issued in the Czech Republic in 2010–2012

		Number December 2012	Proportion of total December 2012
Companies with registered shares	Book-entry	247	2.30%
	Paper	10 459	97.47%
	Book-entry and paper	24	0.22%
	Total	10 730	42.78%
Companies with bearer shares (bearer bonds)	Book-entry	362	2.62%
	Paper	13 411	97.24%
	Book-entry and paper	19	0.14%
	Total	13 792	54.99%
Companies with registered shares and also bearer shares (bearer bonds)	Book-entry	37	10.69%
	Paper	281	81.21%
	Book-entry and paper	28	8.09%
	Total	346	1.38%
Unspecified	Total	213	0.85%
Total JSC		25 081	100.00%

Source: ČEKIA, 2013

low administrative and financial costs, while the true owners can remain hidden.

For companies which do not enter tenders for public contracts, the abolition of bearer shares in paper form will result in additional unproductive administrative costs (Kohoutek, 2013).

In our opinion, it is also important to bear in mind the current discussions which are proposing that the question of anonymous shares be resolved at the level of the legislation governing the management of public funds and not at the level of commercial law. This stems from the belief that the right to know the true owner is not justified in the private sector and therefore no blanket ban on anonymous shares is necessary. It should be remembered that joint stock companies, as private companies with no influence on the capital market, may set up their ownership structure however they want.

We may concur with this conclusion, provided that the purpose of bearer shares is clarified. This is particularly apparent in the case of companies established on the basis of a public offer of shares. It is in founders' interests both to acquire capital from an unspecified number of people and also to keep the company's administrative costs as low as possible. In this case, lower costs may be achieved due to the fact that the company:

- is not obliged to keep records of shareholders,
- is not obliged to send out invitations to company general meetings to shareholders' places of residence or headquarters,
- is not obliged to determine who their shareholders are. This makes shares more easily transferrable (Mišutková, 2013).

Bearer shares may have a similar impact for companies which, although not established on the basis of a public share offer, have a greater number of shareholders. The disposition of these shares is easier than with registered shares. We agree according to which bearer shares are a flexible system which does have its uses and there are therefore justified grounds for keeping it in place.

There are also other arguments against the "blanket" abolition of registered paper shares. We particularly agree with the argument that claims that ownership anonymity may be achieved through other means than anonymous shares. The abolition of bearer shares can hardly be expected to have the desired effect in the case of shareholders who want to remain anonymous. Our legal system allows shareholders who want to remain anonymous to conceal their identity in a number of different ways, e.g.:

- as a silent partner,
- by exercising shareholder rights through a broker – commission agent. The right to shares is guaranteed by an in-house contract, which does not in itself assure transparency (Rydvan, 2013). By holding an interest in a company through a concern in a foreign country whose legal system

permits the holding of anonymous shares, the true owner will be very difficult to trace (Mišutková, 2013).

3.2 Are There Justified Reasons for Restricting Bearer Shares in Paper Form and Publishing the Identity of Shareholders?

Nowadays our legal system allows shareholder rights to be exercised by anyone who presents bearer shares, regardless of whether or not that person is the true owner of the shares. This situation has attracted criticism, on the grounds that it makes it a much more complicated matter to determine the true owners of such companies, both for public authorities and also for the companies themselves, which should be able to show their shareholder structure. The existence of anonymous joint stock companies particularly poses the risk of lack of transparency and corruption. Another risk is that these joint stock companies may be easily used for money-laundering purposes, as well as for circumventing the law in obtaining public aid or assigning public contracts.

The new duty to book-register or immobilize bearer shares as established by the new law from 1. 1. 2014 responds to these risks and also serves to reveal ownership structures, which is in the public interest. According to Kajánková (2012), this is a flagrant infringement on the part of public authority on freedom of ownership as guaranteed by the constitution, as it forces companies to lay out high costs associated with the duty to book-register or immobilize bearer shares. This may also be inferred from, amongst other things, the fact that, in the interests of identifying the owner of the shares, this duty is set out "merely" as an alternative to the option of converting bearer shares to registered shares.

The right to know the true owner is not justified in the private sector, according to Pergl, who does not consider a blanket ban on anonymous shares to be necessary (Pergl, 2013). Restrictions on the issuance of bearer shares in paper form from 1. 1. 2014 therefore opens room for discussion on whether the new legislation will result in the effects expected (Business Corporation Act, 2012; Criminal Liability of Legal Persons Act, 2011).

From the professional discussions under way on the topic of anonymous shares there are several important ideas that may be applied both in theory and in practice:

A. There are justifiable reasons for restricting the anonymity of shareholders, although this should not be a blanket measure. This conclusion is substantiated by a wide range of arguments.

If owners become legally obliged to reveal their identity and the number of shares they own, the possibility of problems in reliably

II: *Transparency of owners of joint stock companies in selected countries*

Country / Factor	France	Great Britain	Austria	Germany	Czech Republic
Are bearer shares (bearer bonds) in paper form permitted?	NO	YES	NO	YES	YES
Are there mechanisms enabling companies to trace their own shareholders?	YES powerful	YES powerful (legal obligation, sanctions for failure to comply)	NO	YES weak (optional for companies, administrative fines for failure to comply)	NO

Source: Anticorruption Endowment, 2013

and independently verifying such a large amount of information cannot be ruled out.

According to the new legislation, efforts being made to identify the owners of shares only allow the person listed as the formal owner to be ascertained. The true owner, i.e. the person who effectively controls the shares, might not necessarily be discovered. This situation may arise particularly in cases where shares are owned by an anonymous company abroad. This would allow a joint stock company to continue to assure anonymity for the true owners.

Bearer shares are common in many countries of Europe, e.g. Great Britain, the Netherlands, Luxembourg, and Germany. However, their existence is conditional upon regulation of how they are subsequently used, particularly in the field of public contracts (Sokol, 2013).

Similar opinions are expressed by Mišutková (2013) and Pergl (2013), according to whom the lifting of share anonymity is only justified in the case of subjects which plan to draw public funds at the national or European level. In their view, public contracts should be limited to companies that are able to demonstrate or register their shareholder structure right up to the ultimate owners and which pledge to declare any changes in that structure for the entire duration of the public contract. Mišutková and Pergl link the effectiveness of such an approach to the imposition of fines for failure to comply with these duties and instruments used to verify that ownership structures declared under such a scheme are correct.

The identity of share owners should be traceable for bodies active in criminal proceedings, administrative authorities, public contracting authorities, grant and subsidy providers; records of bearer shares should be kept if stipulated by the law. This should also assure protection for owners of bearer shares by assuring that shares remain anonymous to the general public.

One alternative means of resolving the problem of unknown company owners is the duty to declare – the ultimate beneficial owner. According to Kroft (2013), announcing the ultimate owner by means of a statutory declaration is common practice in Great Britain or the USA, for example.

According to P. Novotný (2013), in many the idea of share anonymity may elicit the feeling that there is someone hiding behind that particular company

who desires to remain invisible in order to use that anonymity to conceal illegal actions. We may also concur with other of P. Novotný's conclusions, in which he expresses his conviction that it is not possible to completely prevent corruption through the abolition of anonymous shares. We believe that it is impossible to rule out situations where, following the abolition of bearer shares in paper form, the ultimate shareholder disappears in a tangle of anonymous companies which, as shareholders, will have interests in joint stock companies with registered shares or as partners in wholly transparent limited liability companies.

B. The abolition of bearer shares does not necessarily guarantee transparency, if a company shareholder is a legal entity from abroad.

In cases like these, the ownership structures is generally so complex that it is virtually impossible to trace the owner, even if the company has registered shares.

The number of Czech entrepreneurs that are using foreign companies to accomplish their plans is on the increase. If a Czech company is owned by a foreign company, this constitutes an international holding, which, when set up properly, can provide a number of advantages. Some of the most common advantages include tax optimization, assurance of the anonymity of the true owner, and distribution of business-related risks.

According to Čekia statistics, as of the end of 2012, there were 12 556 Czech companies whose owner was based in a tax haven (Press News ČEKIA, 2013). For Czech companies, the tax benefits of an international structure tend to be secondary and more conventional, the principal of which is the elimination of risks due to the more stable regulatory environment.

At this point it should be said that the number of these could actually be higher, as these statistics are restricted to figures from publicly available sources.

The creation of holding structures retains assets and anonymous ownership. In the case of typical holding structures, the highest-ranking group of shareholder in the holding is those who have links just to a private trust, which allows the owners to anonymously control the entire group. This is followed by the 'parent', which owns the other

III: Number of Czech companies with an owner from foreign offshore and onshore destinations

Offshore destination	2011	2010
Bahamas	35	35
Belize	89	83
Bermuda Islands	6	5
British Virgin Islands	434	422
Gibraltar	65	66
Jersey (Great Britain)	0	0
Cayman Islands	36	32
Lichtenstein	249	245
Netherlands Antilles	15	14
Panama	176	170
Seychelles	367	330
Offshore destinations total	1 472	1 402
Onshore destinations	2011	2010
Cyprus	1 604	1 550
Luxembourg	1 246	1 254
Monaco	50	64
Netherlands	4 519	4 519
United States of America	2 680	2 635
Onshore destinations total	10 099	10 022
Sum total of offshore and onshore destinations	11 571	11 424

Source: Database ČEKIA, 2013

companies. Just below the parent is another tier of companies, which generate profit. The advantage of a private trust for shareholders is that it allows for conditions and rules to be set up regarding who assets will be treated in the future if an unexpected situation happens to arise. The trust also assures

the continuity of assets, without the heirs being able to break them up or misappropriate them. In order to protect against risks, it is important that the assets the trust administers are kept separate from the personal assets of the shareholders themselves.

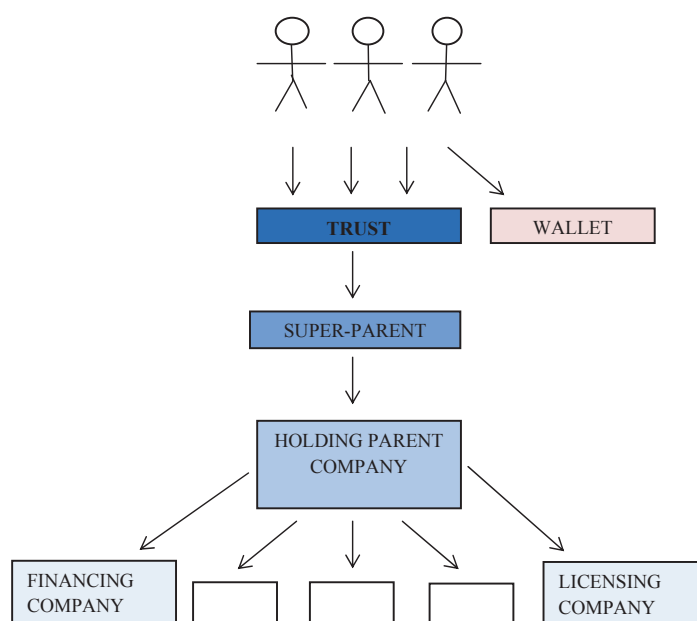
Both onshore and offshore destinations are used by companies in the Czech Republic to set up international structures (ČEKIA, 2013).

Typical examples of onshore countries are the Netherlands, Luxembourg, Cyprus, Malta, Switzerland, the USA and Great Britain. Onshore companies are used for the following characteristics (CFOworld, 2013).

- Companies are established in accordance with the local laws and may trade with any concerns from various different countries.
- Companies are obliged to pay legal entity income tax in their country of residence.
- Companies must keep accounts, file tax returns and are also generally subject to audit.

In recent years there has been a relative increase in the number of Czech companies controlled from offshore destinations. These destinations are characterized by a benevolent relationship with the business community. In the Czech context, these companies are established primarily to conceal the identity of the true owner. Onshore companies differ from offshore companies in that:

- they are established in accordance with the local laws, but must not engage in business in their country of residence,
- that company's revenues from trade are not taxed in that country,
- tax is paid in the form of an annual "existence" fee,
- they are generally not required to keep accounting records or file tax returns (CFOworld, 2013).



1: The holding structure with a private foundation

Source: AKONTinfo, 2010

Offshore companies are popular particularly due to the high level of anonymity of information on the Internet. Unlike in the Czech Republic, information about owners cannot be traced in the companies register via the Internet. Offshore destinations generally require the minimum of information from the companies register, often merely the name and address of the company. In contrast, in the Czech Republic a whole range of detailed information may be acquired within just a few minutes over the Internet, particularly who owns what company, how much that company is worth, and what profit it makes. Besides this, it is also possible to see information about where the owner lives. According to M. Friedberger, this situation is not common in the EU or elsewhere in the world (Report AKONT, 2013).

According to ČEKIA statistics, in 2012 in the Czech Republic entrepreneurs most often used companies from Cyprus, USA and the Seychelles to control their firms. These countries have much less available information in the Commercial Register and limited options for ascertaining information free of charge on-line. Cyprus, for example, records information about shareholders or partners as well as financial statements in the Commercial Register; however, this information may only be acquired by visiting the office personally. Owners are also evidently protected in the USA, where information about executives is in the public domain, while company owners remain anonymous. Maximal privacy is afforded by the Seychelles world (Report AKONT, 2013). Unlike onshore destinations, these do not offer companies tax breaks (CFOworld, 2013).

According to statistics (Database Bisnode, 2013), by the end of April 2013 domestic concerns owned 58% of the basic capital in Czech companies and had an equity stake in 77% of companies. Although foreign owners controlled only 23% of Czech companies, their share of the total registered capital was 42%. 42.5% of total foreign capital was from onshore or offshore destinations, 96% of which were onshore and 4% offshore. These figures may be relativized, although their magnitude and import for the Czech economy cannot be made light of. The majority of these companies used shares in paper form (Report AKONT, 2010).

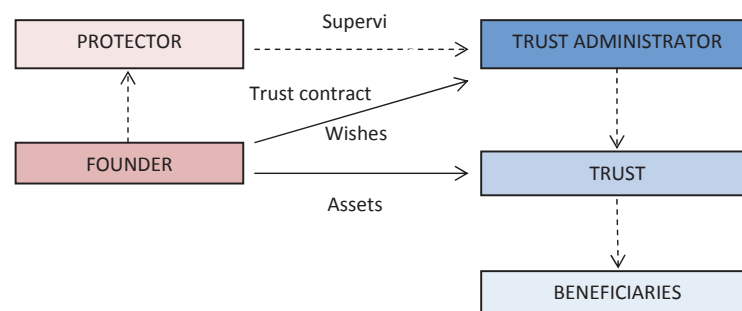
Another way of assuring owner anonymity and protecting the identity and true assets of the owner is the trust. This is a sophisticated means of assuring owner anonymity, as in the case of registered shares, that owner is officially entered in the Commercial Register as a trust shareholder. It is practically impossible for anyone to track down the person who benefits from those assets. In the case of the trust, there is no publicly accessible registry which keeps records of the true owner or beneficiaries.

The trust is popular abroad as it can be used to secure a wide range of different forms of assets. The founder deposits assets with the trust on the basis of a trust contract, which transfers those assets to the trust administration. By doing so, the founder ceases to be the effective owner of the assets, although he does also have the right to appoint a Beneficiary, i.e. the person to whom the proceeds from the trust's assets will go. To put it simply, assets deposited with the trust cease to be the property of the original owner and from then on belong only to the trust. After setting up the trust, the original owner can no longer be associated with those assets (Report AKONT, 2010).

C. Nowadays, sensitive information poses a significant risk for trading companies.

If at least part of the structure of a Czech company is situated abroad, one expected impact of this is that it eliminates the risk of protection of sensitive information. In the Czech Republic trading companies must "leak" information to one another in the Collection of Documents in the Commercial Register. If a company complies with its legal duty to provide information in the Collection of Documents, it reveals its profit, margin and several other details which could be worth a lot in the struggle for competition.

One of the many ways in which the true owner of shares may be traced in the Czech Republic is through minutes from the ordinary and extraordinary general meetings of joint stock companies. The law stipulates that minutes must be drawn up of every general meeting. These minutes contain, amongst other things, a list of shareholders present and the quantity and numbers of their



2: A trust structure and the beneficiaries
Source: AKONTinfo, 2010

shares. The minutes should be lodged with the Commercial Register and public Collections of Documents. Unfortunately, in practice this does not always happen. It is often the case that minutes from joint stock company meetings are missing entirely (Šedová, Benada, 2013). In many cases, the minutes of the general meeting merely state that the list of shareholders present was verified by a notary. Often they are present at the general meeting through the statutory bodies of their legal entity, and there is no mention of the true owners.

In the Czech Republic there is enormous pressure to provide detailed information. To use the Internet to find out who owns a particular company, how much that company is worth, and what profit it makes is free of charge and takes a matter of minutes. Information about the owner's address is just as easy to find. This situation is not common in the EU or elsewhere in the world.

What is needed to assure transparency in business is transparent and publicly available information about the management and economy of the company. Therefore, companies are obliged by law to file this information (financial statements and other accounting-related information) in the Collection of Documents in the Commercial Register. The purpose of this is to provide the business public with information concerning their trading partners and enable assessment of the possible risks of doing business with those partners.

According to the available figures, in the Czech Republic there are a large number of companies which either do not publish this information at all or which only publish partial figures. According to a press release from CRIF (Czech Credit Bureau), as many as 79% of companies failed to disclose their financial statements by the due date. According to this press release, the situation is at its worst in Prague, where as many as 57% of firms have never published a financial statement; in contrast, the best situation is found in the Hradec Králové region (29%) (Analysis of the Czech Credit Bureau, 2013).

Failure to comply with the legal duty to disclose financial statements in the Commercial Register can result in two types of fines being imposed on companies /49/:

- from the Court of Registration (fine of up to 20 000 CZK);
- from the Tax Office (fine of up to 3% of the total value of the company's assets).

The Tax Office and Court of Registration may impose the aforementioned fines on the basis of:

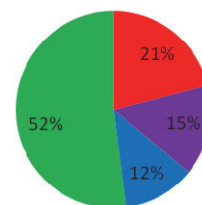
- the Accounting Act – fines to cover enforcement of obligations (Accounting Act, 1991),
- the Misdemeanors Act – business-related misdemeanors (Offences Act, 1990),
- the Act on Criminal Liability of Legal Entities – distortion of data relating to operations and assets (Criminal Liability of Legal Persons Act, 2011),
- Violation of the Commercial Code in conjunction with the Code of Civil Procedure (Bohutínská, 2012).

As of the beginning of 2012, legal entities (companies) may now be prosecuted for the crime of distorting data relating to operations and assets /50/.

It is alarming that so many companies are neglecting their duties. This situation is undoubtedly

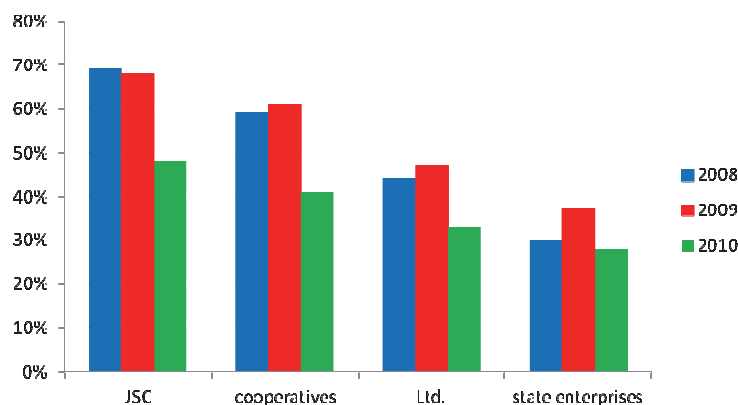
Trading companies by date of last financial statement

■ 2011 and 2012 ■ 2010 ■ 2009 and older ■ without FS



3: Trading companies in the Czech Republic by date of last disclosed financial statements

Source: CRIF – Czech Credit Bureau, a. s., 2013



4: Proper disclosure of financial statements by company type

Source: CRIF – Czech Credit Bureau, a. s., 2013

exacerbated by the commercial courts and financial authorities, which should take steps to recover their debts and may impose heavy fines. Evidently, these fines are not being imposed sufficiently (Press News CRIF, 2013).

Revealing the ownership structures of joint stock companies which carry out public contracts, as well as other economic relations between the state and companies, such as the provision of public aid, the sale or lease of assets, etc.

- According to Gazdík (2003) in the Czech Republic there were around 18% of companies with anonymous shares and these acquired approximately 70% of all public contracts.
- The results of a study carried out by the Centre for Applied Economics has shown that anonymous companies which participate in tenders announced for public contracts or by state and municipal firms attain 23–70% higher profits than those whose owners are public (Zindex, 2011).

CONCLUSIONS

All these arguments lead us to conclude that there are justified reasons for considering the risk of corruption to be the principal risk resulting from corporate anonymity. The adoption of a systematic solution will require more complex quantitative and qualitative analyses of how trading companies behave in the Czech Republic. From the sources available to us we may conclude that solutions tend to be made on an ad hoc basis, rather than systematically. We assume that there is so far no comparison of the new legislation governing securities with how securities are defined in other countries, particularly EU member states. In our opinion, these comparisons may offer new insights into the systematic measures required to increase transparency in the Czech business environment. From this point of view, these are new challenges for research into the conduct of capital corporations.

SUMMARY

In the Czech business environment anonymous companies pose a significant corruption risk. It has been shown that a systematic solution is required in order to reduce the level of this risk. Gradual changes must be differentiated for civil legislation and public legislation.

The primary question in the case of civil legislation is the regulation of bearer shares, especially bearer shares in paper form. Experience from abroad and current experience in the Czech Republic shows that excessive regulation in this area is reflected in a change in how trading companies behave. Trading companies and the owners of shares issued by these companies who want to remain anonymous find substitutes for bearer shares, especially bearer shares in paper form. The problem of anonymity in the enforcement of ownership rights is not limited just to the Czech Republic; this is an international issue. The principal platforms which assure owner anonymity are international holdings. The structures of international holdings are increasingly taking account of owners' desire to remain anonymous, as well as tax optimization. Tightening up the private legislation and increasing pressure for transparency of bearer shares may have the adverse impact of driving companies abroad, with all the undesirable consequences that that would entail. These adverse impacts cannot be ruled out with the securities-related legislation in the new Civil Code and the provisions governing bearer shares in the Business Corporations Act, which only covers bearer shares in book-entry or immobilized form. This treatment of bearer shares is not bonding from the viewpoint of the European legislation and is not generally accepted to such an extent in other countries of the EU.

In public legislation we are seeking answers to the question of how the new legislation may be used to assure a greater degree of transparency in the business environment in the Czech Republic and to what extent. Based on assessment of past experience we may conclude that public procedures are successfully being used to identify owners, and it may be assumed that the scale of this will increase. These findings are of course relativized by several other facts which detract from the anticipated final effects of public regulation:

- When identifying the owner of shares in the manner defined by the law, all we discover is who is listed as the “formal” owner. We will not necessarily ascertain the true owner, in other words the person who effectively controls the shares.
- The issue of the anonymity of owners who trade with the state and other public subjects cannot be dealt with on an ad hoc basis, but must be resolved in a systematic and coordinated manner. Owner anonymity is not just a problem for public contracts, but also for other economic relations between the state and companies, e.g. the provision of public aid, the sale or lease of assets, etc.
- One important factor is the level of detail in the information that owners should provide about themselves, and whether and to what extent that information will be available to the general public or will be limited to a close circle of subjects. The Czech Republic is one country in which a large amount of information is required and made available to the public on-line.
- A crucial role in the problem of anonymous owners is also played by an effective system to check compliance with the legal duty to provide information and a thorough system of fines for breaches

of this duty. The standard of enforceability in the Czech Republic has long been poor in comparison with other EU member states. On this subject, this conclusion is also supported by the extent to which companies are fined for violating their legal duty to provide information to the Commercial Register and financial authorities. Neither the commercial courts nor the financial authorities make proper use of their powers.

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