Journal of Business and Economics, ISSN 2155-7950, USA
November 2021, Volume 12, No. 11, pp. 1087-1101
DOI: 10.15341/jbe(2155-7950)/11.12.2021/002

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Process of Squeezing Out Minority Shareholders From the Viewpoint of the Target Joint-stock Company in the Czech Republic

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Abstract: The focus of the present article is on the legal regulation of "squeeze-out" in the Czech Republic. This term denotes forced passage of the ownership title to shares in a joint-stock company to its main shareholder. Successful implementation of this process is conditional, to a large degree, on how the target company adheres to its legal duties. The article lists the basic statutory duties of the target company in the squeeze-out process. For a squeeze-out to succeed, the main shareholder will have to make certain arrangements with the company. The main duty of the target company in this regard is to convene its general meeting, which needs to adopt a resolution on squeeze-out of minority shareholders. The article goes on to describe the duties borne by the company in the preparation and course of its general meeting, and also those that come into play after the necessary resolution on squeeze-out is adopted.

Key words: shares; target (joint-stock) company; main shareholder; board of directors; general meeting; squeeze-out of minority shareholders

JEL code: K220

1. Introduction

Squeeze-out of minority shareholders is understood especially as a certain legal relationship between the main shareholder and minority shareholders, as the ownership of shares passes from one to the other. However, the target joint-stock company also plays an important role in this regard, taking the form of a number of statutory duties, and usually also a number of contractual obligations, on the part of this company. If these duties and obligations were not performed by the target company, the squeeze-out of its minority shareholders could never be legally accomplished.

The article summarizes the basic statutory duties of the target joint-stock company in squeeze-out of minority shareholders and outlines their general structure. At the same time, it lists certain obligations of the target company that will have to be embodied in a contractual arrangement, in order to ensure the squeeze-out procedure.

2. Legal Regulation of Squeeze-out of Minority Shareholders in the Czech Republic

The legal regulation of forced passage of participating securities ("squeeze-out") was already incorporated in

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Czech Act No. 513/1991 Coll., the Commercial Code, as amended (hereinafter the "Commercial Code"). The question of conformity of this regulation with the constitutional order of the Czech Republic was reviewed by the Czech Constitutional Court, which refused to annul the regulation by virtue of its judgement Pl. ÚS 56/05. The Constitutional Court concluded that joint-stock companies required a flexible legal framework to achieve their strategic goals, which could not always be attained by means of private contracts. The legislature should thus create the necessary preconditions by enacting an appropriate regulation (van der Elst Ch., van den Steen L., 2007, p. 25). According to the judgement of the Constitutional Court, squeeze-out of minority shareholders cannot be viewed as expropriation because minority shareholders are not being deprived of their rights by a public authority enforcing a public interest. The Constitutional Court also stated that the principle of proportionality was maintained. When a single shareholder attains a share of 90% or more in the registered capital and voting rights, the other shareholders lose any realistic possibility to participate in the management and decision-making of the joint-stock company, and their position is limited solely to the property aspects of their investment. If an appropriate compensation is provided for this property component, the procedure can be considered constitutional. The objective is to provide the general meeting with the option to change the structure of private ownership relations among the shareholders (Schmidt-Aßmann E., 2004, p. 1023).

In the cited judgment, the Constitutional Court stated that the economic and legal grounds for introducing this legal institution were mutually conditioned. Joint-stock companies initially made their decisions unanimously and it was not possible to interfere with the internal arrangements of such a company by the law. The "vested rights theory" proclaimed that shareholders could not lose certain rights without their consent. This concept already became untenable at the end of the 19th century, especially for economic reasons. It was therefore replaced by the principle of majority decision-making (Weiss E. J., 1981, pp. 627-657). The development of the economy and the growing number of joint-stock companies and shareholders gradually led to a conflict between the membership strategy and the investment strategy, with ensuing manifestations of tyranny of the minority with the right of veto (Weiss E. J., 1981, pp. 627-657). This is why the original ideas were gradually abandoned and the development led to the current situation prevailing not only in the U.S.A., but also in individual developed countries of Europe, and since 2004, also within the European Union.

It was thus important for the Constitutional Court's judgment regarding squeeze-out that this process is regulated legally and clearly, thus differing from "wild squeeze-out", where other means are used to force out minority shareholders which are aimed at the same objective, but are not regulated transparently and make it possible to harm minority shareholders whose share significantly exceeds even 5% to 10%.

The legal regulation of forced passage of participating securities is currently comprised in Sections 375 to 394 of Act No. 90/2012 Coll., the Corporations Act, as amended (hereinafter the "Corporations Act"). The substance of the legal regulation of squeeze-out in the Czech Republic is that the majority (main) shareholder (90 % of shares or voting rights) asks the target joint-stock company to convene its general meeting. The general meeting then decides on the passage of all other participating securities (hereinafter "shares") to the main shareholder, and determines the amount of the consideration for these shares. The consideration is paid out by an authorized person (bank or securities trader) from funds handed over to that person by the main shareholder before the general meeting is held. Once the resolution on squeeze-out is adopted, the target company files an application for entry of this resolution in the Commercial Register. Upon expiry of one month of publication of the entry of the resolution in the Commercial Register, the ownership title passes to the main shareholder. The former shareholders become entitled to payment of the consideration and interest usual at the time of passage of the ownership title to the main

shareholder. If the consideration is not appropriate to the value of the shares (i.e. reasonable), the shareholders may claim, within three months of publication of the entry of the general meeting's resolution in the Commercial Register, that the main shareholder top up the consideration. If the court indeed grants the right to such top-up to the individual claimant(s) and determines its amount, the main shareholder thus becomes obliged to top up the consideration for all the former shareholders. If the main shareholder settles with the claimant(s) out of court, the main shareholder has to notify the other shareholders of the out-of-court settlement and invite them to also apply for the top-up.

3. Conditions for Convening the General Meeting

The law[1] lays down that a shareholder may ask the board of directors or the administrative board[2] to convene the general meeting and submit to the general meeting for its decision a proposal for passage of all other shares to the shareholder, subject to fulfillment of the set conditions. These conditions are (cumulatively):

1) a certain shareholder holds shares with a total nominal value of at least 90% of the company's registered capital divided into voting shares;
2) the shareholder holds shares carrying at least 90% of the voting rights.

A shareholder who meets these conditions is designated by the law as the main shareholder. The joint-stock company has to assess whether the shareholder who asks for the general meeting to be convened indeed meets the set conditions. Case law pertaining to the former legislation[3] inferred that if the board of directors convenes the general meeting without the main shareholder having previously proved to the board, in the manner specified by the law, that the main shareholder has become entitled to have the general meeting convened, the board is thus not acting with due managerial care, as it is violating the duty to enable the exercise of this right solely to a person who provides the relevant proof in the manner specified by the law. It was noted at the same time that non-compliance with the statutory procedure in verifying the applicant's right to have the general meeting convened can be considered contrary to the law in convening the general meeting if the applicant was not the main shareholder at the time of the request, nor at the time of when the general meeting was convened.

By the deadline for convening the general meeting, the board of directors will have to assess whether the applicant was the main shareholder at the time of delivery of the request or whether it can be reasonably expected that he/she will be the main shareholder on the date when the general meeting is convened. In view of the manner in which the general meeting is convened, the board of directors will be forced to take measures to ensure that an invitation to the general meeting is not published or sent to the shareholders if the fulfillment of the conditions for convening the general meeting is not proven by the person who requested that the general meeting be convened later, after the delivery of the request. Nevertheless, if the board of directors errs and convenes the general meeting although the fulfillment of the conditions specified in Section 375 of the Corporations Act has not been proven, this will have a serious legal consequence only if the applicant is not in the position of main shareholder as at the date of the general meeting.[4]

[1] Section 375 of the Corporations Act.
[2] The rules for the board of directors and the administrative board are identical. Where the text further refers to the "board of directors", this also covers an "administrative board".
[3] Resolution of the Supreme Court of the Czech Republic File No. 29 Cdo 1173/2011 concerned Section 183i (1) of the Commercial Code.
[4] Resolution of the Supreme Court of the Czech Republic File No. 29 Cdo 1173/2011, resolution of the Supreme Court of the Czech Republic File No. 29 Cdo 1169/2011.

Decision-making on whether the applicant has met the relevant conditions may cause certain difficulties especially in cases where the shareholder does not yet hold the required number of shares, e.g., because a part of the shares has yet to be paid up and the shareholder holds interim certificates. It will also have to be assessed whether the shareholder owns voting shares. If the shareholder owned, e.g., preferred shares, it would have to be examined, based on the articles of association of the target joint-stock company, whether they entail a voting right or not.

Together with the request for convening the general meeting, the main shareholder has to deliver to the joint-stock company justification of the amount of the consideration or an expert report and the relevant decision of the Czech National Bank,[5] if required. If squeeze-out takes place after a takeover bid has been made and if the main shareholder has exercised the right to squeeze out within three months of expiry of the binding effect of the mandatory takeover bid, the main shareholder need not provide justification for the amount of the consideration or present an expert report. It holds in that case that the main shareholder acquired the shares as a result of the mandatory takeover bid or voluntary takeover bid and the consideration provided is reasonable.[6]

When making its decision, the board of directors shall assess, in particular, whether the main shareholder is obliged to submit an expert report or justification of the amount of the consideration, and the relevant decision of the Czech National Bank. Decision-making in this regard is governed by the rule that a decision of the general meeting on the passage of all other shares in a company admitted to trading on a European regulated market to the main shareholder requires justification of the amount of the consideration by the main shareholder and prior consent of the Czech National Bank. The legal regulation thus requires the main shareholder to present justification of the amount of the consideration and prior consent of the Czech National Bank in squeeze-out of shareholders whose shares are traded on one of the European regulated markets.

The legal regulation does not explicitly lay down any conditions that would define the requisites of the mandatory justification. Providing justification for the reasonableness of consideration is explicitly a duty of the main shareholder. However, nothing prevents the main shareholder from referring, in such justification, to an expert report drawn up for this purpose by an appointed expert. Justification drawn up by an expert institute or some other suitable person is also acceptable if the proponent (main shareholder) refers to them in the application for prior consent of the Czech National Bank.[7] An expert report may also be necessary to justify the amount of the consideration in cases where participating securities (shares) admitted to trading on a European regulated market are not sufficiently liquid and the prices attained do not provide a sufficient basis for determining a reasonable amount of consideration. The reason why the legal regulation requires justification of the amount of the consideration, rather than an expert report, is probably the requirement that the Czech National Bank grant prior consent to the justification for the proposed amount of the consideration. The law provides for certain aspects of the Czech National Bank's procedure in granting consent.[8] According to this regulation, only the main shareholder is a party to the proceedings before the Czech National Bank; the target joint-stock company is not a party to these proceedings.

In the proceedings on the application, the Czech National Bank reviews the following facts, in particular:

[5] Section 391 of the Corporations Act

[6] Section 393 of the Corporations Act

[7] In this regard, see e.g., CNB's decision file No. S-Sp-2018/00061/572 on application for CNB's prior consent to squeeze-out of minority shareholders in Pražské služby, a.s., available online at: http://www.cnb.cz/export/sites/cnb/cs/dohled-financni-trh/.galleries/prilohy/S-Sp-2018_00061_CNB_572.pdf.

[8] Section 391 (2) to (4) of the Corporations Act.

1) whether the applicant is the main shareholder of the target company;
2) whether the shares of the target company are admitted to trading on a European regulated market;
3) whether the main shareholder has properly justified the proposed amount of the consideration.

Re i): The Czech National Bank requires that the necessary ownership of shares be documented. In case of book-entered shares, the main shareholder shall submit copies of the statements of asset accounts attesting to his/her share in the registered capital and voting rights in the target company. The target company's articles of association specifying the number and kinds of the shares issued may also be enclosed with the application.

Re ii): The Czech National Bank verifies whether the shares are traded on the Czech or some other European regulated market. If the shares were traded only on a non-European market, the Czech National Bank would not have jurisdiction to make a decision in this regard. The list of Czech and foreign regulated markets in the European Union is published in the Official Journal of the European Union.[9]

Re iii): The role of the Czech National Bank does not necessarily lie in the protection of minority shareholders, but rather aims at protecting the capital market, as the Czech National Bank is the regulatory authority in this regard.[10] The Czech National Bank has drawn up and published Information of the Czech National Bank on the valuation of participating securities for the purposes of mandatory takeover bids, public draft contracts and squeeze-outs[11]. The Czech National Bank prepared the document with "the objective of publicly declaring criteria based on which it assesses, in cases laid down by the law ..., ... whether the reasonableness of the consideration has been properly justified".[12] According to the Information of the Czech National Bank, the basic principle in determining the consideration is the application of the price for which the given shares are being traded on a regulated market if the participating securities are sufficiently liquid. The following requirements are imposed by the Czech National Bank on the valuation justifying the amount of consideration:

- comprehensive nature;
- entirety;
- internal consistency;
- independence and impartiality;
- repeatability.

By virtue of its decision, the Czech National Bank grants consent to the applicant (main shareholder) to adopt a decision of the general meeting on the passage of all other participating securities to the main shareholder. Given that the main shareholder does not convene the general meeting, this is, in substance, consent that the main shareholder may request the target company to convene the general meeting to decide on a proposal for passage of all other participating securities to this shareholder.

However, from the viewpoint of the target joint-stock company's board of directors, the decision of the Czech National Bank on prior consent serves as a basis which relieves them of the duty to examine whether the main shareholder has properly justified the proposed amount of the consideration. Consequently, if the main shareholder delivers, together with the request for convening the general meeting, a justification of the amount of

[9] Most recent list was published in EU Official Journal C 209 of 15 July 2011.
[10] Section 1 of Act No. 6/1993 Coll., on the Czech National Bank, as amended.
[11] Available online at: http://www.cnb.cz/export/sites/cnb/cs/dohled-financni-trh/.galleries/legislativni_zakladna/emise_evidence_cp_nabidky_prevzeti_vytesneni/download/metodika_oce_20100816.pdf.
12 Information of the Czech National Bank on the valuation of participating securities for the purposes of mandatory takeover bids, public draft contracts and squeeze-outs, p. 4.

the consideration and prior consent of the Czech National Bank where the Czech National Bank concluded that the applicant (main shareholder) properly justified the proposed amount of the consideration, the conditions for convening the required general meeting are met.

The situation is different if the shares of the target company are not traded on European regulated markets. In that case, the main shareholder is obliged to deliver an expert report to the target company.[13]

The Corporations Act does not lay down explicitly the requisites of an expert report. Ensuring proper performance of expert activities in proceedings before public authorities, as well as expert and interpreting activities performed in relation to legal acts of natural or legal persons, is the subject of special legal regulations[14]. Experts, expert offices and expert institutes are authorised to perform expert activities. The authorisation to perform expert activities arises upon entry on the list of experts kept by the Ministry of Justice of the Czech Republic. An expert report must be complete, truthful and reviewable. An expert report must contain the following requisites:

- title page;
- terms of reference;
- list of underlying documents;
- finding;
- assessment;
- substantiation, within a scope allowing for review of the expert report;
- conclusion;
- if possible, annexes necessary to ensure reviewability of the expert report;
- expert clause; and
- imprint of the expert seal.

Except in justified cases, the expert report must be drawn up in accordance with generally recognized procedures and standards in the given field and industry. In accordance with the generally recognized procedures and standards, the conclusion of an expert report contains unambiguous answers to the questions posed; if the underlying documents or method do not enable the expert to reach an unambiguous conclusion, the expert shall specify the facts which compromise the accuracy of the conclusion.[15]

The expert is obliged to record information on the expert report in the register of expert reports. The register of expert reports is administered by the Ministry of Justice of the Czech Republic. The register is a public administration information system and is kept in a manner enabling remote access.

The relevant expert report attests to the reasonableness of the consideration proposed by the main shareholder, i.e., a finding on the value of the shares held by minority shareholders. In view of this fact, various methods will be used in the preparation of the expert report especially in accordance with the International Valuation Standards.[16]

The main shareholder is required to deliver the justification or expert report to the target joint-stock company. In the invitation to the general meeting, the board of directors has to state decisive information regarding the determination of the amount of consideration or conclusions of the expert report, if required. The board of

[13] Section 376 of the Corporations Act.
[14] Act No. 254/2019 Coll., on experts, expert offices and expert institutes.
[15] Sections 27 to 29 of Act No. 254/2019 Coll.
[16] Current version: International Valuation Standards 2020, issued by the International Valuation Standards Council.

directors is thus required to accept the justification or expert report delivered by the main shareholder. The law does not lay down any rule for the board of directors (administrative board) of a joint-stock company according to which the joint-stock company should review whether the justification or expert report meets the requirements imposed on them by the law. Nonetheless, with regard to justification of the amount of consideration, the board of directors of a joint-stock company can be reasonably required to check whether the Czech National Bank has granted its prior consent to the main shareholder. Since the Czech National Bank assesses whether the applicant has properly justified the proposed amount of the consideration, the board of directors is not required to examine in any way whether the contents of the justification sufficiently conform to the law.

The situation is more complicated in cases where the main shareholder delivers an expert report to the joint-stock company. It can be assumed that the board of directors shall review whether the document delivered by the main shareholder meets the basic statutory requisites for an expert report, in terms of the formal requirements. This includes, in particular, whether the expert report was drawn up by an expert authorized to perform this activity in the given field and possibly with the relevant specialization required for the preparation of such an expert report. The review will also focus on the question of whether the expert report is drawn up in the form prescribed by the law. It can be assumed that certain formal shortcomings of the expert report could be cured before the general meeting is convened, or by the date when it is held, at the latest. At the same time, the board of directors shall check that the expert report is not more than three months old as at the date of delivery of the main shareholder's request.

A separate question is whether the board of directors of a joint-stock company is obliged to provide any co-operation in the preparation of an expert report or justification of the amount of consideration. The law does not impose any such duty on the target joint-stock company and it is thus clear that the board of directors is not obliged to provide it. It is clear, however, that if the board of directors provides the main shareholder, or an expert contracted by the main shareholder to draw up an expert report, with certain co-operation in terms of disclosing publicly unavailable information (e.g. on planned transactions, expected economic results), the proposed amount of the consideration can be determined more accurately.

In providing co-operation, the board of directors of the joint-stock company must act with due managerial care, i.e. protect legitimate interests of the company, because information provided to the main shareholder (expert) may have the nature of business secrets or otherwise jeopardize the interests of the company in competition or in trading on regulated markets.

Based on the principle of equal treatment of shareholders, it can be considered that the board of directors might also disclose information provided to the main shareholder (expert) to the other shareholders, e.g., at a general meeting, and thus enable them to assess whether the amount of the consideration proposed by the main shareholder is correct.

4. Convening the General Meeting

A request made by the main shareholder in this context represents a special case of a qualified shareholder's request for convening the general meeting[17]. According to this provision, qualified shareholders may request the board of directors to convene the general meeting to discuss matters proposed by them. The shareholders shall either submit a proposal for a resolution on the proposed matters, or justify the matters.

[17] Section 366 of the Corporations Act.

The board of directors is required to convene the general meeting within 30 days of the date of delivery of the request of its main shareholder. The thirty-day period runs from the delivery of the main shareholder's request, including all the annexes. During this period, the board of directors must convene the general meeting in the set manner, i.e. publish an invitation to the general meeting on the website of the joint-stock company and, in the case of registered shares, send an invitation to the shareholders' respective addresses set out in the list of shareholders, or announce the general meeting in the manner specified by the articles of association.

Since a main shareholder's request is a special case of convening the general meeting on request of a qualified shareholder, the deadline for publication and sending of the invitation to the general meeting is reduced to 15 days in this case; in the case of a company whose shares have been admitted to trading on a European regulated market, the deadline for publication and sending of the invitation to the general meeting is 21 days.[18]

In the invitation to the general meeting, the board of directors is obliged to include the requisites laid down by the law[19] or by the articles of association of the joint-stock company. The invitation to the general meeting must include at least:

a) the business name and registered office of the company;

b) the venue, date and time of the general meeting;

c) specification as to whether an ordinary or substitute general meeting is being convened;

d) the agenda of the general meeting;

e) the decisive date for participation at the general meeting, if specified, and explanation of its importance for voting at the general meeting;

f) the draft resolution of the general meeting and its substantiation;

g) the time limit for delivery of the shareholder's statement on the agenda of the general meeting if correspondence voting is allowed; the said period must be at least 15 days commencing upon delivery of the invitation to the shareholder, unless the articles of association specify otherwise.

The board of directors may not change the proposed agenda of the general meeting. The board of directors may supplement the proposed agenda of the general meeting only with the consent of the main shareholder, who requested that the general meeting be convened.

Furthermore, the invitation to the general meeting must also include three other basic types of information. Primarily, these are data containing information regarding the determination of the amount of consideration or conclusions of the expert report, if required. In the invitation to the general meeting, the board of directors shall specify, based on information obtained from the main shareholder's request, or from an annex containing an expert report or justification, decisive information as to determination of the amount of consideration or conclusions of the expert report. Decisive information can be deemed to include not only information on the amount of the proposed consideration, but also the manner in which the amount of the proposed consideration was determined (expert report, justification, amount of consideration in the case of a mandatory takeover bid).

The board of directors need not include in the invitation any information on the main shareholder or attach an expert report or justification of the amount of consideration to the invitation. However, the board of directors must make these details available to the shareholders. The invitation to the general meeting must, nonetheless, include a notice to the shareholders that, at the shareholder's request, the company will issue, free of charge, copies of

[18] Section 367 (1) of the Corporations Act.
[19] Section 407 of the Corporations Act.

documents containing information that the company is obliged to make available to the shareholders at its registered office. This includes information on the main shareholder's identity, an expert report or decision of the Czech National Bank, and justification of the amount of the consideration provided by the main shareholder if the shares in question have been admitted to trading on a European regulated market.

In the invitation, the board of directors (administrative board) has to invite pledgees to inform the company of the existence of any pledge of the shares issued by the company. The holders of pledged shares are obliged to notify the company of the pledge and the identity of the pledgee without undue delay after they become aware that the general meeting is being convened. This extends the requisites for an invitation to the general meeting which is to make a decision on squeeze-out. While a pledgee need not be the company's shareholder, in which case the invitation will not be delivered to the pledgee, the owner of the pledged participating security will receive the invitation.

The third piece of information that the board of directors is obliged to include in the invitation to the general meeting is the board of directors' statement on whether it considers the proposed amount of consideration reasonable. The law does not prescribe any procedure for the board of directors in determining whether the amount of the consideration proposed by the main shareholder is reasonable. It will be up to the board of directors to decide whether it will limit itself only to review of the underlying documents received from the main shareholder (expert report, justification of the amount of consideration) and compare them with its own information that it has available, or whether it will obtain an expert report on the basis of agreement with an expert selected by the board of directors. If the board of directors opts for preparation of an expert report based on agreement with an expert, the board has to make its own statement on the proposed amount of consideration. The expert report serves only as an underlying material for such a statement by the board of directors. If the board of directors has commissioned an expert report, it is not obliged to make the report available to the shareholders. The board of directors' statement on the reasonableness of the amount of consideration proposed by the main shareholder may be one of the decisive arguments for the shareholders as to how they should vote at the general meeting on the draft resolution and, as appropriate, whether they should request top-up of the consideration because the consideration was set at an unreasonably low amount.

Whenever a general meeting is convened at request of the main shareholder with a view to squeezing out minority shareholders, the general meeting will decide that the shares will pass to the main shareholder for a consideration in an amount determined by the general meeting. The invitation to the general meeting must include the draft resolution. The draft resolution of the general meeting may not determine the consideration at an amount lower than that indicated by the expert report, or in justification of the amount of the consideration in cases where the law does not require that an expert report be prepared. If the board of directors drafts the resolution, the board may propose in the resolution an amount higher than proposed by the main shareholder. Of course, the main shareholder may submit a counter proposal in this regard. If the resolution is drafted by the main shareholder, the board of directors will include the draft resolution in the invitation, together with its own statement on the reasonableness of the proposed amount of consideration.

5. Disclosure of Information

The board of directors is obliged to ensure that the joint-stock company makes certain information available at its registered office. This enables the shareholders to obtain more detailed information for deciding on how to

act at the general meeting,[20] and in particular, whether to exercise the right to claim top-up of the compensation.

Shareholders have the right to inspect details on the main shareholder. The scope of details on the main shareholder is not defined by the law. This information comprises, as a minimum, the shareholder's name or business name, place of residence or registered office, and facts indicating that the shareholder meets the conditions allowing him/her to ask for convening the general meeting with a view to squeezing out minority shareholders. Further information on the main shareholder may also be provided if such information is available to the board of directors and its disclosure is not limited by the law (duty to maintain confidentiality, business secrets, etc.). In particular, in cases where a business grouping has existed for a long time, the target joint-stock company will usually have certain information available on the main shareholder.

The scope of further data disclosed differs depending on whether the main shareholder is obliged to submit an expert report or justification of the amount of the consideration.

If its shares are admitted to trading on a European regulated market, the joint-stock company is also obliged to make available the Czech National Bank's decision and justification of the amount of the consideration presented by the main shareholder. In addition to the duty to make information available at the registered office of the company, the company is also required to publish information on delivery of the main shareholder's request for convening the company's general meeting held with a view to squeezing out minority shareholders on the company's website.

In cases where the company shares have not been admitted to trading on a European regulated market, the company is obliged to make available the expert report delivered by the main shareholder.

The time as from which the joint-stock company is obliged to make the required information available is not expressly specified by the law. The company may disclose the information at its registered office as soon as it obtains it, i.e., once it receives the main shareholder's request for convening the general meeting. This will usually be purposeful only if the shareholders simultaneously become aware that the information is available. Information on disclosure of information will be available to shareholders holding shares admitted to trading on a European regulated market at the time of receipt of the main shareholder's request by the joint-stock company.

If the company shares are not admitted to trading on a European regulated market, the shareholders will generally become aware that the relevant information is available at the company's registered office only when they receive the invitation to the general meeting. Until then, it will usually serve no purpose that the information is made available at the company's general meeting.

The duty to make the information available terminates once the general meeting adopts the decision on squeeze-out.

6. General Meeting

The board of directors of the target joint-stock company is required to arrange for the organization and course of the general meeting. Along with the usual tasks, such as arrangement of premises for holding the general meeting, organization services and nomination of individuals to the bodies of the general meeting, this will also include arrangement of the presence of a notary to draft a public deed (notarial deed) on the decisions taken by the general meeting. The board of directors must participate in the general meeting.

The consent of at least 90% of votes of all the shareholders is required for the adoption of the general

[20] Resolution of the Supreme Court of the Czech Republic File No. 29 Cdo 2592/2010.

meeting's decision on squeezing out minority shareholders, where the holders of non-voting shares and the main shareholder always have the right to vote. However, this rule does not apply to all joint-stock companies because, for example, the holders of preferred shares in a bank do not have the right to vote.[21]

In addition to the proposal for the passage of shares, the draft resolution of the general meeting shall also include identification of the main shareholder, the amount of the consideration and the deadline for payment of the consideration.

During the general meeting, the board of directors is responsible for providing explanations at the shareholders' request. It may also be asked to provide information on whether the main shareholder has handed over to the authorized person the necessary amount of money required for payment of the consideration. However, the board of directors is limited by the fact that the general meeting deals with a proposal of the main shareholder and underlying documents presented by the main shareholder. It cannot be fairly required of the board to explain the aspects of the main shareholder's proposal, or answer any questions regarding the underlying documents submitted by the main shareholder (expert report, justification of the amount of consideration). It can be assumed that a majority of requests for explanation will concern the board of directors' statement on whether it considers the proposed amount of consideration reasonable.

7. Obligations of the General Meeting

The board of directors is obliged to lodge an application for entry of the general meeting's resolution concerning the squeeze-out in the Commercial Register without undue delay after the resolution is adopted. At the same time, the board of directors shall publish the resolution of the general meeting and the conclusions of the expert report, if required, in the manner specified by the Corporations Act and the company's articles of association for convening the general meeting, and deposit the relevant public deed (notarial deed) at the company's registered office for inspection; the fact that the deed has been deposited will also be mentioned in the published notice. In cases where the law does not require an expert report, the joint-stock company shall publish the justification of the amount of the consideration and the consent of the Czech National Bank, if required.

Publication of the entry of the resolution in the Commercial Register marks the time decisive for commencement of the relevant period of time. The ownership title to the share passes to the main shareholder upon expiry of one month of publication of the entry of the resolution in the Commercial Register. The ownership title passes automatically by operation of law upon expiry of the set period. No endorsement is required for the passage of shares in the form of share certificates, and any potential limitations on transferability laid down by the law or the company's articles of association will not apply either.

The joint-stock company will be required to perform certain acts to effect the change the shareholder.

With regard to book-entered shares, the company is obliged to give an instruction to the person authorized to keep the relevant records of securities to register the change of the owners of book-entered shares in asset accounts, without undue delay after the ownership title passes to the main shareholder. The change will be entered in the records on the basis of the general meeting's decision, or more specifically, the notarial deed on the decision of the general meeting, on the passage of shares and a proof of publication attesting to the expiry of one month of publication of the entry of the resolution in the Commercial Register. The change in the records of ownership title consists in the fact that the shares are transferred in the records from the asset accounts of the current owners to

[21] Section 20 (2) of Act No. 21/1992 Coll., on banks.

the asset account of the main shareholder. If the main shareholder has several asset accounts, the shareholder must specify to the company which of the shareholder's asset accounts the shares are to be transferred to.

The Corporations Act does not contain any explicit provisions governing the change of the owner in the case of immobilized shares. In that case, it will be necessary to proceed by analogy with book-entered securities. The joint-stock company will instruct the immobilized security depositary to effect the change of the owner.

With regard to shares issued as share certificates, the Corporations Act requires the former shareholders to submit their shares in the joint-stock company within 30 days of the passage of the ownership title. The shareholder's duty to present the shares is reflected in the duty of the joint-stock company to take over the shares presented by the shareholder. In order to comply with this duty, the company must create preconditions for takeover of the submitted shares. This will include, in particular, specification of the place where the shares are to be submitted and of the persons authorized to take over the shares and keep records of their takeover. For practical reasons, information on the procedure in the submission and takeover of shares must be notified to the shareholders in a suitable manner, e.g., on the website of the joint-stock company.

Given that the company cannot realistically take the shares over without co-operation of the former owners, the law provides an incentive to the former shareholders to perform their duty by stating that the shareholders may not claim the consideration as long as they are in delay with submitting their shares. The former shareholders also become entitled to payment of the consideration and interest usual at the time of passage of the ownership title only upon the submission of the company shares, as from the date of passage of the ownership title to the shares to the main shareholder. The right to interest does not arise as long as the entitled person is in delay with the submission of the shares.

The former owners of the shares are required to submit these shares to the company within 30 days of the passage of the ownership title.

After expiry of the set deadline, the company becomes obliged to set an additional deadline for the submission of the shares, which may not be less than 14 days. The law does not lay down any procedure for notifying this additional deadline; if such rules are not laid down by the articles of association or a resolution of the general meeting, the procedure will depend on a decision of the company's board of directors. This could include a notice addressed to the former shareholders who have not yet submitted their shares, or the procedure set out for convening the general meeting. A procedure should be chosen that will make it possible to effectively inform the former shareholders of the additional possibility to perform the duty and will not burden the joint-stock company with unnecessary and non-purposeful costs.

If a former shareholder fails to submit his/her shares to the company even within the additional deadline, the board of directors is obliged to declare the shares void and notify the shareholder of this fact by a written notice sent to the address of the place of residence or registered office specified in the list of shareholders. The company will issue new shares of the same form, kind and nominal value to the main shareholder without undue delay. If a no-par value share has been declared void, the joint-stock company will issue a share without a nominal value.

The law does not explicitly specify when the former shareholder becomes entitled to payment of the consideration in case the shareholder has failed to submit the shares to the joint-stock company and the latter declared them void after expiry of the relevant deadlines. It can be inferred based on earlier case law[22] that the former shareholder becomes entitled to payment of the consideration at the time when he/she was deprived of the

[22] Resolution of the Supreme Court of the Czech Republic File No. 29 Cdo 2321/2011.

possession of the shares, i.e., when the shares were declared void by the company's board of directors.

The company shall hand the shares submitted by the former shareholders over to the main shareholder without undue delay. The company does not become the owner of such shares, but is rather only supposed to keep the shares in its possession and subsequently hand them over to the main shareholder. The company is required to mark the new owner on any shares in the form of order securities. It must also mark the change of the shareholders without undue delay in the list of shareholders, without the main shareholder being required to prove to the company the reasons for the change.

The company should also be aware which shares were pledged, based on a notice given by the shareholders or based on an invitation addressed to the pledgees. Such a pledge terminates *ex lege* upon passage of the shares in the process of squeeze-out. If the pledgee has the pledged shares in his/her possession, the pledgee is required to submit the shares to the company. If these shares are not submitted, the company must proceed in the same way as in the case of shares not submitted by the former shareholder.

In the case of pledged book-entered shares, the company has to instruct the person who keeps records of book-entered securities to mark the change of the owner in the relevant asset account and delete the pledge, after the ownership title to the shares passes and the pledge thus terminates.

In the case of immobilized shares, it will be necessary to proceed by analogy as the law does not contain any explicit provisions in this regard.

The person authorized to pay the consideration will provide the consideration to the person who formerly owned the share upon of passage of the ownership title unless it is proven that the share has been pledged. In such a case, the authorized person will provide the consideration to the pledgee unless the owner proves that the pledge terminated before the passage of the ownership title. The duty to provide the consideration to the entitled persons is borne by the authorized person. In view of the above-mentioned legal regulation, especially in relation to shares in the form of security certificates, the authorized person will need information on certain facts (e.g., submission of a share to the joint-stock company or declaration of a share void as a result of failure to submit it to the company) in order to pay the consideration. This information is only available to the joint-stock company and it will be the duty of the main shareholder to reach agreement on the conditions under which this information will be provided.

As of the date of passage of the ownership title to the shares, i.e. upon expiry of one month of publication of the entry of the general meeting's resolution] in the Commercial Register, the shares are removed from trading on the Czech regulated market. The law requires that the joint-stock company inform the organizer of the regulated market, without delay, of the general meeting's decision on squeeze-out [and] of the date of passage of the ownership title to the main shareholder, and thus removal of the shares from trading.

The company has no duties related to payment of the consideration by the authorized person. Certain duties of the company might be established by agreement with the main shareholder, as stated above.

In connection with the former shareholders' right to claim top-up of the consideration from the main shareholder, if the consideration provided is not reasonable with regard to the value of the shares as of the date of passage of the ownership title to the main shareholder, the main shareholder has to announce the date of exercise of the right to top-up by the squeezed-out shareholder without undue delay. According to the law, this should happen in the manner specified by the law and the articles of association for convening the general meeting. The main shareholder will not be able to make such an announcement without collaboration from the company, especially because a notice has to be published on the company's website. To this end, the main shareholder and

the company will have to make an agreement establishing conditions for the performance of the main shareholder's duty. This will thus be a contractual obligation of the target joint-stock company.

If, in a dispute where the former shareholders claim top-up from the main shareholder, the court indeed grants the right to a different amount of the consideration, such a decision will also be binding for the main shareholder, as regards the merits of the right granted by the court, towards other shareholders. By the deadline set by the court, the main shareholder shall pay the top-up intended for all the shareholders into court escrow and, at the same time, deposit in court escrow the amount of interest from the date of passage of the ownership title to the shares, the amount of default interest and the amount of the anticipated purposefully expended costs associated with the court escrow. Together with the decision on granting the right to top-up, the court shall also display on its official board an invitation to the shareholders to apply with the court for the top up.

At the same time, the joint-stock company is obliged to publish this court decision and invitation to apply for the top-up in the manner in which the general meeting that decided on forced passage of the shares was convened. It can be expected that the main shareholder will provide the joint-stock company with the necessary collaboration especially by notifying the company of the court decision. The company might not be a party to the proceedings on the right to top-up and it might thus not be aware that the decision has been adopted.

If the main shareholder settles with the claimant(s) out of court, the main shareholder has to notify the other shareholders of the out-of-court settlement and invite them to also apply for the top-up at the relevant court. The notice and invitation shall be communicated to the shareholders in the manner in which the general meeting that decided on the forced transfer of the shares was convened. The joint-stock company will have to provide its collaboration in this procedure as well. Without undue delay after such an agreement is concluded, the main shareholder shall pay the top-up intended for all the owners of the same kind of shares into court escrow and also deposit in court escrow the amount of interest from the date of passage of the ownership title to the shares, the amount of default interest and the amount of the anticipated purposefully expended costs associated with the court escrow. The amount of the top-up vis-à-vis the other holders of the same kind of shares may not be lower than the agreed amount of the top-up.

The target joint-stock company will be the one to be sued in potential litigation concerning invalidity of general meeting's resolution. Such disputes may be initiated by the former shareholders on various grounds. The shareholders may contest the reason for and manner of convening the general meeting, the course of the general meeting, the underlying documents for the general meeting's decision, etc. The former shareholders' right to apply in the court for declaring the resolution of the general meeting on squeeze-out void is also not prevented by the fact that the ownership title to their shares has already passed at the time when such an application is filed. Nonetheless, the fact that the consideration is supposedly not reasonable is not a reason for declaring the general meeting's resolution on passage of the shares to the main shareholder void. It can be concluded based on case law[23] that the resolution of the general meeting cannot be declared void, either, on grounds that the expert report submitted by the main shareholder was based on inappropriate valuation approaches or did not use suitable valuation approaches correctly.

[23] Resolution of the Supreme Court of the Czech Republic File No. 29 Cdo 3797/2008, or the Opinion of the Plenum of the Constitutional Court of the Czech Republic - st. 36/13, Collection of Laws No. 132/2013.

8. Conclusion

An overview of the basic legal duties of the target joint-stock company within the process of squeezing out minority shareholders shows that the company has a number of duties imposed on it by the law. In the performance of these duties, the board of directors, as the company's governing body, must proceed very carefully because incorrect or insufficient performance of one of these duties could jeopardize the validity of the squeeze-out resolution adopted by the general meeting and thus also the validity of the whole squeeze-out process. By taking an incorrect procedure in the performance of their duties, the board members could breach the duty of due managerial care and, as a result, they could be ordered by the court to compensate any damage thus caused.

However, the position of the board of directors of the target joint-stock company and, as a matter of fact, of all its bodies and employees is rather difficult, especially in terms of the mutual links between the target joint-stock company and the main shareholder within the existing business grouping, especially if the companies involved belong to such a corporate group. Of course, a certain pressure on the target company is also caused by the fact that the main shareholder will become the company's sole shareholder as a result of the decision on squeeze-out. Nonetheless, these facts should motivate the board of directors and further bodies of the joint-stock company to be even more cautious and careful, especially in the preparation and course of the general meeting. Indeed, the main duty of the target joint-stock company in the process of squeezing out minority shareholders is to ensure that the general meeting's resolution on squeeze-out is valid. A finding that such a squeeze-out resolution was not adopted validly would have legal consequences not only in that the passage of the ownership title within the squeeze-out would be cancelled, but also in the form of the main shareholder's right to a refund of any consideration already paid for the shares.

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