

COMMERCIAL CODE ("Obchodní zákoník")

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as subsequently amended "Obchodni zakonik"

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PREFACE

The Commercial Code (Act No. 513/1991 Coll.) came into effect from 1 January 1992. It repealed a number of previous Acts, such as the Economic Code, Joint Venture Act, International Trade Code, Joint Stock Companies Act, Act on Economic Planning and others.

The Commercial Code was amended several times between 1992 and 2000. The most extensive amendments were adopted under Act No. 370/2000 Coll. (effective as of 1 January 2001) as part of the process of harmonizing Czech law with the European Union legislation. The full wording of the Commercial Code (after all amendments) was promulgated under Act No. 63/2001 Coll.

This Code contains fundamental provisions on entrepreneurs, Czech-owned and foreign-owned businesses and the formation and structure of companies, partnerships and co-operatives. General commercial partnerships (unlimited partnerships), limited partnerships, limited liability companies, joint stock companies and co-operatives are all considered to be legal entities if formed and incorporated under Czech law. The Code also includes detailed provisions on various types of contracts. Contracts which are not regulated by the Commercial Code are subject to the provisions of the Civil Code.

COMMERCIAL CODE "Obchodní zákoník"

No. 513/1991 Coll.,

amended under Acts No. 264/1992 Coll.,
No. 591/1992 Coll., No. 286/1993 Coll.,
No. 156/1994 Coll., No. 84/1995 Coll.,
No. 94/1996 Coll., No. 142/1996 Coll.,
No. 77/1997 Coll., No. 15/1998 Coll.,

No. 165/1998 Coll., No. 356/1999 Coll., No. 27/2000 Coll., No. 29/2000 Coll.,

No. **30/2000 Coll.***, No. 105/2000 Coll., **No. 367/2000 Coll.*** and **No. 370/2000 Coll.***

Amendments under Acts No. 30/2000 Coll., No. 367/2000 Coll., and No. 370/2000 Coll. are printed in bold type and came into effect on 1 January 2001, unless otherwise indicated. The full wording of the Commercial Code, including amendments, was promulgated under Act No. 63/2001 Coll.

PART ONE

GENERAL PROVISIONS

CHAPTER I

FUNDAMENTAL PROVISIONS

Division I

Introductory Provisions

Section I

Scope of the Code

(1) This Code regulates the status of entrepreneurs*, business obligations and some other relations connected with business activities**.

(2) The legal relations specified in subsection (1) above are subject to the provisions of this Code. Should it prove impossible to resolve certain issues according to the provisions of this Code, they shall be resolved in accordance with the civil law provisions. In the event that such issues cannot be resolved in accordance with the civil law provisions, they shall be considered according to trade usage {commercial practice} and, in the absence of this, according to the principles upon which this Code is based.

Commentary on section 1:

The Czech Commercial Code can be compared - to some extent - with the Companies Act and the Sale of Goods Act in the UK and the Uniform Commercial Code in the USA.

* The Czech word "podnikatele" is also translated as "businessmen" or "businesspersons" and refers to both legal entities and individuals conducting business activity in accordance with section 2(2).

** The term "business activity" or "business activities" is sometimes also referred to as "entrepreneurial activity" or "entrepreneurial activities"; in Czech "podnikání".

The Czech Commercial Code is primarily a legislative Act of private law, but the status of entrepreneurs is also subject to public law

provisions (e.g. the Trades Licensing Act; see section 2). The scope of regulation outlined in subsection (1) is not exhaustive. Parts One and Two of the Commercial Code deal with "the status of entrepreneurs", including the regulation of partnerships, companies

and co-operatives and also with "some other relationships connected with business activities" (e.g. unfair competition). The term "entrepreneur" is defined in section 2. Wholly or partly foreign-owned businesses in the Czech Republic and the protection of their property (sections 21-26) are also subject to the Commercial Code, which repealed the former Joint Venture Act. The Commercial Code further applies to "persons other than entrepreneurs" if the Commercial Code or some other Act so stipulates.

*The extensive Part Three of the Commercial Code regulates individual **types of contracts**.*

Legal relations under subsection (1) are subject to the Commercial Code, provided that such relations are not regulated in a particular Act. Should an issue not be regulated by the provisions of the Commercial Code or a particular Act, it is considered in accordance with the civil law provisions, mainly the Civil Code. The civil law provisions apply, for example to acts in law (also referred to as "legal acts" or "legal transactions"; in

Czech "první úkony"), ownership, etc. Where it proves impossible to resolve an issue according to the Commercial Code or civil law provisions, it is considered in the light of trade usage (i.e. the established practice in a particular trade and/or between the parties concerned). With regard to business (contractual) obligations, further details of the relationship between the Commercial Code and the Civil Code are stipulated in section 261 and the details of applicability of trade usage in section 264. Where an issue cannot be resolved according to trade usage, it is to be considered in accordance with the principles upon which the Commercial Code is based (e.g. the protection of fair trade practice)

Section 2

Business Activity

- (1) "Business activity" (also referred to as "entrepreneurial activity"; in Czech "podnikání") is understood to be systematic activity which is independently carried on for the purpose of making a profit by an entrepreneur in his* own name, and at his own liability (responsibility).
- (2) Under this Code, an "entrepreneur" (also referred to as a "businessman"; in Czech "podnikatel") is deemed to be:
 - (a) a person (natural or legal) recorded in the Commercial Register (in Czech "obchodní rejstřík"; in German "Handelsregister");
 - (b) a person engaged in business activity on the basis of an authorization to practise a certain trade (referred to hereafter as a "trade authorization"; in Czech "živnostenská oprávnění"; in German "gewerbliche Berechtigung");
 - (c) a person engaged in business activity on the basis of an authorization issued under particular Acts or regulations different from the provisions governing the issue of a trade authorization;
 - (d) an individual engaged in farming activity (agricultural production) who is recorded in an appropriate register (registry) under a particular Act or regulation.
- (3) The seat of a legal entity and the place of business of a natural person (an individual) shall be the address of such person's seat or place of business entered in the Commercial Register or in some other register (or registry) stipulated by law. The address shall mean the name of the city, town or village (and, where applicable, also the borough), postal code, cadastral registry number and, if available, the name of the street or square. Each entrepreneur shall register his (its) actual seat or place of business. The seat of an enterprise's organizational component (section 7) shall be the address of its location. The seat of a legal entity may be situated * "His" also refers to "her" and "its", and similarly "lie" to "she" and "it" in a flat (an apartment) only if the nature of such business activity so allows. The actual seat shall mean the place from which the legal entity concerned is managed by its statutory organ,

Commentary on section 2:

"Business activity" (also referred to as "entrepreneurial activity") means activity which is undertaken by an entrepreneur:

- systematically (i.e. regularly, even seasonally);
- independently (independent performance distinguishes business activity e.g. from employment under an employment contract);
- in own name (which, in the case of a business entity means its business name in accordance with section 8 et seq);
- on own responsibility (i.e. liability; a legal entity is liable for its obligations with all its business property, while a partner of a general commercial partnership, or a general partner of a limited partnership, is liable for the partnership's obligations with all his property; each entrepreneur further bears business risks and liability for damage caused to a customer or an employee, delay in performance, faulty output, etc.); for the purpose of attaining a profit.
- Conducting a trade (which may be a craft, manufacturing or commercial activity) requires that the conditions laid down in the Trades Licensing Act (also referred to as the Tradesman's Act; in Czech "živnostenský zákon") are met. The Act lists activities which are subject to its provisions, such as forging, casting, motor vehicle repair and construction of civil engineering structures, and stipulates activities which are not regarded as trades, such as the professional activities of physicians, dentists, pharmacists and lawyers.
- Trades can be conducted by both Czech and foreign persons. The definitions of Czech and foreign persons are included in section 21 of the Commercial Code and section 5 of the Trades Licensing Act. For the purposes of these two Acts, foreign persons are those whose seat or residential address (abode) is outside the Czech Republic.
- The general conditions which must be met by any individual carrying on a trade are:
 - a minimum age of 18 years- legal competence
 - unimpeachability of character (in the sense of not having a criminal record).

An entrepreneur can carry on a trade through a responsible representative (also referred to as "a proxy"). A

responsible representative ("odpovedny zdstupce") is an individual who has been appointed by the entrepreneur and who is responsible for the proper conduct of the trade and compliance with trades licensing legislation. A responsible representative must stay in the Czech Republic and meet both the general and specific conditions for carrying on a particular trade. No one can act as a responsible representative far more than two entrepreneurs. If a responsible representative (or an entrepreneur who does not appoint a responsible representative) is not a citizen of the Czech Republic, he must prove his knowledge of the Czech language to the Trades Licensing Office. Citizens of the Slovak Republic are exempt from this rule. Foreign citizens must also have a residency (residence) permit. If a legal entity wishes to conduct a trade, it must always appoint a responsible representative, unless the Trades Licensing Act provides otherwise. The scope of a trade authorization (permission) is stated either in a trade certificate or in a trade licence.

Subsection (2) lists those who are considered to be entrepreneurs under the Commercial Code:

- an entity or an individual entered in the Commercial Register;
 - a person conducting activity on the basis of a trade authorization (in the form of either a trade certificate or a trade licence);
 - a person carrying on business activity on the basis of other than a trade authorization;
 - an individual engaged in trading activity and entered in the records in accordance with a particular Act.
- The newly-amended wording of subsection (3) emphasizes that the seat of a legal entity (or a sole proprietor's place of business), as stated in the Commercial Register, must be the address of the place from where the business in question is actually managed. Subsection (3) also lays down the particulars of such address.

Section 3

(1) The following persons shall be recorded (i.e. registered or entered) in the Commercial Register:

- (a) business companies and partnerships¹, co-operatives, and other legal entities specified by law;
- (b) foreign persons under section 21(4).

(2) An individual who resides permanently (i.e. who has a permanent residential address) on the territory of the Czech Republic and who is an entrepreneur in the meaning of this Commercial Code [section 2(2)(b) to (d)] will be entered in the Commercial Register if he himself opts to apply for registration.

(3) An individual who is an entrepreneur in the meaning of this Code [section 2(2)(b) to (d)] shall be entered in the Commercial Register if:

- (a) his net turnover, computed under special statutory provisions, in the last two accounting periods attained or exceeded the sum requiring the auditing of his financial statements audited;
 - (b) he carries on a trade industrially (an industrial trade); or
 - (c) special statutory provisions so stipulate.
- (4) An individual subject to registration in the Commercial Register under subsection (3) shall file an application (a petition) for his entry (registration) in the Commercial Register without undue delay after such obligation arises.

Commentary on section 3:

Based on an application (a petition), an entry is made into the Commercial Register by the registration court within whose jurisdiction the seat or place of business of the person lies. The first entry into the Commercial Register of a newly-formed entity is of particular importance, because the entity comes legally into existence upon incorporation (as of the effective day of the registration).

Foreign persons (section 21) can directly undertake business activities in the Czech Republic only after having been entered in the (Czech) Commercial Register (section 27), unless they are subject to an exemption from this obligation. As of 1 February 2001, such exemption applies e.g. to any individual who has a permanent residential address in one of the European Union's member states or in another state of the European Economic Area i.e. EEA [see section 21(5)] and who starts his business (trade) in the Czech Republic. Branches of foreign banks are also exempt from the obligation of entry in the (Czech) Commercial Register [section 27a(4)J]. Otherwise, a foreign person not entered in the (Czech) Commercial Register may participate with his capital in a Czech entity (under section 24), become a Czech entrepreneur's silent partner (section 673 et seq) or establish co-operating relations here.

Individuals who have a permanent residential address in the Czech Republic or in a member state of the EU or EEA and who are entrepreneurs are not required to be recorded in the Commercial Register, but they may apply for registration voluntarily. All entrepreneurs recorded in the Commercial Register must use a double-entry bookkeeping system (section 36), whereas individuals not entered in the Commercial Register may use

¹ General commercial partnerships (i.e. unlimited partnerships) and limited partnerships are legal entities under Czech law. Existence upon incorporation (as of the effective day of the registration).

a single-entry bookkeeping system.

Section 3a

Unauthorized Business Activity

(1) The nature or validity of an act in law (transaction) shall not be affected by the fact that the particular person (who concluded the transaction) is forbidden to undertake business activity or lacks authorization for such business activity; this provision shall have no impact on section 49a of the Civil Code.

(2) A person who effects an activity whose performance requires, under special statutory provisions, notification or authorization (licence), and who does so without such notification or authorization, as well as persons who effect this activity in another person's name

or on another person's account, shall be liable for damage caused thereby; the liability of such persons under special statutory provisions shall be hereby unaffected.

Commentary on section 3a:

Under this new section of the Commercial Code, a business transaction is valid even if concluded by a person (or on behalf of a person) who is not authorized to undertake such business activity.

Section 4

The relations of persons other than entrepreneurs are also subject to the provisions of this Code, if this Code or a particular Act so provides.

Commentary on section 4:

Section 4 supplements the provisions of section 1(1). It extends the applicability of the Commercial Code to persons other than entrepreneurs, such as "competitors" and "consumers" (see the provisions on economic competition and unfair competition). The provisions of Part Three (sections 261 to 755) apply not only to entrepreneurs but also to relations arising between state, municipal and district authorities (and their agencies), on the one hand, and entrepreneurs, on the other, when public supplies and services are provided [section 261(2)]. Section 261(3) stipulates which relationships are subject to the provisions of Part Three. Contracting parties to whom the Commercial Code applies may deviate from the provisions of Part Three if the parties so agree in writing, but they cannot exclude applicability of the mandatory provisions stipulated in section 263. See sections 261 to 263 and section 729 et seq.

Division II

Enterprises and Their Business Assets

Section 5

(1) For the purposes of this Code, an enterprise is understood to be the aggregate of tangible, personal and intangible components constituting a business activity. Things, rights and other property values which belong to the entrepreneur and which are used to operate the enterprise, or which, because of their nature, are intended to serve this purpose, are appurtenant to the enterprise.

(2) An enterprise is a collective thing (universitas rerum). Its legal relations shall be subject to the provisions concerning things in the legal meaning. This shall not affect the scope of specific statutory provisions on real estate (immovables), objects of industrial intellectual (intangible) and other intellectual rights, motor vehicles, etc., if these form part of an enterprise.

Commentary on section 5:

Under the Commercial Code, an enterprise is regarded as an object of legal relations, and it corresponds roughly to the French concept of "fonds de commerce".

The definition does not mention debts (liabilities) pertaining to an enterprise. Nevertheless, in the case of sale of an enterprise (see section 476 et seq), debts pertaining to the enterprise are sold together with the enterprise.

An entrepreneur may own more than one enterprise.

Section 6

(1) For the purposes of this Code, "business property" (in Czech "obchodnf majetek") is deemed to be the sum of property values (things, receivables and other valuable rights as well as values appraisable in money) which belong to the entrepreneur and which serve, or are intended to serve, his business activity. The business property of an entrepreneur which is a legal (business) entity shall be all the entity's property.

(2) For the purposes of this Code, "business assets" (in Czech "obchodnf jmenP* or in short "jmenP") means the aggregate of business property and liabilities incurred by an entrepreneur in connection with his business activity. The business assets of an entrepreneur which is a legal (business) entity shall be the aggregate of all

the entity's business property and liabilities.

(3) "Net worth" (also translated as "net business assets"; in Czech "ciste obchodni jmenf") means business property reduced by liabilities incurred by an entrepreneur in the course of his business activity, if such entrepreneur is an individual (a natural person), or business property reduced by (all) liabilities, if such entrepreneur is a legal entity.

(4) "Equity capital" (or "equity"; in Czech "vlastni kapital") shall mean own resources used to finance an entrepreneur's business property, shown in a balance sheet on the side of liabilities.

Commentary on section 6:

Under the Commercial Code, "business property" comprises the tangible and intangible items which are owned by a certain entrepreneur and which are used in his business activity. It also includes receivables (i.e. amounts due to the entrepreneur in connection with his business activity), his business name, know-how, etc. Items which are leased to the entrepreneur do not form part of his business property.

in the case of an entity which engages solely in business activity, its property is identical with its business property. In the case of an individual, who is a sole proprietor, only that portion of his entire property which is connected with his business activity is regarded as his business property. Nevertheless, he is liable for his business obligations with his entire property. His liability is restricted solely to business property if he has established a one-member limited liability company.

An entity's "business assets" are important if it is wound up without liquidation, when they are transferred to the entity's legal successor (see section 69 et seq). "Net worth" ("net business assets") means the value of an enterprise (a business) when all its debts (liabilities) are subtracted from its business assets. Net worth is used for computation of a settlement share and a liquidation share (section 61). Equity (capital) means funds furnished by the owners (partners, members, shareholders) of a business.

Section 7

Organizational Components of an Enterprise

(1) A "branch" (in Czech "odstepn' zavod", in German "Zweigbetrieb") is an organizational component of an enterprise which is entered as such in the Commercial Register. In its operations, a branch uses **the commercial name (section 8)** of the entrepreneur (enterprise) supplemented by an indication that it is a branch of the enterprise.

(2) Another organizational component **of an enterprise** shall also have a status similar to that of a branch if the law requires that such organizational component be entered in the Commercial Register.

(3) An "establishment" (in Czech "provovovna", in German "Betriebsstatte") is understood to be the space in which a certain business activity is performed. Such establishment must bear **the entrepreneur's commercial name, to which** the name of the establishment or another distinguishing designation may be added.

Commentary on section 7:

h is up to an entrepreneur to decide whether an organizational part of his enterprise will be entered in the Commercial Register. Where the name of the manager (head, director) of an enterprise's branch is recorded in the Commercial Register, he becomes the entrepreneur's statutory organ for the branch [see section 13(3)].

Division in Commercial Name

Section 8

(1) "**Commercial name**" (also referred to as "**business name**"; literally "**the name of the firm**"; in Czech "**obchodnf firma**" or "**firma**") is the designation under which an entrepreneur is entered in the Commercial Register. **An entrepreneur shall undertake acts in law under his commercial name.**

(2) **An entrepreneur who is not entered in the Commercial Register shall not be subject to the provisions on the commercial name; if such entrepreneur is an individual (a natural person), he shall undertake acts in law (conclude legal transactions) under his full name, and if such entrepreneur is a legal entity, under its designation.**

Commentary on section 8:

The new wording of section 8 initially caused confusion about its interpretation, and it is expected that some "technical provisions" will be added to the Code to emphasize that the new definition of the commercial name (in Czech "obchodni firma" or "firma") applies only to entrepreneurs entered in the Commercial Register and not to those entered only in other registers, (e.g. Trades Licensing Office Registers). Under the previous wording, effective until the end of 2000, "commercial name" (in Czech "obchodni jmeno") was defined as "the designation under which an entrepreneur undertakes acts in law when carrying on his business activity".

Section 9

(1) The commercial name of an individual (sole proprietor) is the person's first name and surname (hereafter referred to as "the full name"). The commercial name of an individual may be supplemented to identify the person of the entrepreneur or the type of his business activity.

(2) The commercial name of a business company, partnership or co-operative is the name under which it is entered in the Commercial Register. The commercial name of a legal entity which is subject to entry in the Commercial Register on the basis of special statutory provisions and which was established prior to such entry shall be its designation. The commercial name of a legal entity must also include an addendum designating its legal form.

Commentary on section 9:

The commercial name of a sole proprietor consists of his first name and surname and usually includes an addendum describing his business (e.g. Jan Novdk - opravy aut, Jan Novdk - car repairs), or his place of business (Jan Novdk, Studenov).

The commercial name of a business partnership, company or co-operative is the name under which such entity is recorded in the Commercial Register and includes an addendum specifying its legal form (e.g. "akciová společnost", "akc. spot." or "a.s.", meaning a joint stock company).

Section 10

(1) A commercial name may not be such as to be open to confusion with the commercial name of another entrepreneur or misleading (deceitful). It shall not be sufficient to distinguish the commercial name of one legal entity from another by a different legal form, indicated in its addendum. Individuals who are entrepreneurs and have identical first names and surnames and carry on business activities in the same place shall distinguish their commercial names by an addendum under section 9(1).

(2) Two or more persons who carry on business activity under a common name without having founded a legal entity shall meet obligations which arise in the course of their activity jointly and severally. A common name is not deemed to be a commercial name. *Commentary on section 10:*

The legal regulation of commercial names is based on several principles, such as:

- *the principle of exclusiveness, which means that a new commercial name must differ sufficiently from existing commercial names. This principle is applied to the commercial names of legal entities carrying on identical or similar lines of business. In such a case, it is regarded as insufficient to distinguish the identical commercial names of two entities merely by adding a different addendum specifying their different legal forms. In the case of individuals who are entrepreneurs with identical names and who are engaged in the same or similar line of business, it is sufficient to distinguish their commercial names by indicating different places of business; ~ the principle of stringency, which means that the commercial name must meet the requirements set out in section 9;*
- *the principle of truthfulness, which requires that any information included in the commercial name and indicating a particular line of business reflects the entrepreneur's current business activity;*
- *the principle of legality, which requires that the commercial name does not contradict the law;*
- *the principle of public interest, which means that the commercial name may not include any inadmissible expressions (e.g. those promoting fascism, vulgar terms, etc.).*

Subsection (2) applies to regulation of the "common" name of an association (a consortium) which is not a legal entity and whose members have concluded an association agreement in accordance with section 829 et seq of the Civil Code.

Section 11

(1) A person who inherits an enterprise or acquires it on the basis of a contract may only continue to undertake such business activity under the existing commercial name with an addendum indicating the successorship if such person has the explicit consent of the testator or the heirs or his legal predecessor.

(2) If an entrepreneur who is an individual has changed his name, he may use his previous name in his commercial name, provided that such commercial name is supplemented to include his new name.

(3) The commercial name of a legal entity shall pass to the successor legal entity together with the enterprise if the original legal entity is wound up (dissolved) without liquidation and its legal successor takes over the commercial name. Should the successor legal entity have a different legal form from the original entity, the supplement indicating the legal form must be changed accordingly.

(4) Transfer of a commercial name without simultaneous transfer of the enterprise in question is inadmissible. Transfer of a commercial name along with transfer of only a part of the enterprise is possible if the entrepreneur intends to operate the remaining part of the enterprise under another commercial name, or if

the remaining part is dissolved as a result of liquidation.

(5) If the commercial name of a legal entity includes the name of a partner or member who has ceased to be a partner or member of the entity, the entity may continue to use his name only with his consent. In the event of the death or dissolution of such partner or member, his prior consent or the consent of his heir or his legal successor's consent is required.

(6) Commercial names of enterprises which belong to one holding-type group [section 66a(7)] may contain some identical elements, provided that an addendum indicates that they belong to such group and their commercial names can be sufficiently distinguished one from another.

Commentary on section 11:

Section 11 regulates the transfer ("prevod"), transference or passage ("prechod") and alteration of commercial names. The transfer of a commercial name without the concurrent transfer of the enterprise, or at least its (organizational) component (part), is inadmissible. When only the organizational component of an enterprise is transferred, it is required that the remaining component of the enterprise operates under another commercial name or is dissolved. Recent amendments introduced regulation of the commercial names of enterprises belonging to one holding-type group (one holding company).

Section 12

(1) Anybody whose rights have been affected by unauthorized use of his commercial name may demand that the unauthorized user desist from further use of his commercial name and eliminate such practice. He may also demand the surrender of unjust enrichment and the granting of appropriate satisfaction, which may be provided in money.

(2) If damage has been caused by unauthorized use of a **commercial name**, compensation for such damage may be claimed under this Code.

(3) In its judgment the (competent) court may award the plaintiff the right to have the court's judgment published at the defendant's expense, and, depending on the circumstances, the court may also determine the extent, form and manner of publishing such judgment.

Commentary on section 12:

Protection of a commercial name under section 12 is regulated similarly to protection against unfair competition (sections 44-55). Under amended subsection (1), unauthorized use of a commercial name entitles the aggrieved party to demand both the surrender of unjust enrichment and the granting of appropriate satisfaction.

Division IV

Entrepreneurial Conduct

Section 13

(1) If an entrepreneur is an individual (sole proprietor), he shall act either in person or through his representative. A **legal** entity acts through its statutory organ or its representative.

(2) The provisions of this Code on co-operatives and various legal forms of business companies and partnerships define the statutory organ whose acts in law (transactions) are deemed to be acts of the entrepreneur.

(3) The head (manager, director) of an organizational component of an enterprise [section 7(1) and (2)] whose name is recorded in the Commercial Register is empowered to undertake all acts in law (transactions) concerning the organizational component on behalf of the entrepreneur.

(4) If an entrepreneur is a legal entity, the entity shall be bound, in relation to third parties, by conduct performed by its statutory organ or liquidator even when such statutory organ or liquidator exceeds the entity's objects (scope of business activity), except when such conduct exceeds the powers entrusted by law, or permitted to be entrusted by law, to the statutory organ or the liquidator.

(5) When the authorization for entrepreneurial conduct of a legal entity's statutory organ is restricted by the statutes, deed of association or a similar document, or by decisions adopted by the legal entity's organs, this restriction may not be applied in relation to third parties, even if the decisions (resolutions) were published.

Commentary on section 13:

The term "entrepreneurial conduct" or "entrepreneur's conduct" refers to acts in law (legal acts, transactions) which give rise to, or which amend or discharge, the entrepreneur's obligations. An individual who is an entrepreneur (sole proprietor) may perform acts in law himself, unless his capacity to undertake such acts is restricted due to his being a minor or on the basis of a court decision. Should the latter be the case, the entrepreneur's legal representative will undertake acts in law for the entrepreneur. An entrepreneur who is an individual and fully capable of undertaking all acts in law may appoint a legal representative.

The conduct of a legal entity is subject to section 20(1) of the Civil Code, which states that "acts in law of a legal entity are performed in all matters by those authorized to undertake them, either on the basis of the founding agreement, the deed of formation or the law" ("statutory organs", also referred to as "statutory bodies"; in Czech "statutární orgány"). The Commercial Code similarly stipulates that the entity performs its acts in law either "through its statutory organ or its representative". Both an entity and an individual may have either a representative (or representatives) who is (or are) authorized to act for the entity or individual on the basis of the law, or a representative who is appointed on the basis of a power of attorney (in Czech "plná moc"; section 31 et seq of the Civil Code). A power of attorney may be conferred on an individual or a legal entity. If the power of attorney is conferred upon a legal entity, the right to act for the person represented is acquired by the legal entity's statutory organ or the person to whom this statutory organ delegates the power of attorney.

A power of attorney may be conferred jointly upon two or more representatives. In this case, unless it is stated otherwise in the power of attorney, both or all of them must act jointly.

There are also forms of "indirect representation" (see e.g. commission agent's contract, section 577 et seq).

An entrepreneur who is entered in the Commercial Register may, by means of procurator (see section 14), empower the holder of the procurator to perform all acts in law which occur in the operation of the entrepreneur's enterprise. A procurator may only be conferred upon an individual or individuals (i.e. not a legal entity). The statutory organs of individual forms (types) of entities which are regulated by the Commercial Code are stipulated as follows:

- in the case of a general commercial partnership (unlimited partnership), each partner forms its statutory organ or the partners form its statutory body; a partner may be an individual and/or a legal entity (section 85);*
- ~ in the case of a limited partnership, its statutory organ is formed by the general partners and each general partner is entitled to act solely for the limited partnership, unless the partnership agreement provides otherwise (section 101);*
- in the case of a limited liability company, its statutory organ is one or more executive officers (also referred to as directors; in Czech "jednatelé"; section 133);*
- ~ in the case of a joint stock company, its statutory organ is the board of directors ("představenstvo"; section 191);*
- in the case of a co-operative, its statutory organ is the managing board ("představenstvo"; section 243), although, in the case of a co-operative having fewer than 50 members, the powers of the managing board may be exercised by the members' meeting (section 245).*

If a branch or an organizational component of an enterprise, and the head (manager, director) of the branch or other organizational component, are entered in the Commercial Register, he is empowered to undertake all acts pertaining to the branch or organizational component.

Section 13a

Commercial Documents

(1) Every entrepreneur shall state his commercial name, or name or designation, seat or place of business and identification number on all orders, invoices and business correspondence; persons entered in the Commercial Register or some other register (registry) shall also give details of such entry, including the relevant file number. Information about the amount of registered capital may be stated in commercial documents only if the registered capital has been fully paid up.

(2) Orders, business correspondence and invoices concerning an organizational component of an enterprise or a foreign person's enterprise (undertaking) shall bear all the information under subsection (1), as well as information (data) on the entry (registration) of this organizational component or enterprise in the Commercial Register, including the relevant file number. (3) In the case of orders, business correspondence and invoices of an organizational component of a foreign person's enterprise or an enterprise of a foreign person, whose seat or permanent residential address is in a state which is not a member state of the European Union and whose law governing such person's relations does not require business registration, information on the foreign person's registration need not be provided.
Commentary on section 13a:

The provisions of section 13a were introduced by Act No. 370/2000 Coll. Under its Transitory Provisions, printed commercial documents not containing all the particulars prescribed by this Act may be used until 30 June 2001,

Section 14

Procuration

(1) By means of "procuration" (in Czech "prokura"), an entrepreneur empowers the holder of the procuracy (referred to hereafter as the "procurator"; in Czech "prokurista", in German "Prokurist") to perform all acts in law (transactions) which are involved in operating the enterprise, even though a special power of attorney might otherwise be required to perform such acts. A procuracy may only be granted to an individual.

(2) The procuracy does not entitle the procurator to alienate (sell) real estate or encumber it, unless this is expressly authorized in , the procuracy.

(3) Limiting the scope of procuracy by means of internal instructions has no legal consequences in relation to third parties. (4) A procuracy may be conferred on more than one individual, in which case either each procurator is independently empowered to represent and sign for the entrepreneur (enterprise), or a concurrent affirmative manifestation of the will of all, or at least two, of the procurators involved is required.

(5) When a procurator signs documents for the entrepreneur he represents, he shall state **the commercial name** of the entrepreneur and in an addendum indicate his procuracy, endorsing this with his signature.

(6) A procuracy becomes effective when it is recorded in the Commercial Register, If it has been conferred on more than one individual, the petition must specify whether each procurator may sign independently or, when applicable, how many procurators must act jointly.

Commentary on section 14:

A procuracy is a special form of empowering an individual (a procurator) to undertake acts in law for an entrepreneur recorded in the Commercial Register. The scope of a procuracy is stipulated by law, unlike a power of attorney. A procuracy may be conferred on one or more procurators. In the latter case, the entrepreneur decides whether each procurator is empowered to represent and sign for him independently or whether a concurrent affirmative manifestation of the will of all, or at least two, of his procurators is required. Under subsection (2), procurators are not empowered to transfer or encumber the entrepreneur's real estate (immovables), unless the entrepreneur specifically empowers his procurator(s) to do so in the procuracy. A procuracy is effective as of the date of its entry in the Commercial Register.

Section 15

(1) Anyone who has been entrusted with performance of a certain activity in the operation of an enterprise is empowered to undertake all acts (transactions) usually involved in the course of such activity.

(2) If by his conduct (acts, dealings) an entrepreneur's representative exceeds the powers conferred on him under subsection (1), the entrepreneur shall only be bound by such conduct if the third party did not know that the representative had exceeded his powers (authorization) and in the light of all the circumstances of the case, the third party could not have been aware that the representative had exceeded his powers (authorization).

Commentary on section 15:

Acts in law on behalf of a certain entrepreneur may be undertaken by the head (manager, director) of the enterprise's organizational component if his name is recorded in the Commercial Register in accordance with section 13(3). Employees or other persons entrusted with performance of a particular activity in the operation of a certain enterprise may only undertake on the entrepreneur's behalf such acts in law as usually occur in the course of their activity. A power of attorney is to be conferred upon a person if the person is required to undertake an act in law that is outside the range of his usual activity on behalf of the entrepreneur (enterprise) concerned. The entrepreneur is only bound by acts undertaken by his representative on his behalf if the latter exceeded the powers conferred on him and the third party concerned did not know that the representative had exceeded his powers (authorization).

Section 16

The entrepreneur is also bound by a transaction carried out by another individual in the entrepreneur's establishment, provided that the third party involved could not have been aware that the said individual was not authorized by the entrepreneur to carry out such transaction.

Commentary on section 16:

Should a supplier deliver goods to a shop during a lunch break and an opportunist thief takes delivery of the goods and then steals them, the entrepreneur who owns the shop will have to pay for the goods. However, the entrepreneur can relieve himself of the obligation to pay for the goods if he proves that the person supplying the goods could have recognized that the goods had been handed over to an unauthorized individual.

Division V
Trade Secrets
Section 17

One of the rights appertaining to an enterprise involves trade secrets (also referred to as "business secrets" or "commercial secrets"; in Czech "obchodní tajemství"). Trade secrets include commercial, manufacturing and technological facts relating to the enterprise which have actual or potential material or nonmaterial value, are not commonly available in the business circles in question, and are to be kept confidential at the discretion of the entrepreneur, who ensures that his enterprise's secrets are protected in a suitable manner.

Commentary on section 17:

The term "trade secret" is not identical with confidential information and facts whose disclosure could cause damage (detriment) to the entrepreneur concerned. Under the Czech Commercial Code a trade secret:

- *involves commercial, manufacturing and/or technological facts,*
- *pertains to the enterprise,*
- *has a value, actual or potential,*
- *is not commonly available in the appropriate business circles,*
- *is required by the entrepreneur to be kept confidential, and*
- *is secured in a suitable manner in accordance with the entrepreneur's instructions. A trade secret is not subject to registration.*

Section 18

An entrepreneur operating an enterprise to which the provisions on trade secrets apply has an exclusive right to dispose of such secrets, including the right to grant permission to someone else to use a particular trade secret and to determine the conditions **of such use.**

Commentary on section 18:
The right to a trade secret is construed as an exclusive right (like the right to ownership, patents, etc.). This right is effective against any person other than the entrepreneur operating the enterprise to which the trade secret pertains. The entrepreneur has the right to grant permission to someone else to use a particular trade secret of his and to determine the conditions for such use.

Section 19

The right to maintain a trade secret lasts as long as the facts referred to in section 17 above apply.

Commentary on section 19:

Protection of a trade secret is not limited to a specific period of time, It lasts as long as all the attributes of the particular trade secret are in effect. However, when a trade secret is transferred to a transferee (licensee) under a contract, the transferee may only acquire the right to make use of the trade secret for a fixed period of time.

An entrepreneur whose trade secret is disclosed without his permission (e.g. by publication) may demand damages from the party which disclosed the secret (see section 373 et seq and section 757).

Section 20

An entrepreneur has the right to legal protection against violation or jeopardising of his trade secrets, as in the case of unfair competition.

Commentary on section 20:

In the event that a trade secret is violated (breached) or jeopardized, the entrepreneur to whose enterprise such trade secret pertains also has the right to protect his trade secret under the provisions on protection against unfair competition (see sections 51, 53 and 55).

CHAPTER II
BUSINESS ACTIVITIES OF FOREIGN PERSONS

Division I Fundamental Provisions

Section 21

(1) Foreign persons (individuals and entities) may engage in business activities on the territory of the **Czech Republic** under the same conditions and to the same extent as **Czech** persons, unless the law stipulates otherwise.

(2) For the purposes of this Code, a "foreign person" (in **Czech** "zahranicnf osoba") is understood to be an individual whose residential address is outside the territory of the **Czech Republic**, or a legal entity whose seat is outside the territory of the **Czech Republic**. A legal person whose seat is in the **Czech Republic** is deemed to be a **Czech** legal entity (in **Czech** "ceska" pravnicka osoba").

(3) For the purposes of this Code, "business activity by a foreign person on the territory of the **Czech Republic**" means business activity by a foreign person who has an enterprise, or an organizational component of such, located on the territory of the **Czech Republic**.

(4) A foreign person's authorization to carry on a business activity on the territory of the **Czech Republic** takes effect on the day as of which that person, or that person's organizational component, is recorded in the (Czech) Commercial Register. Such foreign person is authorized to engage in the range of business activities specified in his (its) entry in the Commercial Register. The application for this is filed by the foreign person concerned.

(5)² The provisions of subsection (4) shall not apply to individuals (natural persons) who have a permanent residential address in a member state of the European Union or in some other state of the European Economic Area if such individuals carry on business activity on the territory of the Czech Republic.

Commentary on section 21:

The Czech Commercial Code and the Trades Licensing Act (also referred to as the Trades or Tradesman's Act) distinguish foreign persons from Czech persons on the basis of the location of their seats or residential addresses (abode). A legal entity whose seat is outside the territory of the Czech Republic, or an individual whose (permanent) residential address is abroad, is considered to be a foreign person for the purposes of the Commercial Code and the Trades Licensing Act. A legal entity which has its seat in the Czech Republic, or an individual who has a permanent residential address in the Czech Republic, is regarded by these laws as a Czech person. A Czech citizen who lives permanently abroad is deemed to be a foreign person for the purposes of these laws, whereas a foreign citizen with a permanent residential address in the Czech Republic (i.e. a foreigner who has a permanent residence permit) is regarded as a Czech person [see also section 5(2) of the Trades Licensing Act],

For the purposes of the Foreign Exchange Act (No. 219/1995 Coll.), a resident is defined as an individual who has a permanent residence (abode) in the Czech Republic or a legal entity whose seat is located in the Czech Republic, whereas a non-resident is an individual or a legal entity other than a resident. This Act restricts acquisition of ownership title to real estate by non-residents who are not Czech citizens. A wholly foreign-owned company registered in the Czech Republic is considered to be a resident.

It is important to note the differences in definitions of who is regarded as a resident (fiscal domicile) and as a non-resident for tax purposes under the Income Taxes Act. Also of interest to non-Czech citizens is the Act on Foreigners' Stay and Residence in the Czech Republic. This Act stipulates that, for its purposes, everybody who is not a citizen of the Czech Republic is a foreigner.

For the purposes of the Commercial Code and the Trades Licensing Act, a foreign person's business activity in the Czech Republic means that the foreign person has an enterprise or its component (permanent establishment) located in the Czech Republic.

A foreign person may also decide to participate in the business activity of a Czech legal entity by acquiring a business share in it. Foreign persons may undertake business activities in the Czech Republic under the same conditions as Czech persons (the principle of equal treatment). However, particular Acts impose several restrictions on foreign persons' business activities in the Czech Republic and on foreign persons' ownership interests in Czech legal entities which undertake certain specific activities (see e.g. legislation on the stock exchange).

The new provisions of subsection (5) enable individuals who have permanent residential address in an EU or EEA country to set up operations (as sole proprietors) in the Czech Republic on the basis of a trade authorization issued under the Trades Licensing Act.

² Subsection (5) is effective from 1 February 2001.

Section 22

Under Czech law, the legal capacity of a foreign person other than a foreign individual (foreign national) is determined by the law under which such person was established. This law also governs the foreign person's internal legal relations and its members' or partners' liability for the person's obligations.

Commentary on section 22:

Some businesses (e.g. limited partnerships) established under the law of a foreign country are not deemed to be legal entities under that law. The legal capacity of a foreign business (firm), its internal relations and its partners' or members' liability are also governed by the foreign law.

Section 23

Foreign persons having the right to engage in business activities abroad are considered to be entrepreneurs under the provisions of this Code.

Commentary on section 23:

The provision that foreign persons authorized to carry on business activities abroad are also regarded as entrepreneurs under the Czech Commercial Code is important for commercial transactions between such entrepreneurs and their Czech counterparts. If Czech law is applicable to a transaction between a foreign entrepreneur and a Czech entrepreneur, it will be subject to the Czech Commercial Code and not the Civil Code.

Division II

Foreign Persons' Capital Interests in Czech Legal Entities

Section 24

(1) Under the provisions of this Code, a foreign person may participate in the forming (founding) of a Czech legal entity or become a partner or member in an already existing Czech legal entity for the purpose of engaging in business activity. A foreign person may be the sole promoter (founder) of a Czech legal entity or become the sole owner of a Czech legal entity, provided that this Code permits a sole promoter (founder) or a single owner (for such a form of legal entity).

(2) A legal entity may be only established under Czech law.

(3) Foreign persons enjoy the same rights and have the same obligations (duties) as Czech persons in the matters specified in subsection (1).

Commentary on section 24:

A foreign person (an individual or a legal entity) may participate with his capital in Czech legal entities mainly in the following ways:

- by establishing a wholly foreign-owned Czech legal entity (an individual may solely form a limited liability company, whereas a legal entity may solely form either a limited liability company or a joint stock company);*
- by becoming one of the founders (together with other Czech and/or foreign persons) of a partnership, company or co-operative;*
- by becoming a member or partner in an already existing partnership, company or co-operative.*

A foreign person may also become a silent partner of a Czech entrepreneur (an individual or a legal entity) under section 673 et seq. or participate in an ad hoc consortium, or participate with his capital in a Czech legal entity established for some other purpose than carrying on business activity. A legal entity in the Czech Republic (ie. a Czech legal entity) can now be formed only under Czech law, whereas until the end of 2000 it could also be formed under a foreign law.

Division III

Protection of the Capital Interests of Foreign Persons Carrying on Business Activities in the Czech Republic

Section 25

(1) The property of a foreign person involved in business activity in the Czech Republic, and the property of a legal entity which includes a foreign capital interest (property participation) under section 24(1), may only be expropriated in the Czech Republic, or restricted in respect of its ownership rights, on the basis of law and in the public interest, if such public interest cannot be otherwise satisfied. An appeal (a remedial instrument) against such decision may be filed with the court. (2) If measures under subsection (1) are taken, compensation must be provided without delay and equal to the full value of the property affected by such measures at the time of their enforcement. It must be

freely transferable abroad in a foreign currency.

(3) International agreements (treaties, conventions) binding on the Czech Republic and published in the Collection of Laws ("Sbírka zákonů") shall not be hereby affected.

Commentary on section 25:

Foreign persons' and Czech persons' proprietary interests are protected in the Czech Republic, regardless of whether such persons carry on business activities or not. However, the provisions of section 25 emphasize the protection of foreign persons' property in relation to their business activities. When expropriation of real estate is necessary in the public interest, it is subject to the provisions of the Building Code; compensation for the expropriated property must be provided. Bilateral (inter-governmental) agreements on investment promotion and protection regulate protection in the case of nationalization and repatriation of proi.ts. The Czech crown is now a convertible currency (Foreign Exchange Act, No. 2/9/1995 Coll.)

Division IV

Relocation of a Legal Entity's Seat

Section 26

(1) A legal entity formed under the law of a foreign state (country) for the purpose of conducting business activity which has its seat abroad may relocate its seat to the Czech Republic if such relocation is permissible under an international treaty binding on the Czech Republic and promulgated in the Collection of Laws or in the Collection of International Treaties, The same shall apply to relocation of a Czech legal entity's seat to a foreign country.

(2) Relocation (transfer) of a seat under subsection (1) becomes effective on the day as of which it is entered in the (Czech) Commercial Register.

(3) The internal legal relationships of the legal entity referred to in subsection (1) shall continue to be governed by the law of the state under which the entity was originally established, even after its relocation to the Czech Republic. The same law shall govern liability of the entity's partners or members towards third parties; however, the scope of such liability may not be narrower than that stipulated for an identical or similar form of legal entity under Czech law. *Commentary on section 26:*

Czech law does not prevent a foreign legal entity which was formed for the purpose of carrying on business activity from relocating its seat to the Czech Republic. The relocation takes legal effect as of the date when this person is entered in the (Czech) Commercial Register and it thus becomes a Czech legal entity. Prior to entry of the entity's seat in the (Czech) Commercial Register, the entity must meet the requirements of Czech law (e.g. it must obtain a trade certificate or a trade licence, if applicable).

CHAPTER III

COMMERCIAL REGISTER

Section 27

(1) The "Commercial Register" (in Czech "obchodní rejstřík") is a public list in which entries are made of legally required data pertaining to entrepreneurs or organizational components of their enterprises when this is stipulated by law. The Commercial Register is kept by the court (hereafter "the registration court"; in Czech "rejstříkový soud") determined by another Act.

(2) A person to whom an entry in the Commercial Register relates is not allowed to raise an objection against another party which acted on the basis of confidence in the entry in the Commercial Register that such entry did not correspond to the actual state of affairs, unless the law provides otherwise.

(3) Facts (information) and the contents of documents whose publication is prescribed by law may be raised in objections against third parties by the person whom such entry concerns only as of the time of their publication, unless this person proves that the relevant facts were known to the third parties (party) in question. However, facts and the contents of documents cannot be raised in objections against third parties until the sixteenth day after their publication, if the third parties prove that they could not have known about them. Facts entered in the Commercial Register shall be effective in relation to anybody as of the day of their publication, but in relation to a party which was aware of an entry in the Commercial Register such facts are effective as of the day of the entry.

(4) If there is a discrepancy between facts entered (registered) and those published, or between deposited documents and their published text, the person concerned cannot base his objections against third parties on such published text; however, third parties may refer to the published text, unless the person entered in the Commercial Register proves that the third parties knew the facts as entered in the Commercial Register or

the contents of documents deposited with the Commercial Register.

(5) Third parties may always refer to the contents of documents and facts in respect of which the obligation of their entry in the Commercial Register and their publication was not yet complied with, provided that effectiveness or validity of such documents is not precluded by their non-entry in the Commercial Register.

(6) As of the entry into the Commercial Register of persons authorized to bind (the legal entity as its organs, or as members of its organs, no one can claim against third parties violation (breaches) of the statutory provisions, deed of association or statutes with regard to the election or appointment of these organs or their members, unless it is proved that the third person knew of such breach. The provisions of sections 131, 183 and 242 shall not be hereby affected.

(7) If the (competent) registration court rejects an application (a petition) for entry into the Commercial Register of a person entrusted to bind the legal entity as its organ or as a member of its organ, the election or appointment of such person shall be annulled as of its inception. This shall not affect third parties' rights acquired in good faith. The registration court's decision (ruling) to reject such entry shall be published after it becomes final. Until its publication, the legal entity may not raise the annulment of the (person's) election or appointment as an objection against third parties, unless it proves that they were aware of the said annulment (nullification).

Commentary on section 27:

The Commercial Register is a public list of entrepreneurs. Section 3 generally regulates who can be entered in the (Czech) Commercial Register. Section 28 prescribes the particulars to be recorded, while sections 27a to 27c include provisions on the registry of documents which is to be kept in support of the entries made.

Commercial Registers are kept by regional courts in accordance with section 200d of the Civil Procedure Code. Each regional court makes entries in the Commercial Register relating to those entrepreneurs who are within its jurisdiction (depending on the location of an entity's seat or an individual's place of business).

Section 27a

(1) The Commercial Register is accessible to everybody. Anyone may inspect any Commercial Register and make copies of the entries therein and abstracts (excerpts) therefrom. On request, the registration court shall make a full copy or a partial copy of an entry or document kept in the registry (collection) of documents, or provide an abstract or confirmation of a particular entry, or issue written confirmation that a particular entry has not been made in the Commercial Register. Official authentication shall confirm that a copy or an abstract (excerpt) is identical to the entry in the Commercial Register or the document deposited in the registry of documents.

(2) The Commercial Register also includes a registry of documents which must contain the following:

- (a) the deed of association or partnership agreement or some other deed of corporate formation, a copy of the notarial deed containing the resolution of the constituent general meeting of a joint stock company or of the constituent members' meeting of a co-operative, the statutes of a joint stock company, limited liability company or co-operative, if according to the relevant deed of association or a similar deed, statutes are to be issued, and the founding (formation) deed of a state enterprise (hereafter collectively "documents of formation"), together with documents recording subsequent changes thereto; in the case of subsequent changes (alterations) to the documents of formation or statutes, their full effective (valid) wording must be kept in the registry;
- (b) any resolution electing or appointing, or recalling or otherwise terminating the office, of persons who are the statutory organ or a member of such, liquidator, bankruptcy trustee, composition trustee (settlement administrator) or trustee (administrator) concerned with enforced administration, or the head (manager, director) of the enterprise's organizational component [section 13(3)], or any organ regulated by law or members of such authorized to commit (bind) the company or represent it before a court or participate in the management or supervision of the company;
- (c) annual reports, ordinary, extraordinary and consolidated financial statements, unless they are included in the annual report, and, if the financial statements are subject to auditing, also an auditor's report on such statements, and interim financial statements, if their compilation is required by this Code; a balance sheet must be provided with the identification data of the persons who audited it in accordance with the law;
- (d) the resolution winding up a legal entity, any (subsequent) resolution cancelling either the

(previous) resolution on winding up the legal entity or the (previous) resolution on such entity's conversion, the judicial ruling (judgment) nullifying a company (section 68a), the report on liquidation under section 75(1), the list of members under section 75a(1) or the report (statement) on disposal of property under section 75(6);

- (e) the resolution on conversion of legal form and the report on such conversion, the contract on merger, transfer of assets or division or its written draft terms, the draft terms of an entity's division; the report on a merger, transfer of assets (property) or division, and a written report drawn up by an expert on a proposed merger, transfer of assets or division;
 - (f) the judicial ruling (judgment) nullifying a general meeting's resolution on the conversion of legal form, a merger, transfer of assets or division (of a company) or nullifying the contract on merger, transfer of assets or division;
 - (g) the report drawn up by an expert or experts on the valuation of a non-monetary (i.e. in-kind) investment contribution when a limited liability company or joint stock company is formed, or when such company's registered capital is increased, an expert's report or experts' report on the valuation of a non-monetary (in-kind) investment contribution provided by a limited partner to a limited partnership, an expert's
 - (h) report on the valuation of assets on conversions of legal entities (section 69), and the valuation of property under section 196a(3);
 - (li) the judicial ruling (judgment) issued under the Bankruptcy and Composition Act;
 - (i) the contract on transfer of an enterprise or a part of such, the contract on lease (rent) of an enterprise or its part, including the notification of extension (prolongation) of such contract under section 488f(1), and, as appropriate, the deeds proving termination of such lease, and the judicial ruling (judgment) on acquisition of an enterprise by inheritance;
 - (j) the relevant controlling contract (section 190b) and the contract on profit transfer (section 190a), including amendments thereto, and, if appropriate, deeds documenting the cancellation of such contract;
 - (k) the document of the other spouse proving such spouse's consent to the use of property in joint ownership of the spouses (under other statutory provisions) for business activity, a copy of the notarial deed (record) on an agreement (contract) concerning a change in the scope of joint property or a reservation which concerns the establishment of such joint property (under other statutory provisions), if such agreement was concluded or if a judicial ruling narrowed the joint property of the spouses or, when appropriate, the agreement on income division (under other statutory provisions); in the case of their divorce, the agreement on settlement of their joint property under other statutory provisions, or the judicial ruling (judgment) on the same, or the declaration by an entrepreneur that no such agreement or judicial ruling is yet available;
 - (l) the contract on pledging a business share (ownership interest or holding), or a document on transfer of such business share;
 - (m) the list of dealings (transactions) under section 64(3);
 - (n) the general meeting's resolution under section 210
 - (o) the judicial ruling (judgment) ordering execution by distraining a member's (partner's) business share in a company (partnership), or by the sale of an enterprise or part of such, or the judicial ruling (judgment) on discontinuance of such execution, the writ of execution issued on a certain member's business share or ordering the sale of an enterprise or part of such, and the ruling (judgment) halting and cancelling such execution;
 - (p) the decision of the Ministry of Education, Youth and Physical Education on giving state approval for the operation of a private university-level educational establishment by a particular person;
 - (q) other documents required by law.
- (3) Where the organizational component of an enterprise or a foreign person's enterprise is entered in the Commercial Register, the following documents must be filed in the registry of documents:
- (a) accounting (financial) documents concerning the activity of such organizational component or enterprise in compliance with the duty to supervise, prepare and publish these in accordance with the law governing such foreign person; should such regulation not comply with the requirements of this Code and other statutory provisions, the accounting (financial) documents relating to the activity of an organizational component under section 27a(2)(c) must be filed in the registry of documents;
 - (b) the deed of association or partnership agreement, statutes and similar deeds relating to the formation of the foreign person, including amendments (alterations) to these and their full wording;

- (c) the certificate issued by the Commercial Register, or a similar register (registry) in the country where the foreign person has his seat, confirming this foreign person's entry in such register (registry);
 - (d) information or a document on the encumbrance of a company's property in another country (state), if
 - (e) the validity of such encumbrance is dependent on its publication.
- (4)³ If an enterprise's organizational component or a foreign person's enterprise is entered in the Commercial Register and such foreign person's seat is in an EU member state (country), only the documents under subsection (3)(a), (b) and (c) will be filed in the registry of documents.
- (5) The duty under subsection (3)(a) does not apply to branches of foreign banks.
- (6) Specimen signatures of the persons authorized to commit (bind) a company (entity) under subsection (2)(b) and of the heads (managers) of organizational components of foreign person's enterprises and also of foreign person's enterprises must be filed in the registry of documents.
- (7) Every entrepreneur entered in the Commercial Register shall submit without undue delay, to the registration court two copies of the documents which are to be filed in the registry of documents. Judicial rulings (judgments) which are to be filed in the registry of documents shall be supplied by the court. Where a certain fact is entered in the Commercial Register and the corresponding document is not filed in the registry of documents, and the registration court ascertains this, the registry of documents shall note this and the entrepreneur concerned shall be invited to file such missing document in the registry of documents without undue delay.

Commentary on sections 27a to 27c:

Sections 27a to 27c were added to the Commercial Code as part of the process of harmonization with EU legislation. Both the Commercial Register and documents relating to entries made in the Commercial Register are available to the public and a legal interest need not be proved when requesting information from the Commercial Register or registry of documents.

Section 27b

The registration court shall keep a separate file for each entrepreneur, each organizational component of an enterprise or each foreign person's enterprise in the registry of documents.

Section 27c

If two or more organizational components of one foreign person's enterprise operate on the territory of the Czech Republic, the documents under section 27a(3) may be deposited on file in only one registry of documents, chosen by such foreign person. In this case, the files in the other registries of documents must include a cross-reference to the registry of documents (chosen by the foreign person), including the file number.

Section 28

- (1) The following information shall be entered in the Commercial Register:
- (a) the commercial name of the person, in the case of legal entities, their seat, and, in the case of individuals, their residential address and place of business, if the latter differs from the former;
 - (b) its identification number ("identifikační číslo", or "ICO")?
 - (c) the objects (scope of its business activity);
 - (d) the legal form of a legal entity;
 - (e) the name(s) and residential address(es) of the individual(s) forming its statutory organ or the members of such, including the manner in which such individual(s) will act in the name of the legal entity, and the effective day of commencement, or termination, of their office; where a legal entity is the statutory organ or a member of such, also the full names and residential addresses of the persons (individuals) who are such legal entity's statutory organ or members of such;
 - (f) the designation, seat and objects of a branch of an enterprise or of another organizational component of such enterprise [section 7(2)], the name of its head (manager) and his residential address;
 - (g) the name of the procurator, his residential address and the manner of his acting for the entrepreneur;
 - (h) any other facts required by law.
- (2) The following additional information shall also be entered in the Commercial Register:
- (a) in the case of a general commercial partnership (i.e. an unlimited partnership, in Czech "veřejná obchodní společnost") the names and addresses of the partners (individuals) and the commercial name or designation and seat of any legal entity which is a partner in the general commercial partnership;

³ Subsection (4) will come into force on the Czech Republic's accession to the EU.

- (b) in the case of a limited partnership ("komanditni spolecnost")» the names and residential addresses of the individuals who are partners, as well as the commercial name or designation and seat of any legal entity which is a partner in the limited partnership, together with an indication of the identity of the general partner ("kom piemen tar") and the limited partner ("komanditista"), the amount of each limited partner's investment contribution into the registered capital and the extent to which it has been paid up;
 - (c) in the case of a limited liability company ("spolecnost s rucem'm omezenym"), the names and addresses of the individuals who are members of the company, as well as the commercial name or designation and seat of any legal entity which is a member of the limited liability company, the amount of the registered capital, the individual amount of each member's investment contribution in the registered capital, and the extent to which each member's contribution has been paid up, the amount of each member's business share (ownership interest, holding), as well as the names and residential addresses of the members of the supervisory board, if established, and the date of commencement, or termination, of their office, and any lien encumbering particular business share, where relevant;
 - (d) in the case of a joint stock company ("akciová spolecnost"), the amount of its registered (share) capital and the extent to which it has been paid up, the number, class and type of shares, an indication of whether these are certificated or uncertificated, and their nominal value, and any restrictions applying to the transferability of shares registered in name, and also the names and residential addresses of members of the supervisory board and the date of commencement, or termination, of their office; should the joint stock company have a single shareholder, such shareholder's commercial name or designation and seat or his full name and residential address, shall also be recorded;
 - (e) in the case of a co-operative ("druzstvo"), the amount of its registered capital ("recorded basic capital"), as well as the amount of its basic membership contributions;
 - (f) in the case of a state enterprise ("statni podnik"), the name of the founder and the amount of the enterprise's basic capital which it is required to maintain, and its determined property (assets).
- (3) In the case of a foreign person's enterprise and an organizational component of a foreign person's enterprise, the following information shall be entered in the Commercial Register:
- (a) the designation and seat of the organizational component of the enterprise or the foreign person's enterprise and its identification number;
 - (b) the objects (business activity) of the enterprise's organizational component or foreign person's enterprise and its identification number;
 - (c) the law of the state (country) governing the relations of such foreign person;
 - (d) if the law under letter (c) so provides, the Commercial (Companies) Register or similar register (or registry) where the foreign person is entered, and the number of such registration;
 - (b) the commercial name or designation of the foreign person, its legal form, the objects (business activity), and also, if appropriate, the amount of its subscribed registered (share) capital in the foreign currency concerned;
 - (e) the information under (1)(e) and the full name and residential address, or place of stay, of the head (manager, director) of the enterprise's organizational component or of the enterprise;
 - (f) the winding-up of the foreign person, the appointment of and information identifying the liquidators and their powers, and completion of the foreign person's liquidation;
 - (g) the issue of a bankruptcy order, confirmation of the start of composition proceedings or similar proceedings concerning such foreign person;
 - (h) the closure of the enterprise's organizational component or the foreign person's enterprise in the Czech Republic.
- (4)⁴ In the case of a foreign person's enterprise or an organizational component of a foreign person's enterprise when such person has its seat in a member state of the European Union, only the following information shall be entered in the (Czech) Commercial Register:
- (a) the seat of the enterprise's organizational component or the foreign person's enterprise and its identification number;

⁴ Subsection (4) will become effective as of the Czech Republic's accession to the EU

- (b) the objects (business activity) of the enterprise's organizational component or the foreign person's enterprise;
 - (c) the register in which the foreign person is entered, and the registration number;
 - (d) the commercial name and legal form of the foreign person and the designation of the organizational component, if the latter is different from the commercial name;
 - (e) the information under subsection (1)(e) and the full name and residential address of the head of the enterprise's organizational component or of the enterprise;
 - (f) the winding-up of the foreign person, the appointment of liquidators and information about their identity and powers, and completion of the foreign person's liquidation;
 - (g) the issue of a bankruptcy order, confirmation of the start of composition proceedings or similar proceedings concerning the foreign person;
 - (h) the closure of the enterprise's organizational component or the foreign person's enterprise in the Czech Republic.
- (5) If there is a discrepancy between, on the one hand, the published documents and the information (facts) relating to a foreign person's registration (abroad) and, on the other, the entered information (facts) or published documents relating to the organizational component of the foreign person's enterprise or to this person's enterprise, the texts of the published documents and the entered information concerning the enterprise's organizational component or the enterprise shall take preference in the case of transaction effected with them.
- (6) An entry in the Commercial Register shall also be required when a legal entity is wound up, with the legal ground (reason) for such winding-up stated; when an entity goes into liquidation, with the full name and residential address of the liquidator (or liquidators) being stated, or giving the full name and residential address of the individual who will act as liquidator for the legal entity; when a bankruptcy order is adjudged, with the full name and residential address or the commercial name and seat of the bankruptcy trustee being stated, or the full name and residential address of the person (individual) who will act as such trustee for the legal entity; when a petition for a bankruptcy order is dismissed due to the debtor's lack of sufficient assets to cover the cost of the bankruptcy proceedings; when a judicial ruling (judgment) is issued nullifying a legal entity; when a legal entity's liquidation is completed, stating the legal ground for the entrepreneur's striking off the Commercial Register. If an entry in the Commercial Register is based on a judicial ruling (judgment), the relevant entry is made in the Commercial Register without a ruling by the registration court on such entry.
- (7) An entrepreneur shall file a petition for the alteration of a specific entry (fact) or advising the lapse of a certain fact without undue delay after its occurrence.
- (8) An identification number shall be assigned to the entrepreneur by the registration court. The necessary identification numbers shall be communicated to the registration court by the competent state administrative authority.
- (9) In the case of an individual (natural person), his personal number shall also be entered in the Commercial Register, but if a personal number has not been assigned to the individual, the date of birth of such individual shall be entered, irrespective of the reason for which the individual is being recorded therein. If a legal entity is entered in the Commercial Register because such entity is a member of another entity, its identification number shall also be entered, if assigned.

Commentary on section 28:

Entrepreneurs are distinguished one from another by their commercial names.

A legal entity entered in the Commercial Register may also undertake activities other than business activities and these are recorded in the Commercial Register. An entry concerning a legal entity must always include the entity's legal form, which determines its statutory organ. The statutory organ's members are also recorded in the Commercial Register.

Individuals who are regarded as Czech entrepreneurs will be recorded in the Commercial Register if they apply for such entry.

Identification numbers are assigned to entrepreneurs by the registration court, unless they have already been assigned.

Section 28a

Entries of Conversions of Legal Entities

- (1) In the case of a merger [section 69(3)] of legal entities, an entry shall be made in the Commercial Register (hereafter only "entry of a merger") in respect of a legal entity which is being wound up stating it is due to a merger by acquisition or a merger by **the statutory organ or members of the statutory organ of the successor**

persons (entities). The application (a petition) for entry of the transfer of business assets shall be filed jointly by the entity being wound up and the member (partner) to whom (which) the business assets of the entity being wound up are being transferred. An application (a petition) for entry of a conversion of legal form shall be filed by the entity whose legal form is being changed.

(6) If the seats of the entities being wound up and their successor entities fall within the jurisdiction of different registration courts, the application under subsection (5) may be filed with any of them. A single ruling by the registration court shall contain all the information which is to be entered in the Commercial Register as at the same date. After the ruling permitting such entries takes legal effect, the other registration courts within whose jurisdiction the seats of the persons (entities) concerned fall shall make the relevant entries in the Commercial Register which they keep.

(7) A merger, transfer of business assets or division shall only be authorized for entry by the court in respect of the entity being wound up (dissolved) and the successor entity as at the same day (date).

Commentary on section 28a:

Section 28a relates to the new regulation of conversion of business entities and changes of their legal forms (subject to sections 69 to 69h and specific provisions on individual legal forms).

Section 29

A branch shall be recorded in the same Commercial Register as the entrepreneur, according to the location of his seat or place of business, or his residential address. If the branch is located within the jurisdiction of another registration court, it must also be entered in the Commercial Register of that court. The same shall apply to any other organizational component, as specified in section 7(2).

Commentary on section 29:

The entry of a branch or another organizational component [section 7(1) and (2)J is part of the entrepreneur's entry in the Commercial Register within whose jurisdiction such entrepreneur has his seat, place of business [section 2(3)] or residential address (Civil Procedure Code, section 200d). If a branch or an organizational component is located within the jurisdiction of another registration court, it must also be entered in the Commercial Register of that court.

Section 30

(1) Unless a particular Act stipulates otherwise, an applicant (petitioner) for registration in the Commercial Register is required to prove that he has valid trade or other authorization (permission, licence) to engage in the activity which is to be entered in the Commercial Register as his business activity, and this no later than the day the entry is to be made.

(2) Business activity which, under specific statutory provisions, may only be carried out by individuals shall only be entered in the Commercial Register as the objects (business activity) of a particular business company, partnership, or co-operative if the applicant proves that this activity will be performed by individuals authorized to do so under such provisions.

(3) A foreign individual whose name is to be entered in the Commercial Register as a person authorized to act for an entrepreneur is required to submit a residence permit (permit for stay) valid for the **Czech Republic**.

(4) Before entry in the Commercial Register, the petitioners shall prove the legal ground for use of the premises stated (proposed) as the seat or place of business of the person to be entered in the Commercial Register. A foreign person shall similarly prove the legal ground for use of the premises stated as those where such a person will locate his (its) enterprise or the organizational component of the enterprise. The same shall apply in the case of a change of seat or place of business.

Commentary on section 30:

In the case of a newly-formed Czech business, the persons authorized (empowered) to act on its behalf before its incorporation can obtain the required trade certificate and/or trade licence from the Trades Licensing Office in accordance with the Trades Licensing Act. A residence permit is issued (or not) under the Act on Foreigner's Stay and Residence in the Czech Republic. Written confirmation of lease of the premises (or another document, e.g. confirming ownership title to the premises) where the proposed seat or place of business is to be located, must be submitted to the Commercial Register (registration court).

Section 31

(1) An application for entry in the Commercial Register shall be filed either by the entitled person whom the entry concerns or by persons so authorized ex lege (in accordance with law), or by persons who have been so empowered in writing by the persons concerned.

(2) An application for entry into the Commercial Register must be accompanied by documents verifying the

facts which are to be entered in the Commercial Register **and by documents which are to be deposited in the registry of documents.**

(3) **The entrepreneur shall fulfil his obligations (duties) relating to the Commercial Register without undue delay after a decisive fact (to be entered or amended in the Commercial Register) occurs. In the case of entry of an organizational component of an enterprise or a foreign person's enterprise, such obligation pertains to its head (manager, director).**

(4) **The entry shall be made as of the day determined in the application (petition). If the decision (ruling) on entry takes legal effect at a later date, or if the application does not include the date as of which the entry should be made, the entry shall be made as of the date when the decision (ruling) concerning such entry takes legal effect.**

(5) The signatures of the persons (individuals) applying for entry into the Commercial Register and the signatures on the power of attorney [under subsection (1)] must be authenticated.

Commentary on section 31:

Documents in support of the data (facts) to be entered in the Commercial Register must be enclosed with the application. The signatures of authorized (empowered) individuals must be authenticated; foreign documents must be legalized and accompanied by official Czech translations.

Section 31a

(1) A person who has performed the office of statutory organ or member of the statutory or another organ of a legal entity for one year before a bankruptcy petition (relating to such legal entity) was filed, or before the day when the duty to file it arose, but who has not performed the said office with due managerial care, may not be the statutory organ, a member of the statutory or another organ of any legal entity for a period of three years after termination of bankruptcy, or for a period of three years after desmissal of a bankruptcy order due to the entity's lack of assets. This shall not apply if the bankruptcy **order** was annulled by the appellate court which amended or cancelled the order (ruling, judgment) of the court of first instance **on the grounds** that the conditions for adjudgement of bankruptcy were not met (and **this was not** due to the legal entity's lack of assets).

(2) An impediment under subsection (1) shall not be taken into account if the insolvency (bankruptcy) of the legal entity concerned occurred due to a breach of duty by a third party, or if the person concerned is a liquidator who filed a petition for a bankruptcy order when he ascertained that the entity was overburdened with debts. If there are doubts whether the person under subsection (1) performed his office with all due managerial care, it is for this person to prove that he exercised such care.

(3)⁵ If a fact under subsection (1) occurs at a time when the person to whom such fact relates is the statutory organ, or a member of the statutory or another organ of another legal entity, the competent organ (body) of this entity shall either recall the person from office as soon as it learns of the said **fact or confirm this person's election or appointment. A majority of at least two-thirds of the votes of attending members or the supervisory board's members shall be required for confirmation of such election or appointment.**

Commentary on section 31a:

Section 31a was introduced under Act No. 105/2000 Coll. and its subsection (3) was subsequently amended by Act No. 370/2000 Coll.

Section 32

Courts and other authorities must notify the competent registration court of any discrepancy between the actual legal position (state of affairs) and an entry in the Commercial Register as soon as they become aware of it. **Where the content of the entry in the Commercial Register conflicts with mandatory provisions of this Code and no remedy is attained under a procedure contained in other statutory provisions, the registration court shall invite the person concerned to remedy the irregularity himself. If such person is a legal entity and fails to arrange for the necessary remedy, the court may, even without a petition to that effect, decide to wind up and liquidate the entity, if such a step is necessary to protect third parties. This shall not affect the provisions of sections 131, 183 and 242.**

Commentary on section 32:

Amendments to facts entered in the Commercial Register may be applied for by an involved person (a legal entity or an individual) or initiated ex officio. The registration court must ascertain whether the legal

⁵ Subsection (3), as amended, has been effective as of 25 October 2000.

requirements for amending the entered facts (particulars) are met.

Section 33

(1) Any entry made in the Commercial Register and the deposit of a document in the registry of documents shall be published by the registration court without undue delay.

(2) The registration court shall notify entry of an entrepreneur and the scope of his business activity, as well as amendments and deletions of facts previously entered into the Commercial Register, to the competent tax authority, the statistical authority and the authority which issued the trade or a similar business authorization to the entrepreneur. The registration court shall notify these authorities no later than one week after the making of such entries.

Commentary on section 33:

Registration courts meet the requirement under subsection (J) by publishing the required information in the Commercial Bulletin ("Obchodni vestm'k").

Section 34

Implementing provisions shall regulate the scope and manner in which notification of the depositing of a document in the registry of documents are published.

Commentary on section 34:

The present wording of section 34 complies with EV legislation.

CHAPTER IV

BUSINESS ACCOUNTING

Section 35

Entrepreneurs shall keep accounts in the scope and manner stipulated in a particular Act.

Commentary on section 35:

The general principles of bookkeeping are prescribed in the Accounting Act, while the detailed provisions are set out in the Accounting Procedures for Businessmen (Entrepreneurs). Accounts must be in Czech crowns and in some specified cases also in a foreign currency.

Section 36

Entrepreneurs entered in the Commercial Register (referred to as "registered entrepreneurs" or "recorded entrepreneurs"; in Czech "zapsanf podnikatele") shall use a double-entry bookkeeping system which reflects the position of, and movements in, their business property and liabilities, and the net business assets (net worth), costs (expenses), income (revenues) and trading result (profit or loss) of their enterprise.

Commentary on section 36:

The Accounting Act requires consistency. An accounting unit may not change its methods of valuation or depreciation during the same accounting period. Most entrepreneurs are required to draw up the following financial statements: a balance sheet ("rozvaha"), a profit and loss account (or income statement; "vysledovka") and footnotes (or notes; "pfiloha").

A double-entry bookkeeping system must be used by all persons entered in the Commercial Register {and by some others in accordance with the Accounting Act}.

Section 37

(1) Unless a particular Act provides otherwise, entrepreneurs who are not entered in the Commercial Register shall use a single-entry bookkeeping system to document their receipts and expenditure and business property and liabilities in such a manner as to enable determination of their net business assets (net worth) and the financial results of their business activity,

(2) Entrepreneurs who are not entered in the Commercial Register may use a double-entry bookkeeping system instead of a single-entry bookkeeping system provided that they use it for the entire accounting period.

Commentary on section 37:

A single-entry bookkeeping system is used by sole proprietors (sole traders) who are not entered in the Commercial Register and by various "not-for-profit" organizations with relatively low expenditure and/or income.

Section 38

The accounting period shall be one calendar year. *Commentary on section 38:*

As of 1 January 2001, the accounting period, and also the taxable period (for income taxes) may differ from the calendar year if there are valid reasons for this and the competent financial office (tax administrator) approves. The wording of the Commercial Code is expected to be amended accordingly.

Section 39

(1) A joint stock company must have ordinary and extraordinary financial statements audited under other statutory provisions. Other business companies, partnerships and co-operatives have this duty only if a particular Act so requires.

(2) An entrepreneur shall provide the auditor with all accounting documents and necessary explanations for the purpose of the audit under subsection (1) above.

(3) The cost of the audit shall be borne by the entrepreneur whose financial statements are audited.

Commentary on section 39:

Section 30 of the Accounting Act sets out the requirements of auditing for:

- *accounting units (entities) which are subject to particular statutory provisions, such as joint stock companies, banks and insurance companies;*
- *other business entities if, in the year prior to the year for which the financial statements are prepared, their net turnover exceeded CZK40 million (about USD 1.5 million) or their net business assets (net worth) exceeded CZK 20 million (USD 575,000);*
- *consolidated financial statements, in the case of a consolidated group whose net assets exceed CZK 300 million and net turnover exceeds CZK 600 million.*

Section 40

Joint stock companies shall publish data from their audited financial statements; other business companies, partnerships and co-operatives must have their financial statements audited only if this is required by a specific Act.

Commentary on section 40:

Joint stock companies whose financial statements must be audited are also required to publish the data from these financial statements. In accordance with section 769 of the Commercial Code, such information is published in the Commercial Bulletin Financial statements, together with the auditor's report (if the latter is compulsory), are filed in the registry of documents kept by the registration court.

CHAPTER V

ECONOMIC COMPETITION

Division I

Participation in Economic Competition

Section 41

Individuals and legal entities taking part in economic competition (hereafter referred to as "competitors"), even though they are not entrepreneurs, have the right freely to develop their competitive activity in order to achieve economic benefits and to associate for the pursuit of such activity. However, they shall observe the legally binding provisions on economic competition and may not abuse their participation in such economic competition.

Commentary on section 41:

The term "competitor" is wider than "entrepreneur", but it is not defined. The Czech statutory provisions also do not include a definition of "economic competition".

Section 42

(1) Abuse of participation in economic competition means unfair competitive conduct (hereafter referred to as "unfair competition") and unpermitted restriction of economic competition.

(2) Unpermitted restriction of economic competition is regulated by a particular Act.

Commentary on section 42:

The general provisions on unfair competition are included in the Commercial Code (sections 44 to 55), The Act on Protection of Economic Competition (also referred to as the Antitrust Act) is intended to protect economic competition of products and services on the market

against restriction, distortion or elimination (referred to as "interference"). The Office for the Protection of Economic Competition, which succeeded the Ministry for Economic Competition, has extensive powers in protecting economic competition.

Section 43

(1) Unless it is stipulated otherwise in international treaties binding on the Czech Republic and promulgated in the Collection of Laws or the Collection of International Treaties, the provisions of this Chapter shall not apply to business conduct having effects abroad.

(2) Foreign persons who carry on business activity in the Czech Republic under this Code shall have equal status with Czech persons in respect of protection against unfair competition. In addition, foreign persons may seek protection on the basis of international treaties (agreements) binding on the Czech Republic, provided that these treaties have been promulgated in the Collection of Laws or the Collection of International Treaties; or if there are no such treaties, they may do so on the basis of reciprocity.

Commentary on section 43:

Subsection (1) restricts the applicability of the (Czech) provisions on competitive conduct to the territory of the Czech Republic. The Czech Republic is harmonizing its statutory provisions on interference in economic competition with the EU legislation.

Division II

Unfair Competition

Section 44

Fundamental Provisions

(1) "Unfair competition" (in Czech "nekalá soutěž") means conduct in economic competition which conflicts with the accepted practices of competition and which may be detrimental to other competitors or customers. Unfair competition is prohibited.

(2) Unfair competition under subsection (1) means in particular the following:

- (a) misleading advertising;
- (b) misleading marking of goods and services;
- (c) conduct contributing to mistaken identity;
- (d) parasitic use of the reputation of another competitor's enterprise, products or services;
- (e) bribery;
- (f) disparagement;
- (g) **comparative advertising**;
- (i) violation of trade secrets;
- (j) endangering the health of consumers and the environment.

Commentary on section 44:

The general definition of unfair competition covers instances of unfair competition outlined in particular in subsection (2).

Section 45

Misleading Advertising

(1) "Misleading advertising" (in Czech "klamavá reklama") is the dissemination of information by a competitor about its own or someone else's enterprise, products or services, with the aim of creating misleading perceptions as to the advantage of its own or someone else's enterprise at the expense of other competitors or consumers.

(2) "Dissemination of information" (in Czech "sffeni udaju") is deemed to be communication through the spoken or written word, the press, pictures, photographs, radio or television broadcasts or other communications media.

(3) The use of a fact which in itself is true but which, owing to the circumstances or context in which it is presented, may be misleading, is also considered to be misleading.

Commentary on section 45:

In addition to the Commercial Code's provisions, the Consumer Protection Act stipulates that "no one may mislead a consumer, particularly by providing untruthful, unsubstantiated, incomplete, inaccurate, unclear, ambiguous or exaggerated information, or by concealing information about the real properties of products or services". Compliance with the Consumer Protection Act is mainly supervised (monitored) by the Czech Commercial Inspectorate ("Česká obchodní inspekce"). Advertising is also subject to the Radio and Television Broadcasting Act.

Section 46

Misleading Marking of Goods and Services

(1) "Misleading marking of goods and services" (in Czech "klamavé označení zboží a služeb") means the marking of goods and services in such a way as to create an erroneous impression in the market place about the country, region or location where the goods or services so marked originated or are made by a certain manufacturer (producer), or the special characteristics or quality of such goods or services. It is irrelevant whether such markings appear on the goods, the packaging, or in commercial documentation, etc. It is also irrelevant whether the misleading marking was provided directly or indirectly, or by what means. Section 45(3) applies as appropriate (*mutatis mutandis*).

(2) Misleading marking also means incorrect marking of goods or services with expressions such as "(of) the kind", "(of) the type", or "(using) the method" in order to distinguish such goods or services from an authentic original, if such marking is capable of creating an erroneous impression with regard to the origin or nature of the goods or services involved.

(3) The marking of goods and services which is commonly used in business to describe a particular kind or a particular **quality** is not considered misleading, unless accompanied by additional words which might be misleading, e.g. "genuine", "original", etc.

(4) The above provisions do not affect rights and duties ensuing from the registered designation (marking) of products, trademarks, protected plant varieties and livestock (animal) breeds, as stipulated by particular Acts.

Commentary on section 46:

In addition to the provisions of the Commercial Code, the misleading (deceptive) marking of goods and services may also be subject to the provisions of particular Acts, such as the Act on Protecting the Designation of the Origin of Products, the Trademarks Act, etc. The Czech Republic has adopted the international regulation of trademarks laid down in the Madrid agreement, the registration of the origin of goods set out in the Lisbon agreement and the protection of intellectual property as defined in accordance with the Paris agreement.

Section 47

Conduct Contributing towards Mistaken Identity

"Conduct contributing towards mistaken identity" (in Czech "vyvolávání nebezpečí záměny") means:

- (a) **using a commercial name or designation or the special designation of an enterprise which is already legitimately being used by another competitor;**
- (b) using the special designation of an enterprise, a special marking or a specific design related to products, services, or commercial materials which customers associate with a particular enterprise, or a particular branch of an enterprise (e.g. packaging, printed matter, catalogues, advertising materials, etc.);
- (c) imitating a competitor's products, packaging or performance, unless this imitation involves elements which are predetermined functionally, technically or aesthetically, and the imitator has taken every possible measure which could be required of him to avoid the danger of mistaken identity, or at least has substantially restricted such danger; if such conduct is capable of creating the danger of mistaken identity **or a misleading notion about a particular enterprise, its commercial name or special designation**, by using such designation or by imitating the products or services of another competitor.

Commentary on section 47:

The use of one and the same commercial name by two different entrepreneurs is also subject to the provisions of sections S 10 12. In the case of use of a competitor's special enterprise markings, the decisive consideration is whether customers associate them with a particular enterprise. Protection is also granted when the imitation of a competitor's products and/or their packaging creates, or contributes to, mistaken identity.

Section 48

Parasitic Use of Reputation

"Parasitic use of reputation" (in Czech "parazitovam na povesti") means the use by a competitor of the reputation of another competitor's enterprise, products or services to gain extra benefits for its own or a third party's business activity which would not otherwise have been achieved by such person.

Commentary on section 48:

Parasitic use of reputation often takes the form of expropriating another competitor's goodwill.

Section 49

Bribery

Under this Code, "bribery" (in **Czech** "podplaceni") means conduct whereby.

- (a) a competitor offers, promises or renders benefits, directly or indirectly, to an individual who is a member of another competitor's statutory or similar organ or employee (or an individual of similar status) to gain an advantage by means of unfair conduct for himself or a third party (another competitor) to the detriment of other competitors, or an illegal competitive advantage; or
- (b) an individual under letter (a) directly or indirectly demands or solicits or accepts any kind of benefit for the same purpose.

Commentary on section 49:

A benefit (bribe) under section 49 may be material (e.g. money) or non-material (e.g. honorary membership). Bribery is further subject to the provisions of the Criminal Code.

Section 50

Disparagement

- (1) "Disparagement" (or "disparaging"; in Czech "zlehcovan") means conduct whereby one competitor states or disseminates false information about the circumstances, products or services of another competitor, such false information being likely to be detrimental. (e)
- (2) Disparagement also involves stating and disseminating truthful information about the circumstances, products or services of another competitor, if such information is capable of causing detriment to that competitor. However, it is not considered unfair competition if a competitor is forced by circumstances to such conduct (e.g. in justified defence).

Commentary on section 50:

Non-material detriment caused by disparagement usually involves jeopardizing a particular competitor's reputation and goodwill. Section 19h of the Civil Code also includes a provision intended to prevent "unjustified interference which harms the good name of a particular legal entity".

Section 50a

Comparative Advertising

- (1) **Comparative advertising** ("**srovnací reklama**") means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor,
- (2) **Comparative advertising shall be permitted when:**
 - (a) **it is not misleading;**
 - (b) **it compares only goods or services meeting the same needs or intended for the same purpose;**
 - (c) **it objectively compares only such features of the goods or services which are fundamental (material), relevant, verifiable and representative; as a rule, several features must be compared and these may include the price; only exceptionally may comparison of one feature be permitted, provided that such comparison fully meets all the stipulated conditions;**
 - (d) **it does not create confusion in the market place between the advertiser and a competitor or between their enterprises, goods or services, or trademarks, commercial names or other distinguishing marks typical of one or the other;**
 - (e) **it does not discredit a competitor's enterprise, goods or services, or trademarks, commercial name or other distinguishing marks which are typical of the competitor or of its activity, relations or other related circumstances;**
 - (f) **in the case of products for which a competitor is entitled to use a protected designation of origin, it relates in each case to products with the same designation;**
 - (g) **it does not take unfair advantage of the reputation of a competitor's trademark, commercial name or other distinguishing marks which have become typical of such competitor, or of the designation of origin of competing products;**
 - (h) **it does not present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name or commercial name.**
- (3) **Any comparison referring to a special offer shall indicate in a clear and unequivocal way the date on which the offer ends or, where appropriate, that the special offer is subject to availability of the goods or services which are offered. When the special offer has not yet begun, the competitor must also state the date of the beginning of the period during which the special price or other specific conditions shall apply.**

Commentary on section 50a:

Section 50a has been added to the Commercial Code to include the provisions on comparative advertising in

the process of harmonization with the EU legislation.

Section 51

Violation of Trade Secrets

"Violation of a trade secret" (in Czech "porušení obchodního tajemství") means conduct whereby an individual illegally informs another person about a trade secret (section 17), or provides him with access to it, or exploits it for his own or another person's benefit, using it in competition, and of which the individual learned of:

- (a) as a result of having been entrusted with that secret, or by having gained access to it through technical documentation, instructions, drawings, models or patterns) on the basis of an employment or other relationship with the competitor, or while performing a function to which the individual was appointed by a court or other authority; or
- (b) through his own or another person's illicit conduct.

Commentary on section 51:

A trade secret is defined in section 77 of the Commercial Code. The right (title) to it is regulated in sections 18 to 20. Section 11 also enables other persons (e.g. a licensee) to claim protection for a particular trade secret.

Section 52

Endangering the Health of Others and the Environment

"Endangering the health of others and the environment" (in Czech "ohrožování zdraví a životního prostředí") is conduct whereby a competitor distorts the conditions of economic competition by manufacturing and marketing products, or by carrying on activities, which endanger health or the environment as protected by law, in order to acquire benefits for himself or for another person at the expense of other competitors or consumers.

Commentary on section 52:

Section 52 applies to conduct whereby a competitor benefits from not observing a particular limit (standard) set for manufacturing (processing) or the sale of certain products.

Division III

Legal Protection against Unfair Competition

Section 53

Persons whose rights have been violated or jeopardized as a *result* of unfair competition can demand that the offender desists from such conduct and eliminate the improper state of affairs (resulting from it). They can also demand appropriate satisfaction, which may be rendered in money, compensation for damage (i.e. damages) and the surrender of unjust enrichment.

Commentary on section 53:

Section 53 specifies what can be claimed by a person whose rights have been violated or jeopardized as a result of unfair competition. Under section 149 of the Criminal Code, "an individual who wilfully harms the reputation or jeopardizes the operation or development of a competitor's company (enterprise) by conduct which is contrary to the provisions on economic competition or the practice of competition, will be punished by imprisonment for a period of up to one year, or by the imposition of a pecuniary penalty or forfeiture of a specific thing."

Section 54

(1) The right to demand that an offender desists from his illicit conduct and eliminates the improper state of affairs may also be asserted, except for the cases referred to in sections 48 to 51, by a legal entity authorized to protect the interests of competitors or consumers.

(2) If the right to require that the offender desists from his illicit conduct or eliminates the improper state of affairs is claimed in the cases stipulated in sections 44 to 47 and in section 52 by a consumer, the offender must prove that he did not behave in a way contrary to the provisions on unfair competition. The same shall apply to the duty of the offender to damages (i.e. compensation for damage) if clarification is needed as to whether damage was caused by conduct regarded as unfair competition and to the other party's right to appropriate satisfaction and the surrender of unjust benefit; however, the amount of damage caused, the significance and extent of other detriment, the nature and extent of unjust enrichment must always be proved by the claimant, even if he is a

consumer.

(3) After the initiation or final conclusion of litigation relating to an improper state of affairs or the requirement to desist from certain conduct, claims for damages made by other entitled persons which are identical and arose from the same conduct shall not be admitted; this shall not affect the right of such other persons to join the initiated litigation as subsidiary (secondary) parties under the general statutory provisions. A final judgment issued on such claims for damages filed by a single entitled person ("class actions") shall also be effective with regard to the other entitled persons.

Commentary on section 54:

The right to defend the interests of competitors or consumers also pertains to a legal entity, such as an entrepreneurs' association, a consumers' union, etc.

Section 55

(1) In the case of hearings during litigation (disputes) pursuant to the preceding provisions, the court may rule on the basis of a motion or ex officio that the public shall be excluded, if a public hearing would jeopardize a trade secret or the public interest.

(2) The court may rule in its judgment that the party whose motion is granted has the right to publish the judgment at the expense of the party which lost the case and, depending on the circumstances of the case, the court may rule on the extent, form and method of publishing such judgment.

Commentary on section 55:

Subsection (1) above relates to the provision of section 1/6(2) of the Civil Procedure Code, which similarly stipulates that the public can be excluded from hearings "if a public hearing would jeopardize a state, economic, commercial or official secret..."

**PART TWO
BUSINESS COMPANIES, PARTNERSHIPS AND CO-OPERATIVES**

CHAPTER I BUSINESS COMPANIES AND PARTNERSHIPS

Division I General Provisions

Section 56

(1) A business company* (hereafter referred to as "a company", in Czech "společnost") is a legal entity formed for the purpose of carrying on business activity. The term "company" (in this chapter) refers to a general commercial partnership (i.e. an unlimited partnership; in Czech "verejna obchodni společnost"), a limited partnership ("komanditni společnost"), a limited liability company ("společnost s rucenim omezenym") and a joint stock company ("akciová společnost"). A limited liability company and a joint stock company may also be formed for another purpose, unless a particular Act prohibits it.

(2) Individuals and legal entities may be promoters (founders) of a company and participate in its business activity, unless the law provides otherwise.

(3) The activity defined in section 30(2) may be carried on only by a company through the individuals referred to in that section. The responsibility (liability) of these individuals under particular statutory provisions remains thereby unaffected.

(4) An individual or a legal entity may become a member* with unlimited liability only in one company (entity).

(5) The provisions on individual forms of companies stipulate the extent of the members' liability for their company's (partnership's) obligations. Their liability is governed mutatis mutandis by the provisions on suretyship (section 303 et seq), unless other provisions of this Code imply otherwise. If the property of a company is subject to a bankruptcy order, the members are liable for those of the company's obligations (debts) which have been claimed in time by creditors and which have not been satisfied during the bankruptcy proceedings.

(6) After the dissolution of a company, its members remain as liable for such company's obligations as they were during its existence. Should the winding-up of a company be associated with its liquidation, the company's members shall be liable for its obligations (debts) up to the extent of their share in the liquidation remainder [section 61(4)], but at least to the same extent to which they were liable while the company was in existence. The members shall reach a settlement among

* "Obchodni" společnost", which is translated in this publication as "a business company", is also referred to as a "commercial company". It should be remembered when reading sections 56-75 that the term "company" also refers to a general commercial partnership and a limited partnership.

* The term "member", in Czech "společník", refers in this chapter collectively to a partner of a general commercial partnership, a general partner and a limited partner of a limited partnership, a member of a limited liability company and a shareholder of a joint stock company themselves in the same manner as in the case of their liability during the existence of the company.

Commentary on section 56:

Under Czech law, general commercial partnerships (unlimited partnerships), limited partnerships, limited liability companies and joint stock companies are all regarded as legal entities (being referred to in this Chapter collectively as "companies"). Under laws of some other countries partnerships are not legal entities.

The Commercial Code includes detailed provisions on general commercial partnerships (sections 76-92e), limited partnerships (sections 93-104e), limited liability companies (sections 105-153e) and joint stock companies (sections 154-220zb) and also on co-operatives (sections 223-260). A limited liability company can even be formed and owned by a single individual or legal entity; the maximum number of the company's members is 50. A joint stock company can be founded by a single legal entity (but not by one individual); the number of founders is not otherwise restricted.

The legal form of entities for certain business activities is stipulated by other Acts (e.g. in the case of a stock exchange).

In addition to business companies (entities), there are also public service companies which are subject to the Act on Public Service Companies (No. 248/1995 Coll.) and which provide "publicly beneficial services". Public service companies are entered in the Register of Public Service Companies. Business activity which, under the Trades Licensing Act, can only be carried out by individuals is entered in the Commercial Register as a particular company's (entity's) business, if the applicant proves that the business activity will be carried on by individuals who have the required trade certificate or trade licence.

Although all partnerships and companies are regarded as legal entities, there are differences in their income tax regime.

Individuals are generally liable to Czech personal income tax if they spend at least 183 days in a single year (12 months) in the Czech Republic, whereas individuals who are domiciled abroad are liable to (Czech) tax on income generated solely from sources in the Czech Republic.

An individual or an entity may bear unlimited liability only in one entity. Under Czech law, unlimited liability for the entity's obligations is borne by any partner in a general commercial partnership and any general partner in a limited liability partnership.

Section 56a

(1) Misuse of a majority or a minority of votes in a company is prohibited.

(2) Any conduct which is intended to put some of the company's members at a disadvantage by means of malpractice shall be prohibited.

Commentary on section 56a:

Subsection (1) should help to protect investors' interests in general terms, while subsection (2) can be referred to in specific cases of business malpractice which are not otherwise legally regulated.

Section 57

Formation of a Company

(1) Unless other provisions of this Code stipulate otherwise, a company is formed (founded) on the basis of a deed of association, signed by all of the promoters (founders). The promoters' (founders') signatures must be officially authenticated. **The deed of association of a limited liability company or a joint stock company must be in the form of a notarial deed.**

(2) The deed of association may also be signed on behalf of the promoter (founder) by a person authorized to do so by a power of attorney ("plná moc"), accompanied by the officially authenticated signature of the promoter. Such power of attorney must be enclosed with the deed of association.

(3) Where this Code permits the formation of a company by a single person, the deed of association shall be replaced by a founder's deed (or deed of formation; "zakladatelska listina") in the form of a notarial deed. The founder's deed must include the same essential data as the deed of association.

Commentary on section 57:

The Commercial Code describes the formation of a company as a process in which promoters (founders) aim at incorporation (registration or entry) of a newly-formed company (or partnership) in the Commercial Register.

The effective day of incorporation is the day when the company (or partnership) officially comes into being.

Section 58

Registered Capital

(1) The registered capital (also referred to as "share capital"; in Czech "zdkladnf kapital") shall mean the total of all its members' monetary and nonmonetary investment contributions a member's "investment contributions"; in Czech "vklad") to its registered capital and expressed in pecuniary terms (in units of Czech currency). A member participates in the registered capital by his investment contribution.

(2) It is mandatory for a limited partnership, a limited liability company and a joint stock company to have registered capital. Its amount shall to recorded in the Commercial Register when the law so stipulates.

Commentary on section 58;

Registered capital ("share capital", "capital stock" or "basic capital") expresses the monetary amount of assets invested in a company (entity). Its registered capital must be distinguished from its net worth [net business assets ~ see section 6(3)]. In the case of a profitable company, its net worth is higher than its registered capital, whereas the net worth of a loss-making company falls below the level of its registered capital on incorporation.

As of 1 January 2001 new amounts of registered capital are prescribed for a limited liability company and a joint stock company.

Section 59

Investment Contributions

(1) A member's investment contribution in a company shall be the aggregate of his pecuniary funds ("a monetary investment contribution) and (or) another asset appraisable in money ("a nonmonetary investment contribution" or "in-kind investment contribution") which a particular person undertakes to invest in the company in order to acquire an ownership interest (i.e. a business share) in such company or to increase such ownership interest.

(2) A nonmonetary (in-kind) contribution may only be an asset with an economic value which can be ascertained and which the company can utilise in pursuing the object of its activity. It is prohibited to make investment contributions in the form of an undertaking to perform some work or supply a service. A nonmonetary contribution must be provided before the amount of the registered capital is recorded in the Commercial Register. Should the company not acquire ownership title to a particular object of a nonmonetary investment contribution, even though such nonmonetary contribution is regarded as paid up, the member who undertook to provide such contribution must pay its value in money and the company must return such nonmonetary contribution to this member, unless the company is under obligation to surrender it to the entitled person. If a member transfers his business share in the company to another person, the transferee shall be liable to pay the value of the nonmonetary contribution in money, unless such business share was acquired on a public market,

(3) The value of a nonmonetary contribution must be stated in the deed of association or the deed of formation (founder's deed), unless this Code provides otherwise. The value of a nonmonetary contribution to a limited liability company or a joint stock company, or of a nonmonetary contribution made by a limited partner to a limited partnership, shall be based on a report drawn up by an expert who is independent of the company (partnership) and appointed by a court. If the value of a nonmonetary investment contribution exceeds CZK 10 million, or if the object of such contribution is an enterprise or a part of such, know-how, or if the company is formed by one promoter (founder) or has one member, a joint report drawn up by two independent experts, appointed by the court, shall be required. A petition (proposal) for appointment of an expert or experts shall be Hied by the promoter or future founder or the company (hereafter only "the petitioner"). The parties to such proceedings shall be the petitioner and an expert, and the proceedings shall be held at the court which has general jurisdiction over the petitioner. The court shall not be bound by the petitioner's proposal. The court shall recall an expert, acting on the basis of a petition filed by the company concerned, if the expert fundamentally breaches his duties. The court shall rule on the determination of a particular expert or his recall within 15 days of delivery (receipt) of the petition. Remuneration for the drawing up of an expert's report shall be paid by the company on the basis of a contract. Should the company not come into being, such remuneration shall be paid jointly and severally by the promoters. Should the parties fail to agree on the amount of remuneration, the court which appointed such expert shall determine its amount, acting on the basis of a petition filed by any of the parties.

(4) The expert's report shall contain at least:

- (a) a description of the nonmonetary contribution;
- (b) the methods of valuation used, stating whether the value of such nonmonetary investment contribution established by use of these methods is equal to at least the total issue price of the shares to be, issued as counterperformance for the nonmonetary contribution, or to the amount which is to be counted as (part) payment in respect of a particular member's contribution to the limited liability company's registered capital;
- (c) the amount at which such nonmonetary contribution is valued.

(5) If a contribution is in the form of an enterprise or a part of such, the provisions on the contract of sale of such enterprise or its part shall apply as appropriate; if such enterprise includes real estate, the agreement (contract) on the member's contribution must also contain a statement under section 60(1).

(6) If an investment contribution or its part is in the form of assignment (transfer) of a receivable, the provisions on assignment of receivables shall apply as appropriate. A member who assigns a receivable to a company as his investment contribution is liable for payment of such receivable up to the amount of its valuation.

(7) If the value of a nonmonetary contribution does not reach the originally agreed amount by the time of the company's incorporation, the member who made such nonmonetary contribution must pay the difference in cash, unless the deed of association or statutes indicate another manner of settling the difference. The same shall apply to a member who makes a nonmonetary contribution after incorporation of the company, should the value of this not reach the valuation amount by the time when investment contributions are to be fully paid up. If a member's contribution is in the form of establishment or assignment of the right to use something for a fixed period and such right extinguishes prior to expiry of the agreed fixed period, the member shall pay cash for the detriment thus caused. If a member transfers his business share to another person, the transferee shall be liable for fulfilment (discharge) of this duty, unless such business share is acquired on a public market.

(8) A receivable from a company cannot be used as an in-kind investment contribution. Such receivable may only be off-set against a company's receivable when it is in the form of a member's paying-up of an investment contribution or the issue price (of a share) if this possibility is stipulated by law.

Commentary on section 59:

The features of an investment contribution are that:

- it is an asset in cash or in other forms, such as a thing, know-how, etc.;
- it has a value which can be expressed in money terms;
- it is transferable. A nonmonetary investment contribution must be provided prior to entry of the registered capital in the Commercial Register i.e. prior to either the first entry or any subsequent entry of the new amount of the registered capital. Subsection (4) stipulates the particulars to be included in an expert's report on the valuation of an in-kind investment when such report is required.

In the case of real estate which is to be registered in the Real Estate Cadastre (Land Registry), an investment contribution is regarded as paid up (i.e. provided) when the member makes a written statement on the transfer and hands over the real estate to the administrator (manager) of investment contributions. However, the transferee (the company) only legally acquires title to the real estate on registration of this transfer in the Real Estate Cadastre.

In the case of movables, the right is usually acquired when the thing is handed over (i.e. on receipt of the movable asset).

Section 60

Administration and Payment of Investment Contributions Before Incorporation

(1) Prior to the legal existence (incorporation) of a company, the promoter so entrusted in the deed of association shall administer (manage) the paid-up investment contributions or portions thereof. The administration of monetary investment contribution may also be entrusted to a bank, even if the bank is not one of the promoters (founders). Ownership title to these contributions or portions of such which were paid up prior to incorporation of the company, or, any other right to such contributions, shall pass to the company on the day of its incorporation (registration, i.e. entry in the Commercial Register). Ownership title to real estate shall be acquired on the basis of registration of such title in the Real Estate Cadastre or of a written statement by the party (person) investing such real estate. The signature on the statement must be authenticated. Other property values to which a right is acquired on entry in a special registry (register) shall only pass to the company on the effective date of such entry.

(2) If a nonmonetary investment contribution is in the form of real state, the investor concerned shall hand over

a written statement under subsection (1) to the person administering paid-up contributions ("the administrator of contributions" or "contributions manager"; in Czech "správce vkladu") before the company's registration in the Commercial Register. On the handing over of the said statement, together with the real estate concerned, to the administrator of contributions, such contribution is regarded as paid up. The provisions of section 59(2) shall not thereby be affected. If a nonmonetary contribution is a movable thing, such contribution is regarded as paid up on the handing over of such thing to the administrator (manager), unless the deed of association or deed of company formation stipulates otherwise. In the case of other nonmonetary (in-kind) investment contributions, they shall be considered as paid up on conclusion of a written contract (agreement) on such contribution with the administrator acting on behalf of the company. This contract shall clearly state that it is the administrator who is responsible for supervision of performance of the contract until incorporation of the company. Where an in-kind investment contribution involves know-how, the appropriate documentation must be handed over. Where an in-kind investment contribution is in the form of supply of an enterprise or a part of such, enterprise or its part must be handed over to the administrator of investment contributions. A record of its transfer shall be drawn up by the administrator and the person (member) handing over the enterprise or part of such or documentation on know-how as his in-kind investment contribution.

(3) After the company's incorporation, the administrator of the contributions shall, without undue delay, hand over the paid-up contributions together with the yields (fruits) and benefits to the company except in the case of monetary contributions deposited in a special account opened for a company at a bank prior to its incorporation. If the company is not incorporated (i.e. if it fails to come into existence), the administrator of the contributions shall return them together with their yields (fruits) and benefits without undue delay. The promoters shall be jointly and severally liable for the discharge of this obligation (duty). (4) The administrator of the investment contributions shall issue a written statement confirming that the contributions or portions thereof have been paid up by the individual members. This statement shall be enclosed with the petition (application) for registration in the Commercial Register (incorporation). An administrator whose statement shows a total (of paid-up contributions) greater than that actually paid up shall be responsible to the company's creditors for company liabilities up to the amount of the difference (between the total shown and the total actually paid up) for a period of five years from the date of the company's incorporation.

Commentary on section 60;

The administration of investment contributions means taking care of the assets making up contributions. Under section 576, the provisions of sections 567 to 575 on mandate apply to such management as is appropriate. The administrator (manager) is usually one of the promoters, although it can be a bank even if it is not a promoter. When real estate is handed over as a nonmonetary investment contribution, the signatures on the protocol recording the handing over of the real estate must be authenticated.

On the company's incorporation, ownership title to the assets which are the objects of the investment contributions is transferred to the company. However, ownership title to real estate is only acquired on registration in the Real Estate Cadastre. The administrator must hand over the assets to the company without undue delay and within the time-limit agreed in the deed of association.

Section 61

Business Share

(1) A business share ("an ownership interest" or "holding") represents the proportion (size) of a particular member's participation in the company and the rights and obligations (duties) derived therefrom. A member (partner) may have only one business share in one company (partnership), except in the case of a joint stock company. A business share in a company (partnership) is not represented (expressed) by a security, except in the case of a joint stock company. For the purposes of this Code, a member's (partner's) business share represents the extent of a member's (partner's) proportionate participation in the net worth (net business assets) of the company (partnership), unless the law provides otherwise.

(2) On termination of a member's participation in a company during such company's existence in a manner other than by transfer of such member's business share to another person, the member becomes entitled to a settlement ("a settlement share"; in Czech "vypofadaci podíl"). The amount of a settlement share shall be computed as at the day of termination of the member's participation as a proportion of the equity capital, ascertained on the basis of interim, ordinary (annual) or extraordinary financial statements drawn up as at the day of termination of the member's participation in the company, unless the deed of association provides that it is to be ascertained from the company's net worth (net business assets) on the basis of a report by an expert appointed under section 59(3). A settlement share is paid in cash, unless the deed of association or statutes stipulate otherwise.

(3) The right to payment of a settlement share matures three months after the approval of financial statements under subsection (2) or after delivery (receipt) of an expert's report under subsection (2) to the

company, unless the law, the agreement of the parties or the deed of association provides otherwise. If the members (partners) or the competent organ of the company fail(s) to approve the financial statements without good reason, the right to payment of a settlement share matures three months after the day when such financial statements should have been approved.

(4) If the winding-up of a company is associated with the company's liquidation, its members are entitled to receive a share of the property remainder resulting from the liquidation ("a liquidation share"; in Czech "podíl na likvidacním zůstatku").

Commentary on section 61:

A member's "business share" or "ownership interest" or "holding", represents the portion (percentage) of the company's net worth (net business assets) which the member acquires in the company in return for his investment contribution. The Commercial Code stipulates that in a limited liability company one member may only own one business share (one holding). In the case of a joint stock company, the extent of a shareholder's rights in the company is determined by the ratio between the nominal value of his shares (stock) and the company's registered (share) capital.

Business shares in a company or partnership remain relatively stable, but their value changes in accordance with the company's trading results (net worth). Net worth may be established from the accounts, which enable the accounting value of a business share to be determined. If on the day on which the value of the business share is to be established, the company's (or partnership's) assets and liabilities are ascertained (or the value of the enterprise is assessed), and the value of (he business share is derived from such amount, the result is referred to as the book value of the business share. When a business share is transferable, it is sold at the market price (the market value of the business share).

When a member terminates his participation in a company while it is still in existence, he is entitled to payment of an amount corresponding to his business share (a settlement share). When a company is wound up and liquidated, he is entitled to receive a share of the liquidation remainder (a liquidation share).

Section 62

Incorporation

(1) A company officially comes into being on the day as of which it is entered in the Commercial Register (incorporation). A petition (an application) for entry in the Commercial Register must be filed (with the registration court) within 90 days of the company's formation (section 57), or within 90 days of the date on which a trade or similar business authorization is delivered. **If a petition is filed within the said time-limit, a petition for entry in the Commercial Register cannot be any longer submitted on the basis of such trade (or similar business) authorization.**

(2) Unless it is explicitly stated that a company is formed (established) for a fixed period of time, it is assumed that the company has been formed for an indefinite period. **Commentary on section 62:**

A company or partnership becomes a legal entity as of the day of its incorporation, i.e. as of the effective date of its entry in the Commercial Register (see also section 27 et seq). It can carry on the business activity or activities recorded in the Commercial Register and employ employees. At the same time it has to meet the legal requirements relating to social security and health insurance contributions (premiums), taxes, etc.

Section 63

All acts in law (legal transactions) involving the formation, incorporation, change, winding-up or dissolution of a company must be in writing, with authenticated signatures; the law determines which acts in law are required to be in the form of a notarial deed. Should the law require a notarial deed for the act in law by which a particular company is formed, any alteration of its content must also be in the form of a notarial deed.

Commentary on section 63:

Section 63 deals generally with the acts in law required by the formation, incorporation, change, winding-up and dissolution of a company or partnership. The provisions of this section apply if the Commercial Code does not include more specific provisions on such acts in law.

Section 64

Transactions on behalf of a Company before Incorporation (1) A person who acts on behalf of a company before its incorporation shall be bound by these transactions (acts in law); if two or more persons act jointly, they shall be liable jointly and severally. If the members (partners) or the competent organ of the company approve(s) such transactions within three months of

the company's incorporation, the company shall be bound by them as of their inception.

(2) Obligations other than those which are related to the incorporation of a company and which commit (bind) the company's promoters (founders) may not be taken over by the company, unless such transactions (contracts) are only concluded subject to a suspensive (dilatatory) condition relating to incorporation of the

company and approval of any such obligations by the members (partners) or the relevant company organ. Persons who assumed other obligations on behalf of the company shall be liable for any damage resulting therefrom and bound by such transactions.

(3) Promoters (founders) shall provide a list of transactions under subsection (2) and submit it for the approval of the members (partners) or the competent company organ (the one authorized to approve such transactions) so that the time-limit under subsection (1) can be observed. If the promoters breach this duty, they shall be liable to creditors for any resulting damage.

(4) After the approval of transactions concluded before the company's incorporation, the statutory organ of the company shall, without undue delay, notify the parties to such transactions accordingly.

Commentary on section 64:

Acts in law which take place between the formation and incorporation (coming into being) of a legal entity are undertaken in the name of the future legal entity. Such acts in law include the initial payment of investment contributions, the filing of an application for a trade certificate or trade licence ("a trade authorization"), and the submission of an application for incorporation. Promoters bear joint and several liability for obligations assumed on behalf of an as yet unincorporated company or partnership. Such obligations pass to the company or partnership upon incorporation, unless the company or partnership renounces (them within three months of its incorporation (see e.g. section 125).

Section 65

Prohibition of Competitive Conduct

(1) The provisions relating to individual forms of companies and partnerships stipulate which persons (individuals) are subject to the prohibition of competitive conduct and to what extent.

(2) A company (partnership) may demand of a person (individual) who violates this prohibition that he surrenders to the company any benefit gained from the transaction by which he violated the prohibition, or that he transfers the corresponding rights to the company. This shall not affect the right of the company to claim damages.

(3) The company's rights under subsection (2) shall become null and void if they are not claimed against the liable person (individual) within three months of the day on which the company learns of the relevant fact; however, a claim cannot be made later than one year after the day when the prohibition is violated. This shall not, however, affect the company's right to claim damages.

Commentary on section 65:

The prohibition of competitive conduct is regulated in the Commercial Code for individual forms of companies and partnerships. Competitive conduct by employees is prohibited by the Labour Code (section 75). A company or partnership may require a person (individual) who breaches the provisions on prohibition of competitive conduct:

- to surrender to the company or partnership any benefit gained from the transaction by which he violated the prohibition;
- to transfer the appropriate rights to the company or partnership;
- to compensate any damage caused by the breach.

Section 65a

(1) If incorporation expenses are shown in a company's accounting as fixed assets, such assets must be depreciated no later than five years after incorporation.

(2) Until assets under subsection (1) are fully depreciated, no shares in profit may be paid out, unless the disposable funds from which shares in profits are otherwise paid out, together with retained profit from previous periods, are equal to at least the non-depreciated part of the incorporation expenses.

Commentary on section 65a:

Section 65a was introduced by Act No. 370/2000 Coll. in accordance with the Fourth Council Directive.

Section 66

(1) A person who is the statutory organ or a member of the statutory or another organ may resign. However, such person must notify his resignation to the organ of which he is a member or which elected or appointed him. The tenure of such person shall end on the day when the resignation is discussed, or should have been discussed, by the organ which elected or appointed this person, unless the deed of association or statutes stipulated that it is sufficient for such resignation to be discussed by the organ of which the person is a member. In the case of a person elected to an organ by the company's employees, the person's tenure shall end on the

day when his resignation is discussed, or should have been discussed, by the organ of which he is a member. The relevant organ shall discuss the resignation at the next meeting (session) after it learned of the (proposed) resignation. If the resigner advises a meeting (session) of the organ concerned of his intention to resign, his tenure shall end two months after this announcement, unless, at person's own request, the relevant organ approves another date for the end of his tenure.

(2) The relationship between the company and the person who is its statutory organ, or a member of its statutory or another organ, or a member involved in arranging the company's affairs, shall be subject, as appropriate, to the provisions on mandate, unless a contract on performance of an office, if concluded, or the law stipulates the rights and obligations (duties) differently. An undertaking to perform an office is an undertaking of a personal nature. A contract on performance of an office must be in writing and must be approved by the general meeting or by all of the partners bearing unlimited liability for such entity's obligations.

(3) Any supply (benefits, emoluments) by a company in favour of a person who is the organ of the company, or a member of such, which this person is not entitled to under the statutory provisions or the company's internal regulations (rules) is subject to approval by the general meeting, unless the person was awarded the right to such supply (benefits) in a contract on the performance of his office. However, the company shall not provide such supply if this person's performance of his office obviously contributed to the company's unfavourable economic results, if this person is guilty of (responsible for) breaching a statutory duty in connection with the performance of his office.

(4) Unless the law or the company's statutes or deed of association provide otherwise, statutory and other organs may adopt a resolution (take a decision) only if more than half of their members are present at the meeting (session) and the resolution requires approval by a majority of the members present. The chairman's vote shall be decisive in the event of a tie. The company's statutes or deed of association may even permit voting in writing, or by means of communication with persons outside the meeting room, if this is agreed upon by all members of the organ concerned. Members voting in such a manner are considered as present at the meeting.

(5) The provisions of subsections (1) and (4) shall not apply to a general meeting.

(6) The provisions of this Code and specific statutory provisions on the rights and duties of company organs and members of such organs shall also apply to persons who, on the basis of a contract (an agreement), their business share in a company or of another fact having a substantial influence on the company's conduct, even though they are not company organs or members of such organs, irrespective of their relationship to the company.

(7) Persons who undertake acts in law in writing in the name and on behalf of a company shall sign the documents by adding their signature to the commercial name of the company. However, a failure by a person undertaking such acts in law to state the commercial name of the company shall not invalidate such act in law.

Commentary on section 66:

The statutory organs of particular types of partnerships and companies are explained in sections 85, 101, 133 and 191. The provisions of subsection (1) do not apply to partners of a general commercial partnership and general partners of a limited partnership who are statutory organs because they are partners.

"Some other organ" refers particularly to the supervisory board, whether it is established mandatorily (as in a joint stock company) or voluntarily (as in a limited liability company), but it does not apply to the general meeting through which members (shareholders) exercise their rights.

Section 66a

Joint Ventures (Business Groupings)

(1) A partner or member or shareholder who has a majority of votes derived from his business share in a partnership or company is the majority partner, member or shareholder, and the partnership or company in which he has such majority is a partnership or company with a majority partner, member or shareholder. Votes derived from a partner's business share in a general commercial partnership (i.e. an unlimited partnership) or a limited partnership, or from a member's business share in a limited liability company, shall be votes attached to his business share in such partnership or company. In the case of a shareholder of a joint stock company, votes attaching to his shares in such company are taken into account, irrespective of whether such shares have been issued. For the purposes of this provision, preference shares to which voting rights are not attached shall be considered as shares with no voting rights attached, even when under the law voting rights are temporarily attached to them. The total number of votes derived from a business share in a company shall not include votes derived from the company's own business shares or shares which are owned by the company or by a person controlled by this company, or from business shares or shares held by another person (party) in his own name but on the account of the company or persons controlled by the company.

(2) A controlling person ("ovla" "dajici osoba") is a person who de facto or legally exercises, directly or indirectly, a

decisive influence on the control or operation of another person's (party's) enterprise (hereafter "a controlled person"; in Czech "ovladana osoba"). If the controlling person is a company, it is referred to as "the parent company" ("materska spolecnost") and a company controlled by it is referred to as "a subsidiary" ("dcefinna spolecnost"). "Indirect influence" ("neprimy vliv") means influence exercised through another person or persons. However, a controlling person is not a person whose influence on the company is based on mandate, a contract on the administration (management) of certain property or another similar commercial contract.

(3) A controlling person is a person who:

- (a) is a majority member (shareholder); this shall not apply if the controlling person is determined under letter (b);
- (b) has at its disposal a majority of voting rights based on an agreement with another member (shareholder) or members (shareholders) (a "pooling agreement");
- (c) can force through the appointment or election or recall of the majority of persons who form the statutory organ or are members of such, or the majority of persons who are members of the supervisory organ (supervisory board) of the legal entity of which he is a member (shareholder).

(4) Persons who are involved in concerted conduct and who jointly have a majority of the voting rights in a legal entity are regarded as controlling persons.

(5) Unless it is proved that another person has at its disposal the same or a higher percentage of the voting rights, it shall be assumed that a person who has at its disposal at least 40% of the voting rights in a legal entity is the controlling person, and that persons who are involved in concerted conduct and have at their disposal at least 40% of the voting rights in a legal entity are controlling persons.

(6) For the purposes of this Code, "having voting rights at one's disposal" shall mean that they can be exercised at the discretion of the person having them, irrespective of the legal ground (if any) on which they are exercised, or having the possibility of influencing the exercise of voting rights through another person,

(7) If one or more persons are subject to common management (hereafter "a managed person"; in Czech "fizená osoba") by another person (hereafter "the managing person"; in Czech "ridici osoba"), such persons shall, together with the managing person, form a holding-type group (in Czech, "koncern"), and their enterprises, including that of the managing person, shall be deemed to be enterprises forming a holding-type group. Unless the contrary is proved, it shall be assumed that the controlling person ("ovladajici osoba") and the persons controlled by the former ("controlled persons"; in Czech "ovladane osoby") form a holding-type group (or a holding company). Persons may also be subject to common management on the basis of a controlling agreement (in Czech "ovladaci smlouva"). A controlling agreement (contract) can also be concluded to cover relations between a controlling person and the persons controlled by it (i.e. the controlled persons).

(8) Where no controlling agreement has been concluded, the controlling person may not exert his (its) influence to force through the adoption of a measure or the conclusion of an agreement (contract) which may cause a property detriment to the controlled person, unless the controlling person settles such detriment by no later than the end of the accounting period when the detriment occurred (arose), or unless within the same time-limit an agreement is concluded stipulating the appropriate period during which the controlling person is to settle such detriment and in what way.

(9) Where no controlling agreement has been concluded, the statutory organ of the controlled person shall draw up a written report on relations between the controlling person and the controlled person and on relations between the latter and other persons controlled by the same controlling person ("related persons" or "linked persons"; in Czech "propojene osoby"), and such report shall be drawn up no later than three months after the end of the relevant accounting period. This report shall state what agreements (contracts) were concluded between related persons, what other acts in law (legal transactions) were made in the interest of these persons, and all the other measures which were adopted or effected by the controlling person in the interest, or at the initiative, of the controlled persons. If a performance (fulfilment) was supplied by the controlling person, the report shall also mention what counterperformance was effected and the advantages and disadvantages of the measures taken, and whether any detriment arose to the controlled person from the said agreements or measures, and whether such detriment was settled in the accounting period or whether an agreement on its settlement under subsection (8) was concluded. This report shall be part of the annual report under other statutory provisions.

(10) If a controlled person has a supervisory board or a similar organ, this organ shall examine the report under subsection (9) and inform the general meeting (or similar assembly or members' meeting) of the controlled person of its examination and opinion.

(11) Where the financial statements of a controlled person are subject to auditing, the auditor shall also audit the correctness (accuracy) of the information provided in the report under subsection (9).

(12) Each member is entitled to file a petition with the court requesting that an expert be appointed to

examine the report on relations between related persons. Such petition may be filed no later than one year after the day when notification of the filing of the relevant annual report in the registry of documents is published, otherwise the right shall lapse (extinguish). The appointment and remuneration of such expert shall be subject to the provisions of section 59(3), and (he competent court shall be the court within whose jurisdiction the company's seat is located. Any petition which is filed by another member before the proceedings are finally concluded seeking the appointment of such expert shall be regarded as joining the proceedings as of the date such petition is filed. As soon as the proceedings on appointment of an expert are concluded (i.e. when they take legal effect), further petitions by legitimate persons to appoint such expert shall be inadmissible.

(13) The right (entitlement) under subsection (12) shall only arise if:

- (a) the auditor's report under subsection (11) expresses reservations concerning the report prepared by the statutory organ under subsection (9);
- (b) the statement under subsection (10) expresses reservations concerning the statutory organ's report under subsection (9); or
- (c) the statutory organ's report under subsection (9) states that detriment arose to a controlled person due to the conclusion of a contract or the implementation of a measure under subsection (8), and that such detriment was not settled by the controlling person and no agreement on its settlement under subsection (8) was concluded.

(14) If the controlling person requires a controlled person with which it did not conclude a controlling agreement to adopt a specific measure, or to conclude a specific contract (transaction) from which a detriment arises to the controlled person without the obligation (duty) under subsection (8) being fulfilled, the controlling person shall compensate the damage (detriment) that arose therefrom. In addition, the controlling person shall compensate any damage suffered therefrom by members (partners, shareholders) of such controlled person, and it shall do so separately from the obligation (duty) to compensate detriment (damage) to the controlled person. The duty to provide such compensation shall not arise if this contract had also been concluded or such measure adopted by a person which is not a controlled person provided that this person would have fulfilled its duties with all due managerial care.

(15) Persons who are the controlling person's statutory organ or members of such shall be jointly and severally responsible (liable) for discharging the obligation to settle damage under subsection (14). The persons who are the controlling person's statutory organ or members of such shall also be responsible (liable) for discharging the controlled person's obligation to settle such damage if they did not include in their report under subsection (9) the contract or measure from which the detriment arose, and such detriment was not settled by the controlling person and no agreement on its settlement under subsection (8) was concluded. This shall not apply if such persons acted on the basis of a resolution duly adopted by the general meeting (or members' meeting) of the controlled person.

(16) The provisions of subsections (10), (12) and (13) shall not be applied when the controlling person is the only member of the controlled person (a single-member company) or when all the controlling persons in relation to the company are its all members whose conduct is concerted (section 66b); in such a case, the provisions of subsections (14) and (15) on compensation for damage (i.e. damages) to members (partners) of the controlled person and on the right of such members (partners) to file a suit for the said damages against the controlling person shall not apply.

Commentary on sections 66a to 66c:

The wording of section 66a is new and is based on EV legislation with regard to defining a majority shareholder. The definition of a controlled person [section 66a(5)] as a person who has at least 40% voting rights in a company reflects the regulation in the French law. A holding-type group (a holding company), which has not been previously regulated in the Czech law and is defined as two or more persons under one management, corresponds to the statutory provisions (on the same) in Germany and Austria. Concerted conduct is defined in section 66b (based on the regulation in the French law) whereas section 66c reflects the provisions of the German law.

Section 66b

Concerted Conduct

(1) "Concerted conduct" (in Czech "jednání ve shodě") means conduct by two or more persons undertaken in mutual agreement with a view to acquiring or conveying or exercising voting rights in a specific person (entity), or utilising voting rights to exert joint influence on the management or operation of such person's enterprise or to elect that person's (entity's) statutory organ (or most of its members) or supervisory organ (or most of its members), or otherwise influence that person's (entity's) conduct.

(2) Concerted conduct shall mean conduct under subsection (1) undertaken in particular by:

- (a) a legal entity and its statutory organ or a member of such, or persons directly managed by such, a

- member of the supervisory organ, a liquidator, a bankruptcy trustee, a composition trustee (settlement administrator) or an administrator concerned with enforced administration, or mutually between these persons;
- (b) the controlling person and persons controlled by it;
 - (c) persons (entities) controlled by the same controlling person; or
 - (d) persons (entities) forming a holding-type group.
- (3) Unless the contrary is proved, it shall be assumed that concerted conduct is conduct undertaken by:
- (a) a limited liability company and its members or mutually between its members;
 - (b) a general commercial partnership (i.e. an unlimited partnership) and its partners or mutually between its partners;
 - (c) a limited partnership and its general partners or mutually between its partners;
 - (d) close persons;
 - (e) an investment company and an investment fund, or a pension fund, managed by such investment company, or between an investment company and investments funds which it manages; or
 - (f) a brokerage house and a person whose securities the brokerage house manages, if the former can make use of voting rights attached to such securities.
- (4) Persons involved in concerted conduct must meet the duties (obligations) arising therefrom jointly and severally.

Section 66c

Anybody who by means of his influence in a company makes a person who is such company's statutory organ or a member of such, or a member of the company's supervisory organ, its procurator or another authorized person to act to the detriment of the company or to the detriment of the company's members (shareholders) shall be liable to compensate the damage which was caused by such conduct.

Section 67

Reserve Fund

- (1) If this Code requires the creation of a reserve fund, such fund may only be used to the extent to which it is formed mandatorily under this Code, and only for the purpose of covering a company's loss, unless the law stipulates otherwise.
- (2) A reserve fund is created mandatorily by a limited liability company or a joint stock company out of after-tax profit in the current accounting period ("net profit") or from other own sources apart from net profit, provided that this is not excluded by law. On incorporation of the company or on increasing its registered capital, a reserve fund may also be created from additional payments made by members (shareholders) over and above their contributions or the issue price of the company's shares.
- (3) A proportionate part of a company's net profit ("a profit share"; in Czech "podíl na zisku") may only be determined after appropriate financial means have been allocated to top up the reserve fund in accordance with this Code, the deed of association or statutes.

Commentary on section 67:

The Commercial Code does not define the term "reserve fund". A reserve fund is formed mandatorily by every limited liability company or joint stock company from its net profit. The reserve fund is used for covering a company's loss as shown in the financial statements. A loss can also be covered from other sources,

Section 67a

Transfer or Lease of an Enterprise or its Part

- (1) A contract whereby an enterprise or a part of such is transferred or leased must be approved in writing by the company's members or general meeting in the same way as a merger. (2) The resolution of the general meeting under subsection (1) must be adopted according to the same rules as when a resolution on a merger is adopted, and a notarial deed thereof must be drawn up.
- (3) For the purpose of the checking of the price of a the contract under subsection (1) by an expert, the provisions of section 92(1)(second sentence) shall apply in the case of a general commercial partnership or limited partnership, the provisions of section 153a(4) in the case of a limited liability company and the provisions of section 220c in the case of a joint stock company as appropriate.
- (4) Members (partners, shareholders) must be given an opportunity to inform themselves of the draft terms of the contract under subsection (1) and the relevant expert's report if such is required, at least one month before granting approval (consent) or before the day of the general meeting.
- (5) The provisions of section 220d(1)(first sentence) shall apply as appropriate to the information to be disclosed

when transfer or lease of an enterprise or its part is proposed.

Commentary on section 67a:

Section 67a regulates transfer or lease of an enterprise or its part. The purpose of an expert checking the relevant contract is to protect the company's members (shareholders) and creditors.

Section 68

Winding-Up and Dissolution of a Company

(1) A company becomes dissolved at the day it is struck off (i.e. deleted from) the Commercial Register [section 31(4)].

(2) Dissolution of a company is preceded by its winding-up, either with or without liquidation; the latter applies if the company's business assets are transferred to its legal successor. Liquidation is also not required if the company is wound up due to reasons under subsection (3)(f) and (g) and if it has no property whereby no account is taken of things, rights, receivables or other property values excluded from the bankrupt's estate. In the case of the winding-up of a company according to the preceding sentence, the tax administrator's approval under other statutory provisions is not required prior to the company being struck off the Commercial Register.

(3) A company shall be wound up:

- (a) on expiry of the period of time for which it was formed;
- (b) on attainment of the purpose for which it was formed;
- (c) on the date specified in a resolution of the members (partners, shareholders), or the competent organ of the company, as the day on which the company will be wound up; otherwise, on the date when such a resolution was adopted, if the company's winding-up is connected with liquidation;
- (d) on the date stated in a judicial order winding up the company; otherwise, on the date when such judicial order (decision) comes into legal force;
- (e) on the date stated in the resolution of the (company's) members or the competent company organ if the company is dissolved due to a merger, the transfer of business assets to a (sole) member or due to a division, otherwise on the day when such resolution was adopted;
- (f) on termination of a bankruptcy order upon implementation of the distribution schedule, or on cancellation of a bankruptcy order because the bankrupt's assets are insufficient to cover the costs of bankruptcy proceedings;
- (g) on dismissal of a bankruptcy petition due to a company's lack of property.

(4) If a petition for a bankruptcy order is dismissed on grounds other than a lack of company property, the company is not deemed to be wound up. If, after the winding-up of the company due to grounds under subsection (3)(f) and (g), there is any property left, the liquidation of the company shall be effected.

(5) If the company was wound up, or if a bankruptcy order was adjudged in respect of its property (assets), the statutory organ shall only act within the scope of powers which have not passed to the liquidator or the bankruptcy trustee. Until such liquidator is appointed, or if his office terminated and no new liquidator was **appointed, the duties relating to liquidation of the company are fulfilled by the company's statutory organ.**

(6) **On the basis of a motion by a state authority, or by a person who has proved a legal interest, the court may rule on the winding-up of a company and its liquidation in the following instances:**

- (a) **if no general meeting has been held for two years, or if the company's organs whose term of office (or whose members' term of office) terminated more than a year previously were not elected in the preceding year, unless this Code stipulates otherwise, or if the company carried on no activity in the last two years;**
- (b) **if the company is no longer authorized to undertake business activity;**
- (c) **if the legal prerequisites for incorporation of the company are no longer met, or if the company is unable to carry on activity due to insurmountable differences (conflicts) between its members;**
- (d) **if the company has breached the duty to create a reserve fund;**
- (e) **if the company has violated the provisions of section 56(3);**
- (f) **if the company has failed to fulfil the duty consisting in either selling a part of its enterprise or dividing itself when required to do so by the Office for Protection of Economic Competition under other statutory provisions.**

(7) **In the instances when this Code permits a company to be wound up by a court order, prior to such order the court shall set a time-limit for the company to eliminate the ground on which its winding-up is proposed, if it is feasible to eliminate (remedy) such ground.**

(8) **The members or the competent organ of the company may cancel their (its) decision on the company's**

winding-up and its going into liquidation until distribution of the liquidation remainder (balance) is commenced. On the effective day of such decision, the office of liquidator shall terminate and the liquidator shall pass

all documents on the course of liquidation to the statutory organ of the company.

(9) If a decision on the company's going into liquidation is cancelled, the company shall draw up interim financial statements as at the effective day of such decision (resolution).

Commentary on section 68:

A company, partnership or co-operative officially comes into being on its entry into the Commercial Register (incorporation) and ceases to exist (i.e. is dissolved) as of the day on which it is struck off (deleted) from the Commercial Register. Prior to the filing of a petition (an application) for its striking-off from the Commercial Register, a written statement approving the proposed dissolution must be obtained from the tax administrator (i.e. from the relevant financial authority), in accordance with section 35(2) of the Administration of Taxes Act. Dissolution of an entity has further consequences for the social and health security of its co-owners and employees.

With regard to the business assets of an entity (a company, partnership or co-operative) which is being wound up, there are two possible courses of action:

- its business assets are liquidated if the entity has no legal successor, except when a petition for a bankruptcy order is rejected by the court due to the entity's lack of assets, or when the entity is wound up in connection with bankruptcy proceedings following which no assets remain for distribution-

~ its business assets are not liquidated because they are passed on to the entity's legal successor.

Section 68a

Nullity of a Company

(1) After incorporation of a company, cancellation of a ruling approving entry of such company into the Commercial Register cannot be demanded and a determination that the company did not come into being cannot be sought.

(2) Nullity (nullification) of a company may only be ordered by a court ruling, acting thereby even without a petition to that effect, and only on the following grounds:

- (a) that a deed of association or a deed of formation or statutes were not drawn up or their prescribed form was not complied with;
- (b) that the actual objects of the company are unlawful (not permitted) or contrary to public policy;
- (c) that the deed of association or the deed of formation or the statutes fail to state the commercial name of the company or the amounts of the members' individual investment contributions or the total amount of the registered capital when an indication of such amounts is prescribed by law, or the objects of the company;
- (d) that the minimum amount of paid-up investment contributions, as prescribed by law, was not complied with;
- (e) that all the founder members (promoters) lacked legal capacity;
- (f) that, contrary to the law, the number of founder members is fewer than two.

(3) As of the day when a court ruling on nullification of a particular company takes legal effect, such company goes into liquidation.

(4) Legal relations into which such a nullified company entered shall not be affected (voided) by the nullity of the company. The members of the nullified company shall remain obliged to pay up unpaid portions of their investment contributions (subscriptions) to the extent to which this is required in order to discharge the commitments of the nullified company against its creditors.

Commentary on section 68a:

The nullity of a company, as regulated in section 68a, is new and corresponds to the EU legislation (First Council Directive 68/151/EEC of 9 March 1968). Nullity of a company by a court order does not void legal transactions entered into by the company.

Company Conversions

Section 69

Methods of Company Conversion

- (1) Companies with their seat in the Czech Republic may be converted:
 - (a) by merger;
 - (b) by transfer of business assets to a (sole) member; or
 - (c) by division.
- (2) A change in the legal form of a company is also regarded as conversion.
- (3) A merger may be effected by:
 - (a) merger by acquisition (of another company; i.e. a take-over); or
 - (b) merger by the formation of a new company (entity).
- (4) A division may be effected by:
 - (a) division by the formation of new companies (entities);
 - (b) division by acquisition; or
 - (c) by a combination of the methods under letters (a) and (b).
- (5) Conversion of a business company shall be permissible even when a company is already in liquidation on the basis of a decision taken by its members or the competent organ of the company. However, in the case of conversion of such company, it is necessary for its members or the competent organ of the company to cancel the previous decision that the company should go into liquidation under section 68(8). Interim financial statements under section 68(9) shall not be required.
- (6) A merger or the transfer of business assets to a (sole) member shall be permissible even in the event that a company is already in liquidation or that a bankruptcy order has been adjudged on its property or that its composition proceedings have been confirmed (section 69h).
- (7) The decision on conversion of a company can be cancelled until the issue of a ruling permitting entry of merger, transfer of business assets, division or conversion of the legal form in the Commercial Register (section 28a), if all the companies concerned so agree. The provisions on members' consent with (approval of) conversion of their company shall similarly apply to decision-making on cancellation of a decision (resolution) on company conversion (conversion of the company).
- (8) If this Code requires valuation of the company's business assets by an expert, this shall not be the reason for a change in valuation in the company's accounting, unless some other statutory provisions stipulate otherwise.

Commentary on sections 69 to 69h:

The previous brief regulation of conversion (transformation) of companies, partnerships and co-operatives (included in sections 69 and 69a) is superseded by the extensive regulation contained in sections 69 to 69g and in the individual provisions on general commercial partnership (i.e. unlimited partnerships), limited partnerships, limited liability companies, joint stock companies and co-operatives.

The Czech term "sloucenr" ("merger") is now replaced by "merger by acquisition" and the Czech term "splynutř ("consolidation") is replaced by "merger by the formation of a new company". The reason is that the amended wording of the Commercial Code introduces the collective term "fuze" ("merger") for both those types of amalgamation (see sections 69 and 69a).

A business entity may also be converted by "division by acquisition" or by "division by formation of new companies" (section 69c) and by conversion of an entity's legal form (sections 69d and 69e). It should be noted that, under the previous regulation, a change in the legal form of a business entity resulted in its existence being discontinued, which is not the case under the current wording.

Section 69f deals with the issue of protecting the interests of creditors and other parties when a business company is converted. Section 69h introduces the new principle that even a bankrupt business entity may be merged or its business assets transferred to its sole member if (he stipulated requirements are complied with.

Section 69a

Mergers

- (1) On merger by acquisition (take-over), one or more companies will cease to exist ("the company or companies being acquired" or "the merging company")* this being preceded by its (their) winding-up without liquidation; the business assets of the merging company (i.e. the company being acquired), including its rights and obligations (duties) arising from labour relations, shall pass to another company ("the acquiring company" or "the successor company"). Members (shareholders) of the merging company shall become members (shareholders) of the acquiring (i.e. successor) company, unless the law provides otherwise.
- (2) On merger by the formation of a new company, two or more companies will cease to exist, this being preceded by their winding-up without liquidation; the business assets of the merging companies, including their rights and obligations (duties) arising from labour relations, shall pass to a newly-formed successor company. Members

(shareholders) of the merging companies shall become members (shareholders) of the successor company, unless the law provides otherwise.

(3) Merging and successor companies must have the same legal form, unless the law stipulates differently.

(4) The legal effects under subsections (1) and (2) shall apply as of the day when such merger is entered into the Commercial Register [section 28a(1)]. If a lien was placed on a member's business share in a company or on a member's (shareholder's) shares or interim certificates, it shall transfer to the business share or shares which the member will acquire as a result of the merger. The successor company shall note a lien on certificated shares registered in the member's name before their issue. The note must have the requisites of a lien endorsement and be signed by a member or members of the board of directors who is or are authorized thereto at the date of issue. Certificated shares on which a lien is established shall be handed over by the company to the creditor concerned (pledged shares). In the case of uncertificated shares, the company shall in its instruction for the issue of such shares under the statutory regulations require that the lien be recorded at either the Securities Centre or another legal entity authorized to keep a registry of uncertificated securities under other statutory provisions (hereafter only "the Securities Centre"). On the basis of the company's instruction (order), the Securities Centre shall register the lien in accordance with other statutory provisions. The petition for entry of the merger in the Commercial Register must also include a request for entry of the lien on a new business share, if such was acquired in place of the business share, securities or interim certificates on which a lien was placed.

(5) In the case of a merger by acquisition, the participating companies are the merging company and also the successor (acquiring) company, whereas, in the case of a merger by the formation of a new company, the participating companies are only the merging companies.

(6) In the case of a merger by acquisition, a merging joint stock company or limited liability company shall arrange that an expert's report on the valuation of its business assets shall be drawn up if, due to such merger by acquisition, new shares are to be issued by the successor company or a new business share will result to such company's members. In the case of acquisition by the formation of a new company, each participating joint stock company or limited liability company must arrange that an expert's report shall be made on the valuation of its assets. The provisions of section 59(3) and (4) shall apply, as appropriate, to the appointment and remuneration of the expert and the content of his report; such expert may also be the person appointed as a merger expert [section 220c(1)]. A valuation of the business assets can be included in an expert's report on the merger [sections 153a(4) and 220c(5)].

Section 69b

Transfer of Business Assets to a Sole Member

(1) Under the conditions stipulated for individual legal forms of companies, members or the competent organ of such company may decide that the company will be wound up without liquidation, and that the business assets of such company, including the rights and obligations (duties) from labour relations, will be assumed by one member which has its seat or his residential address in the Czech Republic. If a lien is placed on a particular member's business share

or share or interim certificate, a decision on transfer of business assets may only be made if a lien creditor is granted sufficient security in respect of his receivable.

(2) The legal effects under subsection (1) shall apply as of the day when the transfer of business assets is entered in the Commercial Register [section 28a(2)].

Section 69c

Division

(1) On division, the company being divided shall cease to exist. This is preceded by its winding-up without liquidation when its business assets, including rights and obligations (duties) from labour relations, pass to the successor companies, and its members become members of the successor companies, unless the law provides otherwise.

(2) The company being divided and its successor companies must have the same legal form, unless the law provides otherwise.

(3) The provisions of section 69a(4) shall apply as appropriate.

(4) On division by acquisition, the participating companies are the companies ceasing to exist and also their successor companies. On division by the formation of new companies, the only participating company is the company ceasing to exist.

(5) In the case of division of a joint stock company or a limited liability company, the company being divided shall arrange that its business assets are valued by an expert's report as at the day of the closing of the financial statements [section 220t(5)]. Such expert's valuation shall also include separate valuation of those

business assets which should pass to the individual successor companies. The appointment and remuneration of the expert and the content of his report shall be subject to the provisions of section 59(3) and (4), as appropriate, and such expert may also be the person appointed by the company as the expert for such division [section 220s(3)]. A valuation of the business assets can be included in the expert's report on the proposed division [sections 153d(3) and 220s(4)].

Section 69d

Conversion of Legal Form

(1) In the case of conversion of a legal entity's legal form, such legal entity will not cease to exist, nor will its business assets pass to a legal successor; only the entity's internal relations and the legal status of its members shall change. A company may convert its legal form to another legal form of company (partnership) or to that of a co-operative, unless the law provides otherwise. The legal effects of the change in legal form shall apply as of the day of its entry (registration) in the Commercial Register [section 28a(4)].

(2) For conversion of an entity's legal form to be effective, the agreement of its members or the resolution of its competent organ on the change of legal form (hereafter "the resolution on conversion of legal form") must be contained in a notarial deed. A proposal for the change of legal form shall be submitted in writing by the statutory organ to the members (of the entity) or to the competent organ. Such proposal, together with a report under subsection (4), must be made available to the members at least one month before the day when the decision on conversion of legal form is to be taken, unless all the members of such entity are the company's statutory organ or its members or they agree that the said time-limit need not be adhered to. This consent (agreement) must be in writing with authenticated signatures, or else it must be given at the general meeting. A declaration that consent was given at the general meeting must be included in the notarial deed on the resolution of the general meeting. Such consent shall also bind an individual member's legal successor.

(3) Any liens on individual member's business shares, or on shares or interim certificates, shall only cease to exist upon the change in the legal form of the company (entity) if they do not encumber business shares in the successor legal entity (i.e. if business shares in the successor entity may not be used to secure an obligation). If a lien ceases to apply, the lien creditor whose receivable was hitherto secured by a lien on business shares or shares or interim certificates must be granted sufficient securing for his receivable by the debtor. When a lien does not cease to apply due to conversion of the legal form of an entity, the provisions of section 69a(4) shall apply as appropriate.

(4) The statutory organ of the company (entity) shall draw up a written report on the proposal of a resolution to convert the company's legal form, and it shall substantiate the proposal in such report from the legal and economic viewpoint and outline the characteristics of the members' legal status after such conversion (hereafter "the report on conversion of legal form"). The report shall not include facts which are a trade secret of the company or of its controlling or controlled person. In this case, the report on conversion of legal form must contain grounds why such facts are not covered by the report. The report on conversion of legal form shall not be required if the company has only one member, or if all its members are the statutory organ of the company or members of such statutory organ, or if all the members agree that such report will not be drawn up. The provisions of subsections (2) shall apply to this agreement. If the company has a supervisory board, this board shall examine the proposal (the draft terms of the resolution on conversion of legal form) and report its findings to the general meeting, which shall adopt a resolution on the proposal.

(5) The proposal for the resolution on conversion of legal form and the resolution on the same must contain at least:

- (a) the commercial name, seat and identification number of the company before the change of legal form;
- (b) the legal form to be acquired by the company;
- (c) the company's commercial name after conversion of legal form;
- (d) the date at which the proposal for (i.e. the draft terms of) the resolution on conversion of legal form was drawn up (hereafter "the day of drawing up conversion of legal form");
- (e) the draft terms of (i.e. the proposal for) a general commercial partnership's or limited partnership's partnership agreement or a limited liability company's deed of association or a joint stock company's or co-operative's statutes after conversion of legal form;
- (f) the full name, residential address and personal number of the persons to be entered into the Commercial Register as the statutory or another organ of the company or partnership or co-operative, or as a member of any such organ after conversion of legal form; if the legal form is to be changed to that of a joint stock company, the members of its first supervisory board are only elected for a term of one year when the statutory provisions on the election of supervisory board members by employees shall not apply and, similarly, the rules and time-limit for the

issue of an interim certificate shall not apply to a member (shareholder) to whom shares are to be issued but who did not as yet pay up his investment contribution to the hitherto existing company or co-operative;

- (g) the procedural rules for settling up with a member who does not agree to conversion of legal form, the amount to be paid to him, and the method of calculating this amount, provided that conversion of legal form does not require the approval (consent) of all of the entity's members;
 - (h) in the case of conversion of the legal form to that of a joint stock company, the number of shares, their class, whether they are (to be) registered in name or bearer shares, whether they are (to be) certificated or uncertificated, the nominal value of the shares determined for each member after conversion of legal form, and the procedural rules and time-limit for their issue;
 - (i) the amount of compensation for holders of bonds (debentures) and option warrants [section 69f(2)].
- (6) A company shall draw up interim financial statements as at the day at which it prepared conversion of legal form, unless such day is the balance sheet day under other statutory provisions. The interim financial statements shall be audited, if auditing is required under other statutory provisions, and approved by the general meeting, which shall also pass a resolution on conversion of legal form, or in other cases by all the members. The data on which the financial statements are based, as at the day of preparing conversion of legal form, may not be older than three months at the day when the resolution on conversion of legal form is (scheduled to be) taken. If the amount of (own) equity capital in the financial statements drawn up as at the day of preparing conversion of legal form is less than the registered capital which the company or co-operative should have according to the proposal for (i.e. the draft terms of) a resolution on conversion of legal form, such conversion shall not be permissible.
- (7) A company which changes its legal form shall draw up its financial statements as ordinary or extraordinary financial statements as at the day preceding the day when the conversion of legal form is entered in the Commercial Register and the opening balance sheet as at the day of such entry. Such financial statements shall be audited.
- (8) In the case of conversion of legal form to that of a limited liability company or joint stock company, the company shall arrange for its business assets to be valued by an expert's report as at the day at which conversion of the legal form is prepared. Such expert's appointment and remuneration and the content of his report shall be subject to the provisions of section 59(3) and (4), as appropriate. The expert shall state in his report whether the amount of net worth (net business assets) is at least equal to the amount of registered capital stated by the company in the draft terms of a resolution on conversion of legal form. The amount of registered capital of a limited liability company or joint stock company cannot in such case be higher than the amount of net worth stated in the expert's report.
- (9) Where equity capital of a joint stock company or limited liability company or co-operative after conversion of legal form does not attain the amount of registered capital in the opening balance sheet drawn up as at the day of entry into the Commercial Register, the members (shareholders) shall be obliged, jointly and severally, to pay the difference in cash without undue delay after the conversion of legal form is entered in the Commercial Register. The members shall settle (the amounts to be paid) between (among) themselves in accordance with the proportionate amount of the nominal value of their shares or investment contributions in the company's registered capital before the conversion of legal form.
- (10) No payments (performance) may be made to members (partners, shareholders) in connection with conversion of legal form, unless this Code stipulates otherwise. No special advantage may be granted to a person who took part in converting the legal form.
- (11) The intention of adopting a resolution on a change of legal form shall be publicized by the statutory organ at least 15 days before adoption of the resolution on the conversion of legal form.

Section 69e

Entry of Conversion of Legal Form in the Commercial Register

A petition requesting entry of conversion of legal form in the Commercial Register shall be accompanied by the following documents:

- (a) the resolution on the conversion of legal form;
- (b) the report on the (proposed) conversion of legal form, if such was required by law, or the members' consent (approval, agreement) under section 69d(4), if they did not require this report to be drawn up;
- (c) authorizations (permissions, licences) issued by the competent state authorities, if required by law;
- (d) documents proving that securing (collateral) under section 69f(1) was provided, if required by law;

- (e) interim financial statements, including an auditor's report, if the auditing of financial statements is prescribed, such interim financial statements being drawn up as at the day at which the conversion of legal form was prepared.

Section 69f

Protection of Creditors and Liability for Damage Suffered due to Conversion of Legal Form

(1) Creditors of a company which has changed its legal form who file receivables" (claims) within six months of the day when the conversion of legal form entered in the Commercial Register became effective against third parties can require that additional security (collateral) be provided, if they cannot seek (immediate) satisfaction of their receivables and the conversion of legal form makes their receivables less recoverable. If a creditor proves that his receivable will become substantially less recoverable due to conversion of legal form, he is entitled to demand that additional (supplemental) security (collateral) be provided, even before conversion is entered in the Commercial Register. When no agreement on the method of securing the receivable is reached between the creditor and the company, the securing of such receivable shall be decided by a court ruling which takes into account the kind and amount of the receivable. The right to have a receivable secured shall not apply to creditors who are entitled to preferential or separate satisfaction of their receivables in bankruptcy proceedings, or to receivables which arose only after the day when conversion of legal form entered in the Commercial Register became effective against third parties.

(2) If a company issued convertible or priority bonds, the right to subscribe for shares or to exchange such bonds for the company's shares shall lapse as at the day when conversion of the company's legal form is entered in the Commercial Register, unless the procedure under other statutory provisions is applied. The status of holders of other bonds shall not change. If share warrants were issued, the rights attaching to these shall lapse as at the day when conversion of legal form is entered in the Commercial Register, unless other statutory provisions stipulate otherwise. Holders of convertible and priority bonds who did not use the procedure under other statutory provisions or holders of share warrants shall become entitled to adequate compensation for their expired rights, the amount of such compensation being determined by the resolution on conversion of legal form. If the compensation provided is not regarded as adequate, the holders of such bonds may apply for a court ruling on the appropriate compensation. A court ruling (order) determining the compensation shall be binding on the company (in respect of the accorded right) and other entitled parties (persons). If such right is not claimed within three months of the day when conversion of legal form entered in the Commercial Register became effective against third parties, it shall lapse.

(3) If in connection with conversion of legal form, the issuing conditions (terms) of bonds other than those under subsection (2) are to be modified, the company must ask for the consent of such bondholders in accordance with other statutory provisions.

(4) The statutory organ shall, without undue delay, notify such of the company's creditors who are known to it as at the day when the resolution on conversion of legal form becomes effective against third parties entitled to supplemental security (collateral) under subsection (1), advising them that they may ask for adequate securing of (collateral for) their receivables.

(5) Persons who are the statutory organ (or members of the statutory organ) of a company which converts its legal form shall be jointly and severally liable for damage which arises to the company which converted its legal form, to its members and creditors, as a result of their breach of a duty during conversion. A court ruling adjudging the right to compensation for such damage from the responsible (liable) persons shall similarly apply against other entitled parties.

(6) The right (entitlement) to compensation for damage under subsection (5) shall become statute-barred five years after (the day when conversion of legal form entered in the Commercial Register becomes effective against third parties.

Section 69g

Nullity of Conversion of Legal Form

(1) Nullification of a ruling concerning conversion of legal form may only be pronounced by a court order until the ruling permitting its entry into the Commercial Register takes legal effect. Only a member of the company whose legal form is to be converted may apply for a nullity order.

(2) If an irregularity which is a ground for seeking a nullity order in respect of a ruling permitting conversion of legal form can be remedied, the court shall invite the company concerned to remedy (eliminate) this irregularity before making a nullity order.

(2) The provisions of section 68a shall not be affected by the provisions of subsections (1) and (2).

Section 69h

Bankruptcy and Composition Proceedings

(1) If a bankruptcy order against a person participating in a merger or transfer of business assets to a (sole) member becomes legally effective, or if a ruling permitting composition proceedings under other statutory provisions becomes legally effective, the merger or transfer of business assets to a (sole) member may take place in the course of the bankruptcy or composition proceedings under conditions stipulated in other statutory provisions.

(2) If a bankruptcy order against the property (estate) of a person participating in a merger or transfer of business assets to a sole member or a ruling permitting composition proceedings becomes legally effective, a merger contract (agreement) under sections 92a(2), 104a(2), 153a(2), 220a(1) and 220n(2), or a contract (agreement) or resolution on transfer of business assets to a sole member under sections 92c(1), J04c(1), 153c(1) and 220p(4) may not become legally effective until the approval required under other statutory provisions is given. A petition concerning the appointment of a merger expert also requires the consent (approval) of the bankruptcy trustee (composition administrator) under other statutory provisions.

Liquidation of a Company

Section 70

(1) If a company is wound up with liquidation, or if some property is left over after its winding-up due to grounds under section 68(3)(f) and (g), liquidation shall be effected under this Act, unless other statutory provisions imply another method of settling the business assets.

(2) A company shall go into liquidation as at the day it is wound up, unless the law provides otherwise. The fact that the company is going into liquidation shall be entered in the Commercial Register. During the period when the company is being liquidated, its commercial name shall be followed by the words "in liquidation".

(3) The powers of the statutory organ to act in the name and on behalf of the company within the scope under section 72 shall pass **to the liquidator on his appointment. If two or more liquidators are appointed and U does not ensue from their appointment otherwise, each such liquidator shall have the said powers.**

Commentary on sections 70 to 75b:

A company which is wound up with liquidation or whose business assets are passed on only partially to another company must complete the liquidation of its remaining assets.

The fact that the company is going into liquidation and the liquidator's name are entered in the Commercial Register. The authority of the company's statutory organ shall pass to the liquidator and the commercial name of the company will be supplemented by the words "v likvidaci" ("in liquidation"). Relations between the liquidator and the company in liquidation are subject to the provisions on mandate, as appropriate.

The liquidator of the company's business assets shall notify all the known creditors and arrange for a notice to be published that the company is in liquidation and that its creditors are invited to file their claims with him. In the course of liquidation, claims by the company's employees shall be preferentially settled, unless the liquidator is bound to petition for a bankruptcy order. Within 30 days of the completion of liquidation, the liquidator shall file a petition for the company's striking off from the Commercial Register.

Section 71

(1) **A liquidator shall be appointed by the statutory organ of the company concerned, unless the law, deed of association or the statutes provide otherwise. Should a liquidator not be appointed without undue delay, he shall be appointed on the basis of a court ruling. A liquidator may only be an individual (a natural person), unless this Code or other statutory provisions stipulate otherwise,**

(2) **If a company's liquidation is based on a court ruling, the court which decided on the company's winding-up shall also rule on the appointment of a liquidator. When the court appoints a liquidator in accordance with the preceding sentence, it may appoint a member (partner) of the company, or the statutory organ or a member of such as liquidator, even without his consent. The member or statutory organ or the member of such appointed as liquidator by the court may not resign from such office. However, he may petition the court to be recalled from the office of liquidator if it cannot be justly demanded of him that he execute such office. If a legal entity is appointed as liquidator, it shall determine an individual who will execute the liquidator's office in its name, and such person shall be entered in the Commercial Register under section 28(6).**

(3) **If a liquidator dies, is recalled or resigns from his office, or if he cannot execute his office, a new liquidator shall be appointed in the same manner as his predecessor and entered in place of his predecessor in the Commercial Register. The court shall appoint a new liquidator if the organ authorized thereto under subsection (3) fails to appoint a new liquidator without undue delay.**

(4) **Irrespective of the manner of the liquidator's appointment, on the basis of a motion by a person who proves his legal interest in the matter, the court may recall a liquidator who breaches his duties and replace him with another person.**

(5) The liquidator shall be the organ of the company (section 66) and be responsible (liable) for performance of his office in the same way as members of statutory organs.

(6) The liquidator's remuneration shall be determined by the company organ which appointed him. If the liquidator has been appointed by a court, his remuneration shall also be determined by such court. The liquidator may be accorded the right to be paid advances (on his remuneration). In the case of a liquidator appointed by the court under section 71(2)(second sentence), he shall not be entitled to such remuneration.

(7) Where a liquidator cannot be appointed under subsections (1) to (4), the (competent) court shall appoint one from the list of bankruptcy trustees.

(8) Third parties (persons) shall co-operate with a court-appointed liquidator to the extent that they are bound to co-operate with a bankruptcy trustee under other statutory provisions.(9) The Ministry of Justice shall regulate in a decree the rules for computing the remuneration of a liquidator or a member of a company organ appointed by a court ruling and also instances in which reimbursement of a liquidator's cash expenses and remuneration shall be settled by the state.

Section 72

(1) The liquidator shall execute on behalf of the company only acts in law (legal transactions) which relate to the company's liquidation. In executing the duties of *his* office, the liquidator shall settle the company's obligations (debts), asserts claims (receivables) and receive their fulfilment (performance), represent the company before courts and other authorities, and conclude settlements (conciliation agreements) and agreements on alteration and discharge of the company's rights and obligations. He may only conclude new contracts if they relate to the termination of pending business transactions, or if it is necessary to preserve the value of the company's property or its utilization, unless this involves continuation of the enterprise's operations. The liquidator is entitled (authorized) to act in the name of the company with regard to entries to be made in the Commercial Register.

(3) If the liquidator ascertains that a company in liquidation is overburdened with debts (i.e. insolvent), he shall file a petition for adjudication of a bankruptcy order without undue delay. This shall not apply if the company was wound up under section 68(3)(f) and (g).

Section 73

Without undue delay the liquidator shall notify all known creditors of the fact that the company is in liquidation. He shall also publish the decision on winding up the company at least twice, no less than a fortnight apart, thereby inviting the company's creditors to register their claims within a period which may not be shorter than three months.

Section 74

(1) The liquidator shall draw up an opening liquidation balance sheet and a list of the company's business assets as of the day the company goes into liquidation. The financial statements at the day preceding the day when the company goes into liquidation shall be drawn up by the company's statutory organ. Should the statutory organ fail to draw up the said financial statements without undue delay after the company's going into liquidation, this duty shall pass to the liquidator.

(2) The liquidator shall send a list of the company's business assets to every member and creditor of the company who so requests.

(3) In the course of liquidation, the liquidator shall preferentially settle wage arrears claimed by the company's employees, unless he is bound to file a petition for a bankruptcy order.

Section 75

(1) After completion of all the acts in law necessary for executing the liquidation, the liquidator shall, without undue delay, draw up a report on the course of such liquidation which shall include a proposal on how to distribute the net property remainder left after the liquidation (the liquidation remainder or liquidation balance) among (between) the company's members; he shall submit such report to the members or the organ competent to approve it (hereafter "the proposal for distributing the liquidation remainder"). As at the day when the proposal for distributing the liquidation remainder is prepared, the liquidator shall draw up the financial statements. Non-approval of the proposal for distributing the liquidation remainder shall not prevent the company from being struck off the Commercial Register.

(2) Any member who disapproves of the proposal for distributing the liquidation balance may ask the court to review the liquidation share (proportion) which, according to the proposal, this member should be given. If this right is not asserted within three months of the day when the proposal for distributing the liquidation remainder was discussed, the said rights shall lapse. A judicial ruling reviewing a member's liquidation share shall be binding on the company with regard to the basis of (he accorded right also in relation to the other

company members.

(3) No payment (fulfilment), even in the form of advances, may be granted to the company's members on the ground of their entitlement to a liquidation share before the claims of all known creditors who filed in time their claims are satisfied. No payments (fulfilment, performance) can be granted before expiry of the time-limit under subsection (2) for distribution of the liquidation remainder (liquidation balance).

(4) When a claim is contested (disputed) or not yet mature (payable), the liquidation remainder may only be distributed if the creditor was granted a corresponding security.

(5) The provisions of subsections (1) to (4) shall not apply in the event of a company being wound up under section 68(3)(f) and (g) and its property not being sufficient to cover all its liabilities. In such a case, the liquidator shall liquidate (turn into cash) the company's property (assets) and settle from the proceeds first the cost of liquidation and wage arrears due to company employees and only then the other creditor's claims in the order of their maturity. If claims of the same order cannot be settled in their full amount, they shall be settled proportionately. Should the liquidator not succeed in liquidating the property within a reasonable time, he shall offer such property to the creditors in settlement of their receivables from the company according to the order of their claims. Should the creditors refuse to take over such property in settlement of their receivables (the company's debt), such property shall pass to the state on the day the company is struck off the Commercial Register. The liquidator shall notify thereof the authority concerned with the interim administration of national property under other statutory provisions.

(6) The liquidator shall draw up a report about the method in which the property under subsection (5) was disposed of, specifying in particular the proceeds realised by the sale of individual items of such property and also (the property items which were not sold (turned into cash), stating whether any such items were taken over (accepted) by creditors in settlement of the company's debts or, if relevant, what property shall pass to the state when the company is struck off the Commercial Register ("the report on disposal of the property"). Such report shall be submitted for the approval of the company's members or the company organ competent to approve it. Should the report not be approved, this shall not prevent the company being struck off the Commercial Register. The liquidator shall draw up financial statements as at the day his report on disposal of the property was prepared.

Section 75a

(1) Liquidation shall be completed by distribution of the liquidation remainder (liquidation balance) or by use of the proceeds of the property sale for settlement of the creditors' receivables, or by their refusal to take over (accept) some property in settlement of their receivables from the company (i.e. the company's debts) under section 75(5). After distributing the liquidation remainder, the liquidator shall draw up a list of the members to whom he paid out a liquidation share.

(2) Within 30 days of completing liquidation, the liquidator shall file a petition for the company to be struck off the Commercial Register.

Section 75b

(1) If, after completion of the company's liquidation, previously unknown property is ascertained or the need arises for other necessary measures relating to such liquidation, the court shall, on the basis of a petition (an application) filed by a state authority, a member of the company, a creditor or a debtor, rule that the company's liquidation be renewed and appoint a liquidator. After this judicial ruling takes legal effect, the registration court shall enter in the Commercial Register the fact that the company's liquidation has been renewed and the name of the liquidator.

(2) If previously unknown property is ascertained after the company is struck off the Commercial Register, the court shall, on the basis of a petition filed by a state authority or a member, creditor or debtor of the company, annul the company's striking off **from the Commercial Register and either renew its liquidation or order the company to go into liquidation, simultaneously appointing a liquidator. After such judicial ruling takes legal effect, the registration court shall enter the fact in the Commercial Register that the company has been reinstated and that it is in liquidation, and the name of the liquidator.**

(3) **At the day of the entry under subsection (1) or (2) in the Commercial Register, the liquidator shall draw up an opening balance sheet. The provisions of section 68(8) shall not be applicable.**

Division II

General Commercial Partnerships (Unlimited Partnerships)

Subdivision 1 Fundamental Provisions

Section 76

(1) A "general commercial partnership" (i.e. an "unlimited partnership"; in Czech "veřejná obchodní společnost") is an entity in which at least two persons carry on business activity under a common commercial name and bear joint and several liability for the obligations (debts) of the partnership with all their property.

(2) A partner of a general commercial partnership can only be a natural person (an individual) who meets the general requirements for undertaking a trade (in Czech "živnost") under other statutory provisions, and in relation to whom there is no impediment to his engagement in a trade under other statutory provisions, irrespective of its objects (the scope of the partnership's activity).

(3) If a partner of a general commercial partnership is a legal entity, the rights and duties connected with participation in the partnership shall be exercised by such entity's statutory organ, or the representative it entrusts thereto and who meets the conditions under subsection (2).

Commentary on section 76:

The Czech term "veřejná obchodní společnost" is translated in this publication as a "general commercial partnership", but it is often referred to as an "unlimited partnership". It is sometimes misleadingly translated as a "public trading company" or "public commercial company". Both the Czech term and its German counterpart "offene Handelsgesellschaft" contain the equivalent of the word "company" ("společnost"), which is not the case in English.

A general commercial partnership established under Czech law is a legal entity which can be formed by both individuals and legal persons (entities). This differs from the laws of some other countries, which do not regard a partnership as an entity and require a partnership to be formed only by individuals.

Any general commercial partnership must have at least two partners. They decide on their investment contributions in the partnership by mutual agreement and are liable for the debts of the partnership with all their property not only during the existence of the partnership but also after its dissolution.

Engagement in a trade, as referred to in subsection (2), is subject to the provisions of the Trades Licensing Act ("živnostenský zákon").

Section 77

The commercial name must include the addendum "veřejná obchodní společnost", or its abbreviated form "ver. obch. spol." or "v.o.s.". Should the commercial name include the surname of at least one of the partners, it is sufficient to add "a spol." ("and partners").

Commentary on section 77:

The commercial name of a general commercial partnership, like the commercial name of other business entities established under Czech law, must include an addendum specifying its legal form.

Section 78

(1) A partnership agreement (in Czech "společenská smlouva") must contain the following particulars:

- (a) the commercial name and seat of the general commercial partnership;
- (b) details of the partners, such as the commercial name and seat of the legal entity or the name and residential address of the individual;
- (c) the partnership's objects (the scope of its business activity).

(2) A petition (an application) for entry of the partnership in the Commercial Register shall be signed by all the partners, and the partnership agreement shall be attached to the application.

Commentary on section 78:

In addition to the information which must be included in the partnership agreement under the Commercial Code, the agreement often specifies in greater detail the partners' rights and duties, such as the amount of their investment contributions and the time-limit for their payment (and the penalties for non-payment), a description and valuation of investment contributions in kind, the duty to participate personally in the partnership's activity, the prohibition of competitive conduct, the conditions for a partner's expulsion from the partnership and for passing a partner's ownership interest (business share, holding) to his heir, a determination of who will act for the partnership, the decision-making process and the method of

distributing a profit or loss and computing a settlement share and a liquidation share.

The partnership agreement (deed of partnership) must be in writing and the partners' signatures must be authenticated. When an application for entry of the partnership in the Commercial Register is filed, the partnership agreement and a trade or other authorization, as applicable, must be enclosed with it.

Subdivision 2 Rights and Duties of Partners

Section 79

(1) The rights and duties of the partners are governed by their partnership agreement (deed of partnership). The consent of all partners is required for any modification of the partnership agreement, unless this Code or the partnership agreement provides otherwise. The partnership agreement may stipulate that the consent of a majority of the partners will be sufficient for its modification.

(2) The consent of a majority of the partners is required for decisions on other matters, unless the partnership agreement or the law stipulates otherwise.

(3) If under the partnership agreement the consent of a majority of the partners is sufficient for the decisions under subsections (1) and (2), each partner shall have one vote. However, the partnership agreement may stipulate another number of votes.

Commentary on section 79:

The partnership agreement of a general commercial partnership is a fundamental document on the formation of the partnership and regulates the partners' rights and duties. Any document which alters the partnership agreement must bear the authenticated signatures of all the partners.

Section 79a

In executing their duties, each partner must proceed with good managerial care (due diligence).

Commentary on section 79a:

In view of the character of a general commercial partnership, its partners' rights and duties are more extensive than in capital-type companies (e.g. joint stock companies), and the partners are required to manage the partnership with due diligence

Section 80

(1) The partner shall pay up his investment contribution within the time-limit specified in the partnership agreement or without undue delay after the partnership's incorporation or after he becomes a partner.

(2) In the case of late payment of a monetary investment contribution, a partner shall pay an interest charge of 20% of the amount in arrears, unless the partnership agreement provides otherwise.

(3) A partner may pay more than one investment contribution into the partnership. For the purpose of computing such partner's business share in the partnership, his investment contributions shall be added together.

Commentary on section 80:

The law does not prescribe the amount of the investment contributions to a general commercial partnership. The partners of a general commercial partnership usually specify the amounts of their investment contributions in their partnership agreement. General commercial partnerships do not enter the amount of their capital in the Commercial Register.

Section 81

(1) Each partner may manage the business of the partnership within a framework of principles agreed on by the partners.

(2) Should one or more partners be authorized (entrusted) by the other partners to manage the partnership wholly or in part under the partnership agreement, the remaining partners lose this right to the same extent. **The authorized (entrusted) partner shall follow in his management of the business those principles which he has agreed with the other partners. The authorized (entrusted) partner must follow the decisions made by a majority of the votes. Each partner has one vote, unless the partnership agreement provides otherwise.**

(3) Delegation of authority to a partner [subsection (2)] may be withdrawn, if so agreed by the other partners, unless the partnership agreement stipulates otherwise. Should the authorized partner substantially breach his duties [section 345(2)], the court may revoke his authorization based on a petition from any of the **other partners, even if the authorization is irrevocable under the partnership agreement. In this case the**

provisions of subsection (1) shall apply until the partners agree on a new authorization.

(4) A partner who is authorized (entrusted) to manage the business of the partnership may give it up in his written resignation for important reasons, but he shall still take measures which do not allow of any delay. His written notice of termination (resignation) must be delivered to the partnership and all the other partners. The notice shall take effect one month after the day of its delivery to the partnership. As of the effective day of the notice, the business of the partnership shall be managed by the other partners.

(5) The partner who has been authorized (entrusted) to manage the business affairs of the partnership must, upon request, inform the other partners about all of the partnership's affairs. Each partner may inspect any of the partnership documents and check the information contained therein, or he may empower an auditor or a tax adviser to do so on his behalf.

Commentary on section 8J:

Since all partners in a general commercial partnership are equal, any of them may manage the partnership's business. However, one or more partners may be entrusted (authorized) by the other partners to manage the partnership wholly or in part. When managing the business, the entrusted partner must comply with any decision made by a majority of the partners. He must also inform the other partners of all the partnership's affairs if so requested. If the partner entrusted with management of the partnership fundamentally breaches his duties, his authorization is revoked.

Section 82

(1) Profit is distributed among (between) the partners in equal proportions. A profit share, as determined on the basis of the financial statements, is payable within three months of the day the financial statements are approved, unless the partnership agreement stipulates otherwise.

(2) The partners shall bear equally any loss indicated by the financial statements.

(3) The provisions of subsections (1) and (2) shall apply, unless the partnership agreement provides otherwise.

Commentary on section 82:

Under the amended wording of the Commercial Code, partners of general commercial partnerships are no longer entitled to receive interest on their paid-up investment contributions. The Income Taxes Act applies to taxation of profits. In the case of a loss, the partners' investment contributions are reduced accordingly, unless the partners settle the loss from their own property.

Section 82a

Each partner is entitled in the name of the partnership to sue another partner liable to the partnership for damage, for compensation of such damage (i.e. damages), and to sue a partner who defaults on payment of his investment contribution; the partner who files such a complaint is entitled to represent the partnership in the proceedings. However, this shall not apply if action to obtain damages or action in relation to such default has already been taken by the partnership's statutory organ. A person other than the partner who filed the complaint or a person authorized by him cannot perform acts in law on behalf of the partnership or in its name in such proceedings.

Commentary on section 82a:

If a partner who is a particular general commercial partnership's statutory organ fails to take action in the situations described in section 82a, another partner may file a complaint, acting in the partnership's name.

Section 83

Another partner may join the partnership or an existing partner may leave it, provided that the partnership agreement is amended accordingly and that at least two partners remain.

Commentary on section 83:

A new partner may join a partnership if this is agreed by the other partners in an altered partnership agreement, which must be in writing and bear the partners' authenticated signatures. An existing partner may leave the partnership if this is agreed by the other partners in the partnership agreement, provided that at least two partners remain in the partnership.

Section 84

Prohibition of Competitive Conduct

Without the other partners' consent, no partner may engage in outside activities which are objects of the partnership's business activity. This also applies to activity benefiting other persons and to the mediation of business transactions for someone else. No partner is allowed to be the statutory or other organ of another

entity having similar business activities (objects). A partnership agreement may regulate the prohibition of competitive conduct differently.

Commentary on section 84:

The prohibition of competitive conduct is usually regulated in the partnership agreement, but if it is not, the provisions of section 84 apply. The consequences of a breach of duty relating to the prohibition of competitive conduct are subject to the provisions of section 65(2) and (3) of the Commercial Code.

Subdivision 3

Legal Relationships with Third Parties

Section 85

(1) All partners of a general commercial partnership shall be its statutory organ. However, their partnership agreement may stipulate that only certain partners or one partner shall be the partnership's statutory organ.

(2) If two or more partners are a partnership's statutory organ, each of them may act independently (separately) in the name of the partnership, unless the partnership agreement stipulates otherwise. The statutory organ's authority to act in the name of the partnership may only be restricted by the partnership agreement. However, such restriction shall not be effective against third parties.

(3) A partner may resign from the office of statutory organ, but he must execute all measures which do not allow of any delay. Notice of his resignation must be delivered to the partnership and all partners. This resignation shall take effect one month after the day of its delivery to the partnership. If the resigning partner is the only member of the partnership's statutory organ, all the other partners shall form its statutory organ as of the effective day of such resignation.

Commentary on section 85:

The statutory organ of a general commercial partnership is formed by all its partners, unless the partnership agreement regulates (the statutory organ differently). The partners forming the statutory organ must manage the partnership's business affairs with due diligence (see section 79a).

Partner's Liability

Section 86

A general commercial partnership is liable for its debts (obligations) with its entire property. The partners bear joint and several liability (as sureties) for the partnership's debts with their entire property.

Commentary on section 86:

The partners of a general commercial partnership are liable for its debts with all their property not only during the existence of the partnership but also after its dissolution.

Section 87

(1) A partner who joins a partnership later is even liable (as surety) for those of the partnership's liabilities (debts) which arose before he joined the partnership. However, he can require compensation from the other partners for his discharge of the partnership's debt, as well as reimbursement of related expenses.

(2) If a partner terminates his participation in a general commercial partnership while it is in existence, he is only liable (as surety) for those debts which arose prior to the day when his participation ended.

Commentary on section 87:

Section 87 regulates the liability of a partner who joins a certain general commercial partnership after its formation and the liability of a partner who leaves it.

Subdivision 4

Winding-up and Liquidation of a General Commercial Partnership

Section 88

(1) In addition to the cases specified in section 68, a partnership will be wound up:

- (a) after notice of termination is submitted by a partner no later than six months before the end of the accounting period, if the partnership agreement was concluded for an indefinite period of time and unless the partnership agreement provides another time-limit of termination;**

- (b) following a judicial ruling under section 90;
 - (c) as a result of the death of one of the partners, although this shall not apply if the partnership agreement permits the passage of a business share in the partnership by inheritance, provided that the deceased partner's heir (or heirs) does not renounce such inheritance and at least two partners remain in the partnership;
 - (d) as a result of the dissolution of a legal entity which is one of the partners, unless the partnership agreement admits the passage of a business share to a partner's legal successor and at least two partners remain in the partnership;
 - (e) on adjudication of a bankruptcy order against the property of one of the partners, or as a result of the dismissal of a bankruptcy petition (in respect of the property of one of the partners) due to a lack of assets;
 - (f) if a distraint order is effective against a partner's business share in the partnership, or upon issue of a writ of execution against a partner's business share in the partnership (after the ruling ordering such execution takes effect);
 - (g) if one of the partners is deprived of his capacity to undertake acts in law, or if such capacity is restricted;
 - (h) if a partner ceases to meet the requirements under section 76(2);
 - (i) for other reasons stipulated in the partnership agreement.
- (2) If any of the grounds for winding up the partnership are among those specified in subsection (1)(a), (c), (d), (e), (f), (g), (h) and (i), the remaining partners may agree to amend the partnership agreement and continue the existence of the partnership without the partner to whom the grounds for such winding-up apply. Should alteration of the partnership agreement not be agreed within three months of the winding-up, this right shall lapse and the partnership shall go into liquidation as of that day, unless the partners have agreed on liquidation of the partnership prior to expiry of the said time-limit.
- (3) If following the remaining partners' agreement to continue the partnership [subsection (2)], a bankruptcy order against a (former) partner's property is cancelled due to reasons other than discharge of the distribution schedule or a lack of property (Note 1), the participation of such partner in the partnership shall be renewed (reinstated); if the partnership has already paid a settlement share to such partner, he must reimburse it to the partnership within two months of the day when the bankruptcy proceedings were cancelled. The same shall apply if a distraint order against (on) a partner's business share in the partnership is stopped under a final ruling, or if a writ of execution is stopped under a final ruling in accordance with other statutory provisions.
- (4) If a partnership wound up under subsection (1)(e) or (f) was not already dissolved, those of its partners who meet the conditions under subsection (3), including any partner whose participation in the partnership was reinstated (renewed), may agree to continue the partnership's existence.

Commentary on section 88:

The provisions of subsection (1) stipulate the reasons for the winding-up of a general commercial partnership with liquidation, but in most cases the remaining partners may agree to carry on the partnership's business (without the partner to whom the reason for the winding-up relates), provided that at least two partners remain in the partnership.

Section 89

In the cases specified in section 88(2), the former partner or his heir, or the former partner's legal successor, is entitled to claim payment by the partnership of a settlement share ("vypofa-daci podíl"). Its amount is computed in the same way as a share in the liquidation remainder (liquidation share; section 92).

Commentary on section 89:

A settlement share is paid to a partner who leaves the partnership during its existence. Its amount is computed as a liquidation share.

Section 90

- (1) A partner may file a petition with the (competent) court seeking the winding-up of the partnership if there are important grounds for this, in particular if another partner seriously breaches his duties or if (he purpose for which the partnership was formed cannot be attained.
- (2) The partnership may file a petition with the (competent) court seeking expulsion of a particular partner who seriously breaches his duties, even though he was invited to fulfil them and notified in writing of the possibility of his expulsion. Such petition must be approved by partners who together have at least a 50% business share in the partnership.

Commentary on section 90;

Should a partner breach the partnership agreement, the court may order the winding-up of the general commercial partnership if one of the other partners applies for this. The partnership may seek a court ruling to expel a partner who has seriously breached his duties.

Section 91

Death of a Partner

An heir who inherits a business share in a general commercial partnership is entitled to terminate his participation in the partnership, even when such partnership was formed for a fixed term (a definite period of time). The notice period for such termination is three months. An heir who gives notice of such termination is not obliged to participate personally in the partnership's activity, even when such duty is stipulated in the partnership agreement.

Commentary on section 91:

The consequences of a partner's death are regulated on section 88. The provisions of section 91 only stipulate the period of notice to be given by someone who inherits a business share in a partnership but does not wish to be a partner in such partnership.

Section 92

Settlements between Partners

(1) If a partnership is wound up and liquidated, the partners are entitled to receive a proportion of the liquidation remainder (liquidation share). The liquidation remainder is first distributed among the partners up to the amount of their paid-up contributions to the partnership. The rest of the liquidation remainder is then distributed equally between (among) the partners.

(2) If the liquidation remainder is insufficient to repay the paid-up contributions, the liquidation remainder is distributed between (among) the partners in proportion to their contributions.

(3) The partnership agreement may regulate the distribution of the liquidation remainder in another manner.

Commentary on section 92:

When a general commercial partnership is wound up and liquidated, each of the partners is entitled to receive a liquidation share, provided that all of the partnership's debts have been settled. Regulation of the liquidation remainder's distribution under the Commercial Code applies only if the partnership agreement does not stipulate otherwise.

Subdivision 5

Winding-up of Partnerships without Liquidation

Section 92a

Mergers of General Commercial Partnerships

(1) Unless it is stipulated otherwise below, the provisions of section 153a(3) and (11) (second sentence), 220a(I) (first and second sentence), (2) (second to fourth sentence), (7) to (11), 220b(I) and (3) to (5), 220c, 220d(1) to (4), 220h(2) to (6), 220i(l)(a), (c), (e) to (g), (i) to (k), 220l and 220n(3) shall apply to mergers of general commercial partnerships. The provisions of section 153a(4) and (6) shall apply, as appropriate, with the proviso that the right to ask for information about the other participating partnerships pertains only to a partner who is not authorized (entrusted) to act in the name and on behalf of the partnership, and such right pertains to him in relation to any partner of the participating partnership who is authorized (entrusted) to act in such partnership's name and on its behalf. The provisions which relate to section 69a(6) shall not be applied.

(2) A merger contract (agreement) must be signed by all the partners of all the participating partnerships. The provisions of section 220a(3)(a), (f) to (h) and (j) shall apply, as appropriate, but the provisions under letter (h) shall only apply to bondholders, and furthermore, instead of an exchange ratio based on shares, the legal status (position) of a particular partner of a merging partnership in the successor partnership (an exchange ratio based on business shares) and the amount of his investment contribution shall be stated, if such contributions are required from the partners, thereby the total amount of the investment contributions of a participating partnership's partners in the registered capital of the successor entity may not exceed the equity capital of the participating partnership, as stated in its financial statements.

(3) Only the participating partnerships and their partners may refer to the invalidity of a merger contract (agreement).

(4) A report under section 220b(1) shall not be required if all the partners of a participating partnership are entitled (empowered) to manage its business affairs.

(5) A petition (proposal) for the appointment of an expert or experts shall be lodged by all partners who are the statutory organ of a participating partnership. If a partner's (partners') petition requesting that the (proposed) merger be checked by an expert is rejected, this shall be stated in the merger contract (agreement).

(6) The draft terms of the merger contract and other documents under section 153a(5), if such documents are required, must be despatched to the partners no later than two weeks before the day determined for the signing of the merger contract. An advisory notice under section 220d(1) shall not be required.

(7) A petition for entry of the successor partnership in the Commercial Register shall be signed by all of its prospective partners.

(8) A lawsuit (complaint) under section 220k may be filed by each partner.

(9) The duty to pay up an investment contribution shall not lapse when a merger is entered in the Commercial Register unless the merger contract provides otherwise.

Commentary on sections 92a to 92d:

Mergers of general commercial partnerships, whether effected by acquisition or by the formation of a new partnership, are subject to section 92a. Contrary to the regulation effective until the end of 2000, a merger of a general commercial partnership and a limited partnership is possible (section 92b, see also section W4b). If one partner remains in a general commercial partnership, this will result in the winding-up of the partnership and its liquidation, unless this remaining partner opts to take over the business assets of the partnership, in which case liquidation is not required (section 92c). In the event of division of a general commercial partnership, its successor entity may be in the legal form other than general commercial partnership (section 92d).

Section 92b

Merger of a General Commercial Partnership with a Limited Partnership

(1) A general commercial partnership may be merged with a limited partnership by acquisition or by the formation of a successor general commercial partnership, whereby all partners of a merging limited partnership become partners with unlimited liability.

(2) Unless it is stipulated otherwise below, the provisions of section 92a shall apply to both a successor general commercial partnership and a merging general commercial partnership, and the provisions of section 104a to a merging limited partnership. A merger contract must be signed by all partners of all the participating partnerships. The provisions of section 104a(4) shall not apply.

Section 92c

Winding-up of a General Commercial Partnership with Transfer of its Business Assets to a Sole Partner

(1) If there are only two partners in a general commercial partnership and there is a ground under section 88(1)(a), (c), (d), (e) or (f) in respect of one of the partners which leads to the winding-up of such partnership with liquidation, the other partner may decide to take over the business assets of such partnership without liquidation.

(2) Such decision must be made by the partner within one month of the day when the ground under subsection (1) arose, otherwise the said right shall lapse and the partnership being wound up shall go into liquidation. The partner's decision to take over the partnership's business assets must be in the form of a notarial deed.

(3) The provisions of section 220p(3) shall apply as appropriate. If such partner is a joint stock company or a limited liability company, the take-over of the general commercial partnership's business assets shall require the approval of the general meeting; in this case the time-limit under subsection (2) shall be extended by the time required by law or by the statutes for the convening of a general meeting. The resolution of the general meeting must be in the form of a notarial deed.

(4) The provisions of section 220p(6) and (7) shall apply as appropriate. A copy of the notarial deed on the partner's decision under subsections (1) and (2) shall be enclosed with the petition requesting an entry in the Commercial Register.

(5) The provisions of section 89 shall similarly apply.

(6) The procedure under this section shall also apply if the grounds under subsection (1) affect all of the partners except one.

Section 92d

Division of a General Commercial Partnership

(1) A contract on division concluded by all of the partners in the form of a notarial deed is required for division of a general commercial partnership by the formation of new partnerships. The successor partnerships resulting from such division may be both general commercial partnership and limited partnerships.

(2) A contract on division must contain a manifestation of will to wind up the partnership without liquidation. The provisions of section 220r(2)(a), (b), (e), (f), (g), (h), (i) and (k) shall apply, as appropriate, to the other particulars of such contract. Partnership agreements of the successor partnerships must be enclosed with the contract on division,

(3) Unless the law provides otherwise, the following provisions shall apply, as appropriate, to the division of a general commercial partnership; section 92a(2) to the amount of investment contributions to registered capital, sections 92a(3), 353d(2), 220h and 220(s)(1) and (3) to (6) to the report on the proposed division and section 220>v, 220x, 220y and 220/ to the petition requesting an entry in the Commercial Register, which must be signed by all of the successor partnerships' partners.

(4) Unless the law provides otherwise, the provisions of subsections (1) and (2) shall apply, as appropriate, to a division by acquisition. The provisions of section 220/n shall also apply as appropriate. **Division by acquisition is permissible in respect of both another general commercial partnership and a limited partnership.**

Subdivision 6

Conversion of Legal Form

Section 92e

(1) **Unless it is stipulated otherwise below, the provisions of section 69d to 69g shall apply to conversion of legal form. The provisions of section 220a(2) shall apply as appropriate.**

(2) **The partners shall be liable for obligations (commitments) existing at the day of entry of conversion of legal form in the Commercial Register to the same extent as before such conversion was entered in the Commercial Register.**

Commentary on section 92e:

The provisions of section 92e supplement those in sections 69d to 69^ when a legal entity which converts its legal form is a general commercial partnership. The consent of all partners to such conversion is required.

Division III

Limited Partnerships

Subdivision 1

Fundamental Provisions

Section 93

(1) A "limited partnership" (in Czech "komanditnf spolecnost") is an entity in which one or more partners are liable for the partnership's obligations up to the amount of the unpaid parts of their contributions. as recorded in the Commercial Register ("limited partners"; in Czech "komanditiste"), and one or more partners are liable for the partnership's obligations (debts) with their entire property ("general partners"; in Czech "komplementari").

(2) **A general partner can be a person who complies with the general requirements for carrying on a trade ("zivnost") under other statutory provisions, and on whose side there is no impediment under other relevant statutory provisions, irrespective of the partnership's objects of business activity.**

(3) **If a general partner is a legal entity, the rights and duties associated with its participation in a limited partnership shall be exercised by its statutory organ or by a representative empowered thereto by the statutory organ, whereby such person must meet the requirements stipulated in subsection (2).**

(4) Unless it is stipulated otherwise below, limited partnerships are governed as appropriate (mutatis mutandis) by the preceding provisions on general commercial partnerships, while the legal status of limited partners is governed mutatis mutandis by the provisions on limited liability companies.

Commentary on section 93:

A limited partnership, like a general commercial partnership, is a legal entity under Czech law. It can only be formed to carry on a business activity or activities. The partners may be both individuals and legal entities.

During its existence a limited partnership must have at least one general partner ("komplementdr") and one limited partner ("komanditista"). The general partner is liable for the partnership's debts with all his property.

A limited partner's investment contribution to the partnership is mandatory. Its amount, which cannot be less than

CZK 5,000, is agreed in the partnership agreement. A limited partner is only liable for the partnership's debts up to the amount of the unpaid part of his investment contribution.

The provisions on general commercial partnerships apply to limited partnerships as appropriate, while the provisions on limited liability companies apply in a similar way to the legal status of limited partners, unless the Commercial Code includes a specific regulation concerning limited partnerships.

Section 94

The partnership agreement (in Czech "spolecenska smlouva") must include the following:

- (a) **the commercial name and seat of the partnership;**
- (b) **determination of the partners in the form of each partner's commercial name and seat, if such partner is a legal entity, or his full name and residential address, if the partner is an individual (a natural person);**
- (c) the objects (scope of partnership's business activities);
- (d) determination of which partners are general partners and which are limited partners;
- (e) the amount of each limited partner's investment contribution.

Commentary on section 94:

Section 94 stipulates the contents of a valid partnership agreement. It also usually regulates other matters, such as the investment contributions to be provided by general partners, the decision-making process governing the partnership's affairs, the rules for profit distribution and computing a settlement share and liquidation share, the transferability of the business share (holding) of a partner, who has authority to act on behalf of the partnership, etc.

Section 95

The commercial name of the limited partnership shall include the designation "komanditni spolecnost" ("limited partnership") which may be abbreviated as "kom. spol." or "k. s.". Should the commercial name of the limited partnership include the name of a limited partner, such partner shall be liable for the partnership's obligations (debts) as a general partner.

Commentary on section 95:

The commercial name of a limited partnership must include an addendum specifying its legal form, in accordance with section 95

Section 96

A petition (an application) for entry of the limited partnership in the Commercial Register must be signed by all of its partners. The partnership agreement must be attached to the application.

Commentary on section 96:

Like the partners of a general commercial partnership, all the partners of a limited partnership must sign a petition (an application) for the partnership's entry in the Commercial Register and their signatures must be authenticated. The partnership agreement, the appropriate trade certificate or trade licence and, in the case of a general partner who is a foreign person, his residence permit for the Czech Republic must be enclosed with the application.

Subdivision 2

Rights and Duties of Partners

Section 97

- (1) Only the general partner(s) may manage the business of the partnership.
- (2) Other matters are decided jointly by the general partners and limited partners on the basis of a majority vote, unless the partnership agreement stipulates otherwise.
- (3) Each partner has one vote, unless the partnership agreement prescribes a different number of votes.
- (4) **The consent of all partners is required for any modification (alteration) of their partnership agreement, unless this Code provides otherwise. However, the partnership agreement may stipulate that the consent of a majority of the general partners and the consent of a majority of the limited partners is sufficient to modify the partnership agreement. The partnership agreement may also provide that the consent of the other partners is not required for transfer of a limited partner's business share (holding) to another person. The provisions of section 115 shall apply, as appropriate.**

Commentary on section 97:

Only general partners of a limited partnership are entitled to manage the partnership's business. The partnership agreement may stipulate that some rather than all of the general partners are entrusted with management of the partnership.

Section 97a

A limited partner shall make an investment contribution to the partnership's registered capital in the amount specified in the partnership agreement, but such amount shall not be less than CZK 5,000. An investment contribution must be paid up within the time-limit stated in the partnership agreement, otherwise without undue delay after the partnership's incorporation or after such limited partner's participation in the partnership arises.

Commentary on section 97a:

The Commercial Code now stipulates the minimum amount of a limited partner's investment contribution. This was previously not the case.

Section 98

A limited partner is entitled to inspect the partnership's books of account and accounting documents and check the data contained therein, or he may empower an auditor to do this on his behalf. He is also entitled to receive a copy of the partnership's financial statements and require information from the general partners about all matters concerning the partnership.

Commentary on section 98:

All partners of a limited partnership have the right to be informed of the partnership's financial situation. A limited partner may inspect the partnerships books of account any time.

Section 99

The prohibition of competitive conduct does not apply to limited partners, unless the partnership agreement stipulates otherwise.

Commentary on section 99:

The prohibition of competitive conduct applies only to general partners, unless the partnership agreement extends the prohibition to limited partners. The consequences of breaching the prohibition of competitive conduct are stated in section 65.

Section 100

(1) A profit shall be divided into a portion appertaining to the partnership as a whole and a portion appertaining to the general partners in the ratio stipulated in the partnership agreement, or else into two (equal) halves. The portion profit pertaining to the partnership as a whole shall be taxed and then distributed among the limited partners according to the ratio specified in the partnership agreement, otherwise according to the ratio of their paid-up investment contributions.

(2) Unless the partnership agreement stipulates otherwise, the portion of profit due to the general partners is distributed among them equally, whereas the portion of profit due to the limited partners is distributed in proportion to their paid-up investment contributions.

(3) A loss ascertained by the financial statements shall be shared equally by the general partners, unless the partnership agreement provides otherwise. Limited partners shall share in the settlement of a loss, if this is specified in the partnership agreement, but they shall not be obliged to return shares in profit which have already been paid to them in order to settle a loss.

Commentary on section 100:

The new wording of subsection (1) harmonizes the regulation of a limited partnership's profit distribution with the income tax and accounting legislation.

Subdivision 3

Legal Relations with Third Parties

Section 101

(1) The general partners shall form the statutory organ of a limited partnership. Unless the partnership agreement provides otherwise, each general partner may act independently **in the name** of the limited partnership.

(2) If a limited partner concludes a contract **in** the name of the partnership without being empowered thereto, he is liable for obligations (debts) ensuing from the contract to the same extent as a general partner.

Commentary on section 101:

Only general partners can form the statutory organ. The partnership agreement may provide that only some of the general partners will be empowered to act for the partnership. In such circumstances, the partnership agreement must include the names of the general partners empowered to act for the partnership and the form of their empowerment (e.g. concurrent approval by two general partners). These facts are entered in the Commercial Register. If a limited partner concludes a contract in the name of the partnership without being mandated to do so, he is liable for obligations ensuing from the contract with all his property, in the same way as a general partner.

Subdivision 4

Winding-up and Liquidation of a Limited Partnership

Section 102

(1) A limited partner is not entitled to terminate his participation in the partnership (i.e. to leave it). If a bankruptcy order is adjudged against a limited partner's property, or if a petition for a bankruptcy order on a limited partner's property is dismissed due to his lack of property, or if distraint order is effective against a limited partner's business share in the partnership or a writ of execution is issued against a limited partner's business share after a judicial ruling ordering such execution takes legal effect, this shall not be a ground for the winding-up of the partnership. Furthermore, the partnership shall not be wound up if a legal entity which is a limited partner of the partnership is dissolved. The fact that a limited partner is deprived of his legal capacity or that his legal capacity is restricted shall not be a ground for termination of his participation in the partnership or for the partnership's winding-up.

(2) If a bankruptcy order is adjudged against the property of a limited partner, or if a petition for a bankruptcy order in respect of a limited partner's property is dismissed due to his lack of assets (property), or if distraint order is effective against a limited partner's business share in the partnership or a writ of execution is issued against a limited partner's business share after the relevant judicial ruling takes effect, such limited partner's participation in the partnership shall be terminated. Such limited partner's entitlement to a settlement share shall be included in his bankrupt estate.

(3) If a bankruptcy order against the property of a limited partner was revoked (cancelled) due to reasons other than the discharge of a distribution schedule or his lack of property, his participation in the partnership shall be renewed (reinstated); if the partnership has already paid a settlement share to such partner, he shall be obliged to repay the amount of the settlement share to the partnership no later than two months after cancellation of the bankruptcy proceedings. The same shall apply if, under a final ruling, a distraint order or a writ of execution against the limited partner's business share in the partnership is discontinued under other statutory provisions.

(4) In the event of a limited partner's death, the partnership shall not be wound up and his business share shall be subject to inheritance proceedings. The partnership agreement may exclude passage of a business share to an heir. In such case, the partnership shall pay a settlement share to his heir (heirs).

Commentary on section 102:

A change in the status of a limited partner (e.g. the issue of a bankruptcy order against a legal entity which is a limited partner), or even his death (in the case of an individual), will not result in the winding-up of a limited partnership, provided that at least one limited partner remains in the partnership.

Section 103

If participation of all the limited partners is terminated, the general partners may agree to convert their limited partnership into a general commercial partnership without liquidation. **The provisions of sections 69d to 69g shall apply as appropriate.**

Commentary on section 103;

If no limited partner remains in a limited partnership and there are still at least two general partners, they may agree to convert their limited partnership, without liquidation, into a general commercial partnership.

Section 104

(1) If the winding-up of a limited partnership is associated with its liquidation, all of its partners are entitled to proportionate parts of the liquidation remainder (liquidation balance). Each partner is entitled to repayment of **the amount of** his paid-up investment contribution. If the liquidation balance is insufficient for such payment, the limited partners will have a preferential right to repayment of their investment contributions. After return of **the amounts of** investment contributions, the rest of the liquidation remainder will be distributed among the partners in the same ratio as a profit.

(2) If the liquidation remainder is insufficient for distribution under subsection (1), it will be distributed among the partners in the same ratio as a profit.

(3) The partnership agreement may stipulate another method of distributing the liquidation remainder among the partners.

(4) A settlement share shall be computed in the same way as a share in the liquidation remainder (i.e. a liquidation share).

Commentary on section 104:

When a limited partnership is wound up and liquidated, all of its partners have a right to a due proportion of the liquidation remainder (liquidation balance),

Subdivision 5

Winding-up of a Limited Partnership without Liquidation

Section 104a

Mergers of Limited Partnerships

(1) Unless it is stipulated otherwise below, the provisions of section 92a shall apply, as appropriate, to mergers of limited partnerships. Should the rights and duties of limited partners not change, they need not sign the merger contract.

(2) A merger contract must determine which partners of the merging (dissolving) partnership will have the legal status of limited partners and which the legal status of general partners. The amount of each limited partner's investment contribution must be specified.

(3) If a partner of a merging partnership has the status of a limited partner and this will change to the status of a general partner in the successor partnership, he shall bear unlimited liability, jointly and severally with the other general partners, for all the participating partnerships' obligations as at the day when the merger was entered in the Commercial Register. However, he may claim from partners who were general partners before the merger was entered in the Commercial Register (to the extent of their business shares in the partnership) reimbursement of payments he made because of his liability (as surety), unless these were obligations for which his liability was unlimited even before the merger's entry in the Commercial Register.

(4) If a partner of a merging partnership had the status of a general partner in such partnership and this will change to the status of a limited partner in the successor partnership, he shall bear unlimited liability, jointly and severally with the other general partners and with the limited partners bearing unlimited liability, for all the participating partnerships' obligations as at the day when the merger by acquisition was entered in the Commercial Register, and this shall be for a period of five years after entry of the merger becomes effective in relation to third parties. He shall only be liable for obligations which arose after the merger's entry in the Commercial Register if his investment contribution to the partnership [to the extent under section 93(1)] was not paid up at that time.

Commentary on sections 104a to 104d:

A limited partnership may be merged with another limited partnership (section 104a) or with a general commercial partnership (section 104b; see also section 92b). If one general partner remains in a partnership in which the participation of all limited partners was terminated, he may opt to take over the business assets of the partnership, in which case the partnership will be wound up without liquidation (section 104c). A limited partnership may also be divided and give rise to successor entities (section 104d).

Section 104b
Merger of a Limited Partnership with a General Commercial Partnership

(1) A limited partnership may be merged with a general commercial partnership by acquisition or by the formation of a successor limited partnership, whereby all partners of such general commercial partnership become general partners of the successor limited partnership.

(2) Unless it is stipulated otherwise below, the provisions of section 104a shall apply as appropriate. A merger contract must be signed by all the partners of all the participating partnerships. The provisions of section 104a shall similarly apply to the merging general commercial partnership's partners who acquire the legal status of general partners in the successor limited partnership.

Section 104c
Winding-up of a Limited Partnership with Transfer of its Business Assets to a Sole General Partner

(1) Unless it is stipulated otherwise below, the provisions of section 92c shall apply, as appropriate, to the dissolution of a limited partnership when its business assets are transferred to its sole general partner.

(2) The procedure under subsection (1) shall be permissible only if the participation of all the limited partners in the partnership is terminated and only one general partner remains.

Section 104d
Division of a Limited Partnership

Unless otherwise stipulated below, the provisions of sections 92d and 104a(2) to (4) shall apply to the division of a limited partnership as appropriate.

Subdivision 6 Conversion of Legal Form

Section 104e

(1) Unless it is provided otherwise below, the provisions of section 92e shall apply to conversion of legal form.

(2) **The partners shall be liable for obligations (commitments) existing at the day of entry of conversion of legal form in the Commercial Register to the same extent as before it was entered in the Commercial Register, unless the partners' liability is higher after the said change. If the partners' liability is greater after entry of the conversion in the Commercial Register, they shall bear such increased liability also for obligations (commitments) which existed at the day when the conversion of legal form was entered in the Commercial Register.**

Commentary on section 104e:

The partners' decision to convert their partnership's legal form must be in writing (in the form of a contract) and their liability will be on at least the same scale as before the change in legal form was entered in the Commercial Register.

Division IV

Limited Liability Companies

Subdivision 1

Fundamental Provisions

Section 105

(1) **A limited liability company (in Czech "spolecnost s rucenim omezenym") is an entity whose registered capital is made up of its members' investment contributions and whose members are liable (as sureties) for the company's obligations until their paid-up investment contributions are entered in the Commercial Register [section 106(2)].**

(2) **A limited liability company may be formed by one person. A single-member limited liability company cannot form or be a single member of another company. This shall not affect the provisions of section 66a(7). One individual may be a member of not more than three limited liability companies.**

(3) A limited liability company may have a maximum of 50 members.

Commentary on section 105:

A limited liability company is a very popular legal form for small- and medium-sized businesses in the Czech Republic. A limited liability company can be formed by one or more persons (individuals, entities), but the

maximum number of its members is 50. All members are recorded in the Commercial Register. The amended wording of the Commercial Code restricts the possibility of one individual being a single member of other limited liability companies. A single-member company (except for a holding type group/company) may not be the only founder or member of another company. The registered capital of a limited liability company established after 1 January 2001 must be no less than CZK 200,000 (see section 107).

Section 106

- (1) The company is liable for breaches of its obligations (commitments) with its entire property.
- (2) Its members are jointly and severally liable (as sureties) for their company's obligations up to (the unpaid portions of their investment contributions according to the entry in the Commercial Register. On entry of full payment of all investment contributions in the Commercial Register, the members' liability for the company's obligations (commitments, debts) lapses. Any payment made by a member to a creditor of the limited liability company shall not lapse or reduce the extent of his liability (according to the first sentence). Any payment made by a member on behalf of the limited liability company on the grounds of his liability (as surety) shall be credited as part of such member's investment contribution, and, if this is not possible, the member may claim reimbursement of such payment from the company. If he cannot obtain such reimbursement from the company, he may claim it from a member who has not paid up his contribution, or else from each of the other members to the extent of his participation in the registered capital.

Commentary on section 106:

Every entrepreneur is liable for breaches of his obligations. A limited liability company is liable for breaching its obligations with its entire property. Members of the company are additionally liable (as sureties) for the company's obligations (debts) up to the amount of their as yet unpaid investment contributions, as recorded in the Commercial Register. In this respect the entry in the Commercial Register concerning the unpaid part of a particular investment contribution is decisive. A creditor of the company may seek payment of an overdue amount (debt) which the company has not settled, despite being asked to do so, from a company member who has not fully paid up his investment contribution to the company. The amount so paid by the member is credited to his investment contribution. If the amount paid is higher than the unpaid part of the member's investment contribution, he can first claim reimbursement from the company, but if this fails, from the other members of the company.

Section 107

The commercial name of a limited liability company must include the designation "spolecnost s rucenim omezenym" ("limited liability company"), or its abbreviated form "spol. s r.o.", or "s.r.o."

Commentary on section 107:

The commercial name of a limited liability company is decided by its founders (see section 8 et seq). An addendum to its commercial name must specify the legal form in accordance with section 107.

Section 108

- (1) The amount of the registered capital of a limited liability company must be at least CZK 200,000.
- (2) A company's claim to payment of an unpaid part of a member's investment contribution and a member's claim against his company are not mutually creditable (i.e. they may not be set off) with the exception of a claim under section 106, unless such setting-off is approved by the general meeting when the registered capital is increased.

Commentary on section 108:

The term "registered capital" is defined in section 58. Until the end of 2000, the registered capital of a limited liability company was required to be at least CZK 100,000 whereas as of 1 January 2001, the amount of any newly-formed limited liability company's registered capital may not be less than CZK 200,000 (about USD 5,400). See also Transitory Provisions of Act No. 370/2000 Coll. (point 18) at the end of the Commercial Code.

Section 109

- (1) The amount of a member's investment contribution must be at least CZK 20,000.
- (2) Each member may participate in the registered capital of a limited liability company with only one investment contribution. The amounts of individual members' investment contributions may be determined differently, but each such amount must be divisible by 1,000 without a remainder. The sum of all individual contributions must correspond to the total amount of the company's registered capital.
- (3) If a nonmonetary (in-kind) investment contribution is to be used to pay up (even partially) a

member's investment contribution, the deed of association or a written statement on increasing a particular member's investment contribution or a written statement on acceptance of this contribution [section 143(6)] must specify the object of such in-kind contribution and the amount to be included as payment of the member's investment contribution. The provisions of section 163a(3) and (4) shall apply as appropriate.

Commentary on section 109:

The term "investment contribution" (also referred to as "contribution") is defined in section 59.

The amount of a member's investment contribution may not be less than CZK 20,000. The amounts of individual members' contributions need not be identical, but any such amount must be divisible by 1,000 without a remainder. The sum of all contributions must equal the company's registered capital.

Section 110

(1) A deed of association must contain at least the following particulars:

- (a) the commercial name and seat of the company;
- (b) the identity of the company's members; in the case of a legal entity, its commercial name and seat, in the case of an individual, his full name and residential address;
- (c) the objects (scope of business activities);
- (d) the amount of the registered capital and the amount of the investment contribution to which each member committed himself, and the method and time-limit for paying up such investment contributions;
- (e) the names and addresses of the company's first executive officers and the method by which they will act in the name of the company;
- (f) the names and addresses of the members of the first supervisory board, if any;
- (g) the determination of the administrator of investment contributions;
- (h) other information, if required by this Code.

(2) The deed of association may also stipulate that the company will issue statutes (by-laws) to regulate its internal organization and provide more detailed regulations relating to particular matters included in the deed of association.

Commentary on section 110:

A deed of association must contain the essential particulars stipulated in subsection (1). Executive officers, as referred to in subsection (1)(e), will form the company's statutory organ (see also section 133).

Section 111

(1) Before filing a petition for entry of a company in the Commercial Register, the full premium and at least 30 per cent of each monetary investment contribution must be paid up. The total of paid-up investment contributions and the value of nonmonetary investment contributions must amount to at least CZK 100,000.

(2) Where a company is formed by one person, it may be entered in the Commercial Register only when its registered capital has been fully paid up.

Commentary on section 111:

A petition for entry of the company in the Commercial Register can be filed only if each monetary investment contribution has been paid up in at least 30% of its amount and the total sum of paid-up monetary contributions and in-kind investment contributions provided is no less than CZK 100,000. Should a company be formed by one person, its registered capital (CZK 200,000) must be paid up in full.

Section 112

(1) All executive officers must sign the application (petition) for entry of the company into the Commercial Register.

(2) The documents listed in sections 30 and 31(2) must be attached to the petition (application) for registration of the company in the Commercial Register, together with the following:

- (a) its deed of association or deed of formation and, where appropriate, its statutes;
- (b) a document proving, that commitments under section 111 have been settled; and
- (c) a report by an expert or experts on the valuation of in-kind (nonmonetary) investment contributions.

Commentary on section 112:

A petition for entry of a company in the Commercial Register must be signed by all its executive officers.

Their signatures must be authenticated before the petition is filed with the registration court. The petition must include all the particulars stipulated in section 28. Documents certifying (supporting) the facts to be entered in the Commercial Register are to be enclosed with the petition.

Subdivision 2

Rights and Duties of Members

Section 113

(1) Each member shall pay up his investment contribution under the conditions (terms) and within the time-limit stipulated in the deed of association, but not later than five years after the company's incorporation or a commitment by the member to increase his investment contribution or make a new one. No member may be relieved of this duty, unless the registered capital is reduced and the owed portion (of an investment contribution) is no longer required. The executive officers shall, without undue delay, notify the registration court, when the contribution of each member has been paid up in full.

(2) A member who has not paid up the prescribed amount of his monetary investment contribution within the time-limit specified in subsection (1) shall pay an interest charge of 20% of the amount in arrears, unless the deed of association provides otherwise.

(3) If a member defaults on the paying up of his monetary investment contribution, the company may, on pain of expulsion, demand that he fulfil his duty within an additional time-limit of at least three months.

(4) A member who fails to fulfil his duty within the additional time-limit may be expelled from the company by a resolution of the general meeting.

(5) The business share (section 114) of an expelled member shall pass to the company, which may transfer it to another member or to a third party (person). The decision on such transfer is made by the general meeting.

(6) Unless the business share is transferred under subsection (5), the general meeting shall decide within six months of the expulsion of a member either to reduce its registered capital by the contribution of the expelled member, or to divide the expelled member's contribution (in the amount of the settlement share) for payment to the remaining members (in a ratio commensurate to their business shares), otherwise the court may wind up the company (even without a petition to that effect) and order its liquidation. On approval by the general meeting of a resolution to divide the expelled member's business share among the remaining members, the divided business share passes to the members under conditions specified by the general meeting.

Commentary on section 113:

It is the duty of every member to pay up his monetary investment contribution to the company within five years of the company's incorporation or of his joining the company, unless otherwise agreed. This applies if there is more than one member.

A member who defaults on the paying up of the unpaid part of his investment contribution has to pay the company interest of 20% on the overdue amount, unless the deed of association stipulates otherwise.

A member who is required by the company to settle an overdue amount within an additional period of three months, on pain of expulsion, may be expelled if he fails to meet this requirement. The business share (holding) of the expelled member may be transferred to another member or a third party. If this share is not transferred within six months, the general meeting will either reduce the registered capital or the expelled member's investment contribution will be divided among the existing members.

Section 114

(1) A "business share" ("holding" or "ownership interest"; in Czech "obchodni podíl") represents the member's participation in the company and the rights and duties derived from such participation. The size of the business share is determined by the ratio of a particular member's investment contribution to the company's registered capital, unless the deed of association provides otherwise.

(2) Each member may have only one business share. If a member makes an additional investment contribution, his total investment contribution is correspondingly increased, with the result that his business share may also be increased.

(3) One business share may be held by more than one person. Such persons can exercise the rights conferred on them by the said business share only through a joint representative, and they shall bear joint and several liability for paying up the investment contribution. The Civil Code's provisions on joint ownership (co-ownership) apply as appropriate to relations among (between) persons holding one business share.

(4) Repealed.

Commentary on section 114:

Each company member may have only one business share (holding, ownership interest; in Czech "obchodni podd"), which represents his participation in the company and therefrom derived rights and duties. One business share may belong to two or more persons. These co-owners can exercise their rights only through a joint representative.

Section 115

(1) Unless the deed of association provides otherwise, a member may, with the approval of the general meeting, transfer his business share to another party on the basis of a contract.

(2) If the deed of association so admits, a member may transfer his business share to another party (the transferee). The deed of association may make transfer of a business share to another party dependent on the general meeting's approval. Should a company have one member (a single-member company), a business share is always transferable to third parties.

(3) A contract on transfer of a business share (holding) must be in writing, and a transferee who is not a member of the company must state therein that he accedes to the deed of association and, where appropriate, the statutes. **The transferor shall be liable for obligations passed on when his business share is transferred.**

(4) The consequences of transfer of a business share under subsections (1) and (2) for a company shall take effect the day when a copy of the **final (effective)** contract on transfer is delivered to the company.

Commentary on section 115:

A company member may only transfer his business share to another member with the approval of the general meeting or to a third party, if this is permitted by the deed of association and approved by the general meeting, if such approval is required. The transfer must be based on a written contract on transfer of the business share. In the case of transfer to a third person, the transferee must declare in the contract that he accedes to the deed of association. The contract becomes effective when it is delivered to the company.

Section 116

(1) In the case of winding-up of a legal entity which is a member of the company, its business share passes to its legal successor; however, the deed of association may prohibit such transference (passage) of a business share to a legal successor.

(2) A business share may be inherited, although a company's deed of association can prohibit this, unless it is a single-member company. The provisions of section 156(10) shall apply as appropriate. An heir may ask that his participation in the company be cancelled (terminated) by a judicial ruling, if it cannot be justly required of him that he be a member of such company; such heir is entitled to file a petition with the court within three months of the day when a court ruling on such inheritance takes effect, otherwise his right to seek judicial cancellation of his participation in the company shall lapse. An heir seeking cancellation of his participation in a company by a court is not obliged to participate personally in the company's activities, even when the deed of association stipulates this duty. An heir's participation in a company cannot be cancelled if he is the sole member.

(3) In the event of a business share not passing to an heir or a legal successor, the provisions of section 113(5) and (6) shall apply as appropriate.

Commentary on section 116:

If a member of a limited liability company is a legal entity which is being wound up and there is a legal successor, its business share in the company passes to its legal successor, provided that this is permitted by the company's deed of association.

If an individual who is a member of the company dies, his business share passes to his heir if the deed of association so permits.

Section 117

(1) A business share may only be divided in the case of its transfer or transference to a member's heir or legal successor. The approval of the general meeting is required for the division of a business share,

(2) A deed of association may prohibit the division of a business share.

(3) If on the division of a business share, a new separate business share is to arise, the amount of the investment contribution may not be less than that stipulated in section 109(1).

Commentary on section 117:

A business share cannot be divided between (among) two or more owners, except in the case of its transfer or transference to an heir or legal successor of a company member, provided that the division is not prohibited by the deed of association. The minimum amount of the relating investment contribution may not be less than CZK

20,000, even after division of the business share.

Section 117a Pledging a Business Share

- (1) A business share may be the object of a lien (i.e. it may be pledged). A contract of lien must be in writing. The signatures on such contract must be authenticated.
- (2) If a business share (in a particular company) can only be transferred with the general meeting's approval, its approval shall also be required for the pledging of a business share. Without this approval, no lien (on the business share) can arise. During the existence of a lien, a business share cannot be pledged for a second time.
- (3) A lien on a business share shall arise on its entry in the Commercial Register. A petition for entry of the lien on a particular business share or its striking off may be filed by either the lien creditor (pledgee) or the pledger. Such petition must be accompanied by the contract of lien or a document confirming the lien's discharge or a document on the general meeting's approval, if such is necessary, unless this Code provides otherwise.
- (4) If a receivable which is secured by a Hen is not duly and timely paid (i.e. discharged), the lien creditor (pledgee) may sell the pledger's business share, even without the general meeting's approval, at the debtor's cost, either in a public tender or, if so permitted by other statutory provisions, at a public auction. The lien creditor shall pass, without undue delay, to the debtor the amount by which the proceeds from selling the business share exceed his secured receivable and the purposefully incurred expenses (related to the business share's sale).
- (5) On transfer of a business share under subsection (4), the lien (on such business share) shall lapse (be discharged).
- (6) During the existence of a lien, the member concerned shall continue to exercise the rights associated with his participation in the company. Any payments to which he is entitled on the basis of his participation in the company after the maturing of a secured receivable shall pertain to the lien creditor up to the amount of such secured receivable and its appurtenances, and these payments shall be set-off against the secured receivable.
- (7) If a lien creditor does not succeed in selling a pledged business share by a method under subsection (4), he is entitled to exercise the rights attached to such share. He may exercise such rights as of the date of the unsuccessful attempt to sell it. The lien creditor (pledgee) and the pledger may agree that the former will accept the said business share as settlement of the latter's debt in a contract for its transfer (assignment) in accordance with section 115. The contract must expressly state that the business share is being transferred (assigned) to settle a debt, including the ground and its amount. No approval of the general meeting shall be required for such transfer (assignment). On transfer (assignment) of (he business share to the lien creditor (pledgee), the lien is discharged. For the purposes of transferring (assigning) a business share to settle a debt, such share must be valued by an expert appointed by the court, acting thereby on the basis of a petition filed by the lien creditor (pledgee). The provisions of section 59(3) shall apply, as appropriate, to the appointment and remuneration of such expert. Without undue delay after the transfer (assignment), the lien creditor shall pay to the pledger the amount by which the value of the business share (as determined by the said expert) exceeds the amount owed, including its appurtenances and the cost of the expert's report.
- (8) Unless it is provided otherwise, the general provisions of the Civil Code and the Commercial Code on a lien attached to a movable shall also apply to a lien on a business share.

Commentary on section 117a:

Act No. 370/2000 Coll. introduced specific provisions in the Commercial Code on pledged business shares.

Section 118

Any change in the person of a member is entered in the list of members and in the Commercial Register. **The company shall enter changes in the persons of its members as soon as such change is proved (documented) to it.**

Commentary on section 118;

A list of all the company's members is kept by the company. An executive officer will file a petition with the registration court for entry of an amendment to the list of members in the Commercial Register, The liability (suretyship) of the previous member for the company's debts then passes to the transferee.

Section 119

If all the business shares fall into the possession of a single member, this member must pay up the full monetary investment contributions **no later than** three months after the day when the business shares are thus concentrated, or part of the concentrated business share must be transferred to another person (party). If the member fails to meet this requirement, the court shall wind up the company, even without a petition to that effect, and order the company's liquidation.

Commentary on section 119:

Ownership of a limited liability company by one member has consequences for the paying up of monetary investment contributions. The one member in question must pay up all the monetary investment contributions within three months of becoming the sole owner or transfer part of the business share to another person. If the company is owned by one person, there is no general meeting and its powers are exercised by the sole owner.

Section 120

(1) A company may not acquire its own business shares by means of a contract on transfer (assignment) of a business share. A contract concluded contrary to this provision shall be void (invalid). If a company acquires its own business shares, it must proceed under section 113(5) and (6).

(2) If a company acquires its own business share legally, the rights and duties attached to such share shall not lapse by their merger, but the company shall not be entitled to exercise the rights of a member. The provisions of sections 161d(2) and (3) and 161e(1) and (2) shall apply as appropriate.

(3) A controlled person may not acquire by contract a business share of its controlling person. The provisions of section 161f(2) to

(4) shall apply as appropriate.

Commentary on section 120:

Section 120 allows a company to acquire its own business share by transference, in which case it cannot exercise the rights attached to the business share. However, a company may not acquire its own business share by a contract on its transfer.

Section 121

(1) A deed of association may stipulate that the general meeting is entitled to impose a duty on members to pay monetary contributions for the creation of equity capital (in addition to the investment contributions they made to the registered capital); the duty to pay such additional monetary contributions (hereafter "additional contributions") may be imposed in an amount of up to one-half of the registered capital (their aggregate investment contributions). If the sum of additional contributions reaches half the amount of the registered capital, payment of further additional contributions may not be imposed. The provisions of section 113(2) to (6) shall apply as appropriate.

(2) A member may pay an additional contribution with the general meeting's consent, even if the deed of association does not stipulate this duty.

(3) Discharge of the duty under subsection (1) and payments made under subsection (2) shall have no influence on the amount of a member's investment contribution and the amount of the registered capital.

(4) Additional contributions can be refunded to members only to the extent to which their amount exceeds the company's losses.

Commentary on section 121:

Additional contributions, as regulated in section 121, may be sought by the company when it makes a loss.

Section 122

(1) Members exercise their rights to manage and supervise the company's activities through their general meeting in the extent and manner laid down in the deed of association or statutes.

(2) Members may specifically demand information on the affairs of the company from its executive officers, and they may look at the company's documents **and check the information (data) therein, or empower an auditor or a tax adviser to do so on their behalf.**

Commentary on section 122:

All members are entitled to participate in and vote at the general meeting unless this right is excluded by law [see sections 113(5) and (6) and 127(5)]. They may ask the company's executive officers for information about the company's financial standing and other business matters and inspect company documents.

Section 123

(1) Members participate in a profit, as determined in a resolution of the general meeting on its distribution among (between) the members in proportion to the size (ratio) of their business shares, unless the deed of association provides otherwise.

(2) Profit cannot be paid out of registered capital, a reserve or other capital fund or resources which, under this Code, the deed of association or statutes, are to be used for topping up these funds. The provisions of section 178(1)(third sentence) (2), (3), (5) to (7) shall apply as appropriate.

(3) During a company's existence, its members may not request repayment of their investment contributions. Payments made to members in the case of a reduction of the registered capital are not considered as a refund of their contributions.

(4) Members shall refund to the company any part of a profit paid to them contrary to the above provisions. Executive officers who approved such payments shall bear joint and several liability for their refund.

Commentary on section 123: Each company member has the right to a proportionate part of the company's profit determined for distribution, based on the size of his business share. A profit means not only the trading result for the last accounting period but also any profit retained from preceding years. Profit is distributed in accordance with a resolution of the general meeting; a proposal for the distribution of profit' is submitted to the general meeting by the company's executive officers. The registered capital and the reserve fund (and amounts determined for transfer to the reserve fund) cannot be used when distributing profit. Should members receive any part of a profit contrary to the provisions of this section, they must return it to the company. The executive officers who wrongly approved the payment of such a part of the profit are jointly and severally liable for its repayment. No member may request repayment of his investment contribution during the company's existence (see section 59).

Section 124

(1) A company shall create a reserve fund (section 67) at the time and in the amount specified in its deed of association. Unless the reserve fund was already created at the time of the company's incorporation, the company is bound to create it from net profit in the first year of its profitability, as indicated in its ordinary financial statements. The reserve fund shall be created in an amount equal to at least 10% of the net profit, but without exceeding 5% of the amount of the registered capital. An amount determined in the deed of association or statutes of at least 5% of net profit shall be annually transferred to the reserve fund until it reaches the level stipulated in the deed of association or statutes, such level being equal to at least 10% of the registered capital.

(2) The executive officers shall decide on use of the reserve fund in accordance with section 67, **except in the instances in which under the law such decision is entrusted to the general meeting.**

(3) **A reserve fund can only be used to settle a company's loss if such loss does not exceed 10% of its registered capital.**

Commentary on section 124:

The general provisions on reserve fund are included in section 67. Any limited liability company must create a reserve fund in accordance with its deed of association and comply with the statutory requirements under section 124 on the creation of reserve funds and mandatory payments to them.

A reserve fund created mandatorily from net profit is to be used to reimburse a loss incurred by the company, provided that such a loss does not exceed 10% of the registered capital. The executive officers' decision on use of the reserve fund is usually subject to the approval of the general meeting.

Subdivision 3

Company Organs

General Meetings

Section 125

(1) The "general meeting" (in Czech "valna hromada") of a company's members is its highest organ. Its powers include:

- (a) approval of transactions made in the name of the company under section 64 prior to its incorporation;
- (b) approval of the company's ordinary, extraordinary and consolidated financial statements and, in the instances stipulated by law, interim financial statements, distribution of its profit and settlement of any loss;
- (c) approval of the statutes and changes to them;

- (d) decision-making on any change in the content of the deed of association, unless such change is based on another legal fact (section 141); decision-making on an increase or reduction in the registered capital or acceptance of a specific nonmonetary investment contribution, or approval of the setting-off of a monetary receivable from the company against a company receivable in the form of payment of an investment contribution;
 - (e) appointment, recall and remuneration of the company's executive officers;
 - (f) appointment, recall and remuneration of the members of the supervisory board;
 - (g) expulsion of a member of the company in accordance with sections 113 and 121;
 - (h) appointment, recall and remuneration of a liquidator, and decision-making on whether to wind up the company with liquidation, if the deed of association so admits;
 - (i) decision-making on transfer or lease of an enterprise or a part of such or on the conclusion of such contract by a controlled person;
 - (j) decision-making on a merger, transfer of business assets to a sole member, division, or conversion of legal form;
 - (k) approval of a controlling agreement (section 190b), a contract on a profit transfer (section 190a) and a contract with a silent partner, and amendments to them;
 - (l) approval of a contract on performance of an office [section 66(2)];
 - (m) any other matters entrusted to the general meeting by law or the deed of association.
- (2) Unless the deed of association provides otherwise, the general meeting authorizes and withdraws procuration.
- (3) The general meeting may reserve the right to decide on other matters falling within the competence of other company organs.

Commentary on section 125:

The Commercial Code regulates three organs of limited liability companies. These are:

- the general meeting;
- the executive officer or officers;
- the supervisory board (optional; see sections 137 to 140). The general meeting of the company's members is its highest organ and may therefore pass resolutions on any internal company matter; however, in some cases the consent of all members (or the members concerned) is required (section 141).

Section 126

A member of (he company shall participate in the proceedings of the general meeting either in person or through a proxy, to whom he grants a written power of attorney. An executive officer of the company or a member of its supervisory board may not act as a proxy for one of the company's members.

Commentary on section 126:

A general meeting is convened in accordance with section 129(1). It is also possible for the company's members to take decisions (i.e. pass resolutions) outside the general meeting (section 130). A member of the company takes part in the general meeting in person, but he can also be represented by a proxy whom he provides with a power of attorney.

Section 127

- (1) The general meeting constitutes a quorum when members having at least half of all the votes are present, unless the deed of association requires a higher number of votes.
- (2) Each member has one vote for every CZK 1,000 of his investment contribution, unless the deed of association stipulates another number of votes.
- (3) The general meeting makes decisions (i.e. passes resolutions) by a simple majority of votes of the members present, unless the law or the deed of association requires a higher number of votes.
- (4) Any decision under section 125(1)(c), (d) and (e) on the winding-up of a company with liquidation shall always require approval by at least a two-thirds majority of all members' votes, while any decision under section 125(1)(f) shall require at least a three-quarters majority of all members' votes, unless the law or the deed of association requires a higher number of votes; a notarial deed relating to any such decision (resolution) must be made. If the registered capital is reduced in such a way that members' investment contributions are decreased irregularly, all the members' consent is necessary.
- (5) A member may not exercise his voting right when:
 - (a) the general meeting decides on a nonmonetary contribution made by him;

- (b) the general meeting decides on whether or not to expel him or whether to file a proposal for his expulsion;
- (c) the general meeting decides whether a contract should be concluded with such member, or another person with whom (which) he (it) is associated in concerted conduct, which is outside the customary trade relationship, unless such contract concerns conversion of the company [section 69(1) and (2)], a contract on profit transfer (section 190a), a controlling agreement (section 190b), a contract on sale of an enterprise or a part of such (section 476) or a contract on lease of an enterprise or a part of such (section 488b), whether such member, or the person with whom he is associated in concerted conduct, should be granted an advantage or released from the performance of a duty (obligation) or whether he should be recalled from an office or membership in an organ of the company due to a breach of his duties when executing his office; decision-making on the appointment of an organ of the company or its membership shall not be regarded as decision-making on the conclusion of a contract;
- (d) he is in default with payment of his investment contribution;
- (e) the law so stipulates in other instances.

(6) The provisions of sections 186c(1) and 186d shall apply as appropriate.

(7) Members who were not present at the general meeting may give their consent to the draft terms of the general meeting's resolution even outside such general meeting. Such member's consent must be delivered to the company within one month of the day when the general meeting was or should have been held. If the law requires that a notarial deed be made of the general meeting's resolution, the member's consent must be in the form of a notarial deed in which the content of the draft terms of such general meeting resolution (which the consent concerns) shall be stated.

(8) If a resolution of the general meeting is adopted under the procedure stipulated in subsection (7), the executive officers shall notify in writing all members of its adoption within 14 days.

(9) The prohibition on exercise of voting rights under subsection (5) shall not apply if all the members are involved in concerted conduct (section 66b).

Commentary on section 127:

In most cases the general meeting constitutes a quorum if members having at least half of all the votes are present. Company members may be represented at the general meeting by their proxies (see section 126). Each member has one vote for every CZK 1,000 of his investment contribution.

A notarial deed under section 77 of the Notaries Act must be made in the case of resolutions which require at least a two-thirds majority of votes of all the members.

Section 128

(1) Unless the law, the deed of association, or statutes provide for a shorter time-limit, the general meeting shall be convened by the company's executive officers at least once a year. The general meeting which approves ordinary financial statements must be convened no later than six months after the last day of the accounting period.

(2) The provisions of section 193 shall apply as appropriate.

Commentary on section 128:

The general meeting of members of a limited liability company is convened by the executive officers at least once every calendar year.

Section 129

(1) The time and agenda of the general meeting must be communicated to the company's members in the form of a written invitation within the time-limit determined in the deed of association, or at least 15 days prior to the general meeting, unless the deed of association provides otherwise. Matters not listed in the invitation can only be discussed if all the members are present at the general meeting. A member may give up his right to timely convening of the general meeting, or its convening in a method stipulated by law or the deed of association, in a statement (declaration) included in the minutes of the general meeting or in notarial deed on the general meeting's resolution, or else it must be in the form of a notarial deed.

(2) Members (of the company) whose contributions exceed (in total) 10% of the registered capital may request the convening of a general meeting. If the executive officers fail to convene it within one month of delivery (service) of such request, the members may convene the general meeting themselves. If the company has no executive officer, any member is entitled to convene the general meeting.

(3) The general meeting shall elect a chairman and a minutes clerk. Until such chairman is elected, the general meeting shall be chaired by an executive officer, or a member entrusted thereto. The chairman shall count the votes.

(4) The executive officer shall take minutes of the general meeting's proceedings and send a copy of such

minutes, at the company's expenses, to all of its members. If the executive officer was not present at the general meeting, a company member, entrusted thereto by the general meeting, shall take minutes of the general meeting's proceedings. The provisions of section 188(2) and (3) shall apply to the contents of such minutes as appropriate.

Commentary on section 129:

The time-limit for convening a general meeting follows from the law or deed of association; as a rule, members must be invited and notified of the agenda at least 15 days in advance.

Section 130

(1) Members of the company may also take decisions outside of the general meeting. In this case a person who is otherwise entitled to convene such meeting shall submit a draft resolution to the members, with a request that they submit their written comments within a fixed time-limit. If a member does not comment on the draft within such time-limit, it shall be assumed that he disagrees. The person who submitted such resolution shall then notify individual members of the final result of the voting. A majority is determined on the basis of the overall number of votes available to all members.

(2) If the law requires the drawing up of a notarial deed on the general meeting's resolution, a resolution outside of the general meeting may only be adopted if the manifestation of a member's will by which he expresses his consent with the draft resolution shall be in the form of a notarial deed in which the content of the relevant resolution is stated.

Commentary on section 130:

Unlike in a joint stock company, the members of a limited liability company may also take decisions (i.e. pass resolutions) outside of the general meeting.

Section 131

(1) Every member of the company and every executive officer, liquidator, bankruptcy trustee, composition administrator or member of the company's supervisory board may petition the competent court to nullify a resolution of the general meeting, should such resolution be contrary to the statutory provisions, the deed of association, the deed of formation or the statutes. This right shall lapse if it is not asserted within three months of the day the general meeting is held, or, if the general meeting was not properly convened, within three months of the day when he could have learned about the holding of such meeting, but no later than one year after the day when the general meeting was held. If such resolution was adopted by the procedure under section 127(7), this right may be asserted within three months of the day when the company notified the member of the resolution's adoption, but no later than one year after the day when the resolution was adopted.

(2) Should the reason for a complaint (lawsuit) under subsection (1) be an allegation that the resolution was not adopted by the general meeting because it was not voted on, or that the content of the contested (alleged) resolution does not correspond to the resolution adopted by the general meeting, such complaint can be filed within three months of the day when the petitioner learned of the contested resolution, but no later than one year after the day of the holding or alleged holding of the general meeting. (3) The court shall not pronounce nullity under subsection (1) or (2):

- (a) if a violation (breach) of the statutory provisions, the deed of association, the deed of formation or the statutes resulted only in a minor violation of the rights of the persons seeking the judicial ruling under subsection (1) or of other persons, or if such violation (breach) did not have any significant legal consequences;
- (b) if the procedure under subsection (1) would essentially interfere with third party rights acquired in good faith;
- (c) if, under an effective ruling, entry of a merger, transfer of business assets, division or conversion of legal form in the Commercial Register was permitted; or
- (d) if a declaration of the nullity of a resolution adopted by the general meeting is sought only on the ground that such general meeting was convened contrary to the law, the deed of association or the company's statutes by the person who convened the general meeting or who participated in its convening, or if all the members were present at a general meeting convened contrary to the law, or if those members who were not present at such meeting subsequently expressed their consent to the general meeting's resolution.

(4) Persons who suffered damage due to the fact that a resolution of the general meeting was adopted contrary to the statutory provisions, the deed of association, the deed of formation or the statutes, shall be entitled to damages from the company, and furthermore to appropriate satisfaction for the violation of a member's essential rights, such satisfaction also being granted in money. This right shall also pertain to the persons mentioned in the preceding sentence when the court does not pronounce nullity (i.e. does not nullify) the disputed general meeting's resolution due to grounds under subsection (3). The right to appropriate

satisfaction must be asserted within the time-limit stipulated for filing a complaint (lawsuit) against the invalidity of a general meeting's resolution or no later than three months after the day when the judicial ruling under subsection (3) took legal effect, otherwise it shall lapse.

(5) Executive officers who did not, in connection with the adoption of a specific resolution of the general meeting, proceed under the provisions of section 127(8), 129 and 135(2) shall be jointly and severally liable for the company's obligations under subsection (4).

(6) The company's executive officers shall act for the company in legal proceedings; however, if they are a party to such proceedings, the company shall be represented by a designated member (or members) of the supervisory board. If both company executive officers and members of the supervisory board are plaintiffs, or if no supervisory board has been established, a representative of the company shall be appointed by the general meeting. Unless such representative is appointed within three months of the complaint being made, the court shall appoint a guardian (in Czech "opatrovník") to represent the company.

(7) A final judicial ruling (judgment) under subsection (1), (2) or (3) shall be binding on everybody.

(8) If no complaint seeking nullification of a resolution adopted by the general meeting under subsection (1) or (2) was filed, or if it was unsuccessful, the validity of such resolution can only be reviewed during the registration proceedings (procedure), in which the court rules on permitting the entry of particular facts (based on the general meeting's resolution) in the Commercial Register. This shall not apply if the general meeting's adoption of a specific resolution modifying the deed of association or statutes resulted in its or their contents being contrary to the mandatory (compulsory) provisions of the law, and further in instances under subsection (9).

(9) Proceedings aimed at reconciling the actual situation and the entry made in the Commercial Registry on the basis of the general meeting's resolution can only be initiated by the court if there is a public interest in commencing such proceedings and if third parties' rights acquired in good faith are not going to be substantially affected; such proceedings must commence no later than three years after entry of the fact based on the (general meeting's) resolution in the Commercial Register.

(10) If the plaintiff (petitioner) withdraws his complaint (lawsuit) under subsection (1) or (2), the court shall appoint a lawyer to act as a joint representative protecting the interests of members who did not file a complaint. The members represented by such joint representative shall not become a party to the proceedings. Such joint representative shall have the legal status of a statutory (legal) representative of the members whose rights he was appointed to protect. Such joint representative shall act at his own discretion when protecting the interests of the members in the proceedings. If he disagrees with withdrawal of the complaint for serious reasons, the court shall not halt the proceedings but continue them in accordance with other statutory provisions. A joint representative is also entitled to file an appeal (a remedial instrument) if, after careful consideration, he expects a successful outcome in the matter. He shall only be liable for damage if he caused it wilfully or it was the result of his own gross negligence.

(11) After conclusion of (he proceedings, the joint representative shall have the right to reimbursement of his expenses and remuneration by the company in an amount determined by the court. At his request, the court may decide that appropriate advances be paid to him by the company. If a complaint was obviously unfounded (unreasonable), the court may rule that such joint representative's expenses and remuneration be settled by the plaintiffs jointly and severally. Should the joint representative not give his consent to the withdrawal of a complaint although such lawsuit was obviously unfounded or he continues the proceedings after it is established that it was unfounded, the court shall rule that the joint representative will not be reimbursed for his expenses or remunerated, or that such reimbursement and remuneration will not be granted in the full amount.

Commentary on section 131:

Section 131 regulates the nullification of a resolution of the general meeting if such resolution is contrary to the statutory provisions, the deed of association or the statutes. A complaint is filed with the regional court within whose jurisdiction the seat of the limited liability company falls. The provisions of the Civil Procedure Code apply to such proceedings.

Section 131a Complaint by a Member

(1) Each member of the company is entitled to file a complaint, in the company's name for compensation of damage (i.e. damages) against the executive officer who is liable to the company for the damage he caused, and also to file a complaint, in the company's name, against a member whose defaults on part payment of an investment contribution. **A person other than the (company) member who filed the complaint, or other than someone empowered by such member, may not perform acts in law in the proceedings on behalf of the company or in its name.**

(2) The provisions of subsection (1) shall not apply if (part) payment of the investment contribution was demanded by an executive officer, or if the general meeting decided to expel the member due to his default on payment of his investment contribution.

Commentary on section 131a:

Acting on the provisions of this section and the company's behalf, a member of the company may take legal action:

*- for damages (compensation of damage) against the executive officer being liable for such damage, and
-for (partial) non-payment of an investment contribution against another member who defaults on paying up his contribution, provided that the executive officer has not yet filed a complaint and the member has not been expelled by the general meeting under section 113(4).*

Section 132

(1) If a company has a single member, no general meeting shall be held and such member shall exercise the powers of the general meeting. The decisions of such member when he exercises the powers of the general meeting must be in writing and carry his signature. A notarial deed is only required in the instances stipulated in section 127(4). **The provisions of section 127(5) shall not apply.**

(2) The single member has the right to require an executive officer and the supervisory board to take part in decision-making under subsection (1). A written decision of the single member must be delivered to the executive officer and the supervisory board, if any.

(3) Contracts (agreements) concluded between the company and a single member, provided that he is also acting in the name of the company, must be **in the form of a notarial deed or in writing and the document must be signed before an authority concerned with legalization.**

Commentary on section 132:

If a limited liability company has only one member, he is authorized to deal with matters which would otherwise fall within the powers of the general meeting. This means in fact that the single member (owner) of the company may decide on any company matter. Any such decision must be in writing and signed by him, and a copy of it must be delivered to the executive officer of the company and the supervisory board, if any. The single member may ask for the executive officer (and members of the supervisory board) to be present at such decision-making. The single member cannot generally act in the name of the company, unless he is also the executive officer. If this is the case, any agreement (contract) between the company and this single member acting in (he name of the company must be in the form of a notarial deed or his signature on the document must be authenticated.

Executive Officers

Section 133

(1) One or more executive officers (in Czech "jednatelé") constitute the company's statutory organ. Each of the executive officers, if there is more than one, has the right to act independently in the name of the company, unless the deed of association or the statutes provide otherwise,

(2) An executive officer's authority to act in the name of the company may only be restricted by the deed of association, the statutes or the general meeting. However, such restrictions are ineffective against third parties.

(3) Executive officers are appointed by the general meeting from among the company's members or other individuals.

Commentary on section 133:

Each limited liability company must have at least one executive officer, who forms its statutory organ. The executive officer is authorized to undertake all acts in law concerning the company's activities, if there is more than one executive officer, each of them may act independently, unless the manner of their conduct is prescribed otherwise, but any restriction of an executive officer's authority to undertake acts in law is ineffective against third parties.

Only an individual, either a company member or another person, who meets the general requirements for carrying on a trade, can be appointed as an executive officer by the general meeting. Under social, health and sickness insurance legislation, an executive officer is regarded as an employee.

Section 134

The executive officer of a company is concerned with its business management. Should the company have appointed several executive officers, the mutual consent of a majority of them is required for a decision on the company's business management, unless the deed of association provides otherwise.

Commentary on section 134:

Executive officers decide matters related to a company's business management, unless under the deed of association such matters fall within the powers[^] of the general meeting.

Section 135

(1) The executive officers shall make arrangements for proper upkeep of the prescribed records and accounting, maintain a list of the company's members and inform the members about the company's affairs.

(2) **The provisions of sections 194(2)(first to fifth sentences), (4) to (7) and 196a shall apply as appropriate.**

Commentary on section 135:

Section 135 outlines the duties of company executive officers. They must arrange that the company duly applies a double-entry bookkeeping system, keep the list of the company members and inform them of matters concerning the company. The executive officers must treat as confidential all matters whose disclosure to third parties could cause detriment to the company. They are liable for damage which they cause to the company by breaching their legal duties. They are also required to file a bankruptcy petition if the company becomes insolvent or is overburdened with debts.

Section 136

Prohibition of Competitive Conduct

(1) **Unless the deed of association or the statutes impose further restrictions, an executive officer may not:**

- (a) **undertake business activity of his own in the same or a similar line of business as his company's or enter into business relations with his company;**
- (b) **act for other persons as an intermediary in contracts with the company or procure contracts for others with the company;**
- (c) **participate in another entity's business activity as a partner with unlimited liability or as a person controlling other persons engaged in the same or a similar line of business activity; and**
- (d) **perform the office of a statutory or other organ, or a member of such, of another legal entity whose business activity (objects) are the same or similar to that of the company, except in the case of a holding-type company.**

(2) Breaches of the duties under subsection (1) have the consequences stipulated in section 65.

(3) A deed of association may determine to what extent the prohibition of competitive conduct also applies to members of the company.

Commentary on section 136:

The prohibition of competitive conduct and consequences for breaching it are regulated in section 65.

Supervisory Boards

Section 137

A "supervisory board" (in Czech "dozorci rada") shall be established if the deed of association so requires.

Commentary on section 137:

A limited liability company will only establish a supervisory board if this is stipulated in the deed of association.

Section 138

(1) The supervisory board shall:

- (a) supervise the activities of the executive officers;
- (b) inspect business documents, the books of account and other documents, and check the information contained therein;
- (c) **examine ordinary, extraordinary and consolidated financial statements and, if relevant, interim financial statements, as well as the proposal for profit distribution or settlement of a loss, and submit its opinion to the general meeting;**
- (d) submit reports to the general meeting within the time-limit stipulated in the deed of association, otherwise annually.

(2) **The provisions of section 194(2), (4) to (7) shall apply to members of the supervisory board as appropriate.**

Commentary on section 138:

The supervisory board's main task is supervision and inspection. In certain cases the supervisory board may convene a general meeting.

Section 139

- (1) Members of the supervisory board are elected by the general meeting.
- (2) An executive officer of a company may not become a member of its supervisory board.
- (3) The supervisory board must have no less than three members.
- (4) Members of the supervisory board are subject to the prohibition on competitive conduct (section 136).

Commentary on section 139:

The general meeting appoints and recalls members of the supervisory board and determines their remuneration. The relationship of a member of the supervisory board to the company is subject to the provisions on mandate, as appropriate.

The supervisory board must consist of at least three members whose names, residential addresses and personal numbers are recorded in the Commercial Register.

Section 140

- (1) Members of the supervisory board have the right to attend the general meeting. They must be given the floor whenever they request it.
- (2) The supervisory board shall convene a general meeting if the interests of the company so require. The manner of convening the general meeting is subject to the provisions of section 129(1), as appropriate.

Commentary on section 140:

The right of the supervisory board's members to participate in general meetings cannot be restricted.

Subdivision 4

Modification of the Deed of Association

Section 141

(1) The consent of all the members or a resolution of the general meeting is required to modify a deed of association, unless the law provides otherwise. For the purposes of determining the required majority of votes, decision-making under sections 12S(1)(e) to (i) and 113, 115 and 117 shall not be regarded as decision-making on the modification (change) of a deed of association. The provisions of section 173(2) and (3) shall apply as appropriate.

(2) If a resolution of the general meeting modifies the deed of association and affects only the rights of particular members, the consent of such members is also required. If a change to the deed

of association affects the rights of all members, such change must be approved by all members.

(3) A notarial deed recording a resolution adopted by the general meeting to modify the deed of association must also include the approved text (wording) of the altered deed of association. Such deed shall state the names of those members who voted in favour of the change to the deed of association.

(4) If the deed of association is altered (changed) on the basis of a legal fact, the executive officer shall, without undue delay after learning thereof, arrange for the full wording of such deed to be prepared in writing and for this to be deposited, together with documents proving the change of the deed of association, in the registry of documents held by the competent registration court.

Commentary on section 141:

The amended wording of section 141 dispells the previous confusion over whether all of a company's members can change the deed of association by mutual consent (without a resolution to that effect by the general meeting).

Increase and Reduction of Registered Capital

Section 142

Registered capital may be increased by new (i.e. additional) monetary investment contributions only after the hitherto approved monetary investment contributions have been fully paid up. However, registered capital may be increased by nonmonetary investment contributions prior to the full payment of monetary investment contributions.

Commentary on section 142:

An increase in the registered capital of a limited liability company is subject to approval by at least a two-thirds majority of all the members' votes in accordance with section 127(4).

Section 143

(1) Company members have a priority (preferential) right to participate in the increase of registered capital if such capital is increased by monetary investment contributions, namely by committing themselves to increase their investment contributions. Such commitment may be undertaken by each member in proportion to his business shares, unless the deed of association provides otherwise. The priority right of members to participate in an increase of the registered capital may be excluded by the deed of association.

(2) Should the members not make use of their priority right within the time-limit specified in the deed of association or the statutes, or one month after the day when they learned of the general meeting's resolution on increasing the registered capital, or should they waive their priority right, any other party (person) may undertake to pay a new investment contribution, provided that the general meeting so approves. Waiving the priority right shall be subject to section 220b(5) as appropriate. Any (existing) member may undertake to increase his investment contribution up to the amount of the proposed increase of the registered capital, if the general meeting so approves.

(3) The resolution of the general meeting shall specify:

- (a) the amount by which the registered capital will be increased;
- (b) the time-limit within which commitments to increase one's investment contribution or to make a new investment contribution must be undertaken;
- (c) the object of a nonmonetary (in-kind) investment contribution and the amount to be counted as (part) payment of such member's investment contribution based on an expert's report.

(4) An invitation to the general meeting which is to decide on the increase in the registered capital must contain the draft information (terms) under subsection (3).

(5) If commitments undertaken to increase (existing) investment contributions or make new investment contributions within the time-limit set by the general meeting are insufficient to increase the registered capital by the amount approved by the general meeting, or if the court rejects a petition for entry of such increase of the registered capital into the Commercial Register, the increase .

of the registered capital shall be ineffective. The provisions of section 167(2) shall apply as appropriate.

(6) The commitments to increase (existing) investment contributions or to make new investment contributions shall be undertaken in a written statement which must have the requisites under subsection (3)(a), (b) and (c), and in which a person who (which) is not yet a member (of the company) must state that he accedes to the deed of association; the signature of such person must be authenticated. The statement shall take effect on its delivery to the company. The provisions of section 204(3) shall apply as appropriate.

Commentary on section 143:

The members of a limited liability company are given priority with regard to assuming an obligation to make new investment contributions to a company. Should they not make use of their priority right within the fixed time-limit, the undertaking to provide an additional investment contribution can be assumed by any interested party, provided that this party accedes to the deed of association and it is approved by the general meeting.

Section 144

The general meeting may pass a resolution (decide) to increase the company's registered capital from its own resources shown in its ordinary, extraordinary or interim financial statements as equity capital, unless such resources are determined by law for a particular purpose only. The amount of each member's investment contribution will be increased proportionately, according to the amount of his previous investment contributions to the company. The provisions of section 208(1) to (5) and (6)(a) and (b) shall apply as appropriate. The general meeting's resolution must also state the new amount of each member's investment contribution. An invitation to the general meeting which is to decide on increasing the registered capital must include the proposed text of the resolution on increasing the registered capital.

Commentary on section 144:

This section deals with a nominal increase in registered capital when the amount of the registered capital and of the members' investment contributions increase, while the business shares of the members remain unchanged and the company's own sources are correspondingly reduced. Own resources of a limited liability company are those sources which are shown as "equity capital" under liabilities in the company's financial statements:

A. Equity capital

A.I. Registered capital

A.I.1. Registered capital

A.II. Capital funds

A.II.1 Share premium

A.II.2 Other capital funds

A.II.3 Gains or losses from revaluation of assets

A.II.4 Gains or losses from investments

A.III. Funds created from net profit

A.III.1 Legal reserve fund

A.III.3 Statutory and other funds

A.IV. Profit (loss) of previous years

A.IV.1 Retained profit from previous years

A.IV.2 Accumulated losses from previous years

A.V. Profit (loss) of current period (+/-)

In the case of a nominal increase in registered capital, the company's net worth does not change.

Section 145

Without undue delay, the company's executive officers shall file a petition requesting entry of the increase of registered capital in the Commercial Register. Prior to the filing of such petition, at least 30% of each monetary investment contribution must have been paid up or an agreement (a contract) on set-off must be concluded. An increase in registered capital shall be effective as of the day of entry of its new amount in the Commercial Register. If the company has only a sole member, the provisions of section 111(2) shall similarly apply.

Commentary on section 145:

A petition for entry of increasing the registered capital in the Commercial Register must be accompanied by the relevant documents, such as the resolution of the general meeting authorizing the increase and, if the registered capital is increased by new investment contributions, written statements by the persons providing such investment contributions and documents on their full or part payment, valuation of nonmonetary investment contributions by one or two experts, and, if the increase of registered capital is from equity capital, copies of the financial statements and the auditor's report.

Section 146

(1) The general meeting's resolution on a reduction of registered capital must contain:

(a) the amount by which the registered capital is being reduced;

(b) information on how individual members' investment contributions are affected;

(c) information on whether an amount equal to the reduction in registered capital will be paid out to members in full or only partly, or whether the duty (obligation) to pay up the outstanding part of the investment contribution will be waived, or the method in which such amount will be used.

(2) Only an investment contribution which pertains to a business share in ownership of the company may cease to exist due to a reduction of the registered capital. Investment contributions can only be reduced unevenly if all the members so agree or if the registered capital is reduced by the amount of as yet unpaid-up investment contribution(s). The amount of the registered capital may not be reduced below that stipulated in section 108(1), and the amount of each member's investment contribution may not be decreased below that stipulated in section 109(1).

(3) An invitation to the general meeting which is to decide on a reduction of registered capital must include the facts under subsection (1)

Commentary on section 146:

According to the grounds (reasons) for reducing registered capital, a distinction is made between whether it is a nominal reduction, whereby the amount of the company's net worth does not change (e.g. in the case of covering losses), or a real reduction, whereby the company's net worth is reduced because the company makes payments to its members.

Section 147

(1) The executive officers shall twice publish a notice on the reduction of registered capital and its amount, first within 15 days of the resolution (of the general meeting) and for a second time within 30 days of the first notice. Such notice shall include an invitation to the company's creditors to file their claims (receivables)

within 90 days of the second notice, unless the registered capital is being reduced to settle a loss or to create a reserve fund.

(2) The company shall either provide appropriate security to creditors who have filed their claims (receivables) in time according to subsection (1) or satisfy their claims.

(3) The registration court shall only enter the reduction of registered capital in the Commercial Register if it is proven that its reduction was announced in the manner laid down in subsection (1) and that the claims of the creditors were either satisfied or they were provided with security under the provisions of subsection (2), unless such securing is not required. The reduction in registered capital shall be effective as of the day of entry of its new amount in the Commercial Register.

(4) Prior to entry of a reduction of registered capital in the Commercial Register, members may not be granted payments due to the (expected) reduction of the registered capital because their duty to pay up an investment contribution or a portion of such may not be waived.

Commentary on section 147:

A reduction of registered capital may affect the company's creditors, unless the registered capital is decreased for the purpose of settling losses. It is therefore required that the company's creditors be informed accordingly.

Termination of a Member's Participation in a Company

Section 148

Court-Ordered Termination of a Member's Participation in a Company

(1) A member of a company may not withdraw his participation (business share) in the company by his own decision, unless he is the sole member. However, a member may file a petition with the court for termination of his participation if he cannot reasonably be required to remain in the company any longer. The provisions of section 113(5) and (6) shall apply as appropriate.

(2) Adjudication of a bankruptcy order against a member's property or an effective distraint order issued on a member's business share in the company (based on a judicial ruling), or a writ of execution against a member's business share (after the judicial ruling ordering such execution takes legal effect) shall have the same effects as termination (cancellation) of such member's participation in the company by a court ruling.

(3) In the case of a single-member company, adjudication of a bankruptcy order against such member's property shall not have the effects under subsection (2). On the adjudication of such order, the single member's business share shall become part of the bankrupt's estate and his rights can only be exercised by the bankruptcy trustee, with received payments (supplies) accruing to his bankrupt estate.

(4) If a bankruptcy order against the property of a member whose participation in the company was terminated (dissolved) under subsection (2) is cancelled, due to reasons other than discharge of the distribution schedule or his lack of property (Note 1), and the company has not yet passed the thereby released business share to another person (party) under section 113(5) and (6), such member's participation in the company shall be renewed; if the company has already paid a settlement share to him, its amount must be repaid to the company within two months of the day when **(he bankruptcy order was cancelled. The same shall apply if, under a final ruling, a distraint order on a member's business share or a writ of execution (on same) is halted under other statutory provisions.**

Commentary on section 148;

The Commercial Code does not allow a member of a limited liability company to terminate his participation in the company unilaterally. He may petition the regional court seeking its agreement to termination of his participation in the company.

Section 149

Expulsion of a Company Member

A company may file a petition with the court asking it to order the expulsion of a company member who has seriously breached his duties, despite the fact that he was requested to discharge them and was notified in writing of the possibility of expulsion. The filing of such petition is subject to approval by members whose contributions represent at least one-half of the registered capital. The provisions of section 113(4) are not thereby affected. The provisions of section 113(5) and (6) apply, as appropriate.

Commentary on section 149:

A limited liability company may only expel a member if he breaches the duties stipulated in sections 773 and 727. In other cases, the company may take legal action in the regional court with a view to securing the expulsion of a particular member, provided that this is approved by members whose investment contributions

represent at least one-half of the company's registered capital.

Section 149a **Agreement on Termination of a Company Member's Participation**

A company member's participation may also be terminated by the agreement of all its members. Such agreement must be in writing and all the signatures to it must be authenticated. The provisions of section 113(5) and (6) shall apply, as appropriate.

Commentary on section 149a:

An agreement on termination of a company member's participation must be distinguished from an agreement (contract) on transfer of a business share. When the participation of a member is terminated under section 149a, the member's business share passes to the company; the company then proceeds in accordance with section 113(5) and (6).

Section 150

Settlement

(1) If a business share passes to the company from a member whose participation in the company was terminated, or to such member's legal successor, the member becomes entitled to a settlement share [section 61(2)].

(2) The person (party) to whom the right to a settlement share arises shall be liable (as surety) for the transferee's payment of the unpaid portion of the investment contribution.

(3) The company shall pay the settlement share without undue delay after the duty under section 113(5) or (6) is fulfilled if the member's investment contribution was fully paid up. If at the time the duty under section 113(5) or (6) is fulfilled the member's investment contribution is not fully paid up, the company shall pay the settlement share without undue delay after payment of the unpaid portion of such investment contribution. A deed of association may extend the time-limit for paying up a settlement share.

Commentary on section 150:

The period within which a settlement share to a former member of a limited liability company becomes payable differs from the period stipulated for payment of a settlement share under the general provisions of section 61(3).

Subdivision 5

Winding-Up and Liquidation of a Company

Section 151

In addition to the cases specified in section 68, a company may be wound up:

- (a) by judicial decision under the provisions of section 152;
- (c) on other grounds laid down in the deed of association.

Commentary on section 151:

Section 151 extends the grounds on which a limited liability company can be wound up.

Section 152

(1) Should the deed of association not confer the right to wind up the company on the general meeting, the company's winding-up shall be subject to the agreement of all the members and such agreement must be in the form of a notarial deed.

(2) Members may petition a court to wind up their company on the grounds and under the conditions laid down in the deed of association.

Commentary on section 152:

A member may only demand the winding-up of a company by a court ruling on the grounds and under the conditions specified in the deed of association, should the winding-up not be agreed by the members.

Section 153

If the winding-up of a company is associated with its liquidation, each company member has the right to a proportionate part of the liquidation remainder (liquidation share). This shall be determined according to the proportion of business shares held, unless the deed of association stipulates otherwise.

Commentary on section 153:

The Commercial Code stipulates the principle to be followed when computing a liquidation share, but a company's deed of association may regulate its computation differently.

Subdivision 6

Winding-up with Transfer of Business Assets to a Legal Successor

Section 153a

- (1) Unless stipulated otherwise below, the provisions of sections 220a to 220k and 220n shall apply to a merger of limited liability companies.
- (2) A merger contract (an agreement on a merger) shall not include the information under section 220a(3)(b), (c), (d) and (e), but it shall include:
 - (a) instead of a share exchange ratio, a statement of the amount of each member's investment contribution to, and business share in, a participating company prior to the merger and to and in the successor company after such merger (business share exchange ratio), whereby the amount to be paid up may not exceed 10% of the amount of new investment contributions to the successor company's registered capital.
 - (b) instead of proposed changes to the statutes in the case of a merger by acquisition, and instead of draft statutes in the case of a merger by formation of a new successor company, the proposed changes to the deed of association of the successor company in the case of a merger by acquisition, or the deed of association of the successor company in the case of a merger by formation of a new company, whereby after a merger by acquisition the amount of the successor company's registered capital shall be computed as the sum of the successor company's registered capital prior to such merger and the amounts of the investment contributions provided by the merging companies' members, on condition that the amounts of the investment contributions provided by existing members of the successor company are neither increased nor reduced. Should the amounts of the investment contributions by the successor company's existing members be increased, the amount of the successor company's registered capital after a merger by acquisition shall be computed as the sum of the amount of the registered capital of the successor company prior to such merger and the total amount by which its existing members' investment contributions are increased and the total amount of all investment contributions by the merging companies' members to the successor company's registered capital. Should the amounts of investment contributions by the successor company's existing members be reduced, the amount of the successor company's registered capital after a merger by acquisition shall be computed as the sum of the amount of the registered capital of the successor company prior to the merger and the total amount of all investment contributions by the merging companies' members to the successor company's registered capital, when such sum is reduced by the total amount by which the existing members decrease their investment contributions to the successor company's registered capital. In the case of a merger by the formation of a new company, the provisions of section 220n(3) shall apply as appropriate, with the amounts of investment contributions to the registered capital being used instead of the nominal value of shares.
- (3) A report on a merger under section 220b(1) shall not be required if all the members are executive officers. A report on the examination of a merger under section 220b(2) shall not be required in the case of companies which have no supervisory board.
- (4) The provisions of section 220c shall apply only when a member of a participating company so requests. In such case, the examination shall be carried out by an expert on mergers, and such examination shall take place only in a participating company whose member so requested. The cost of the examination shall be met by the company. If the member's request for examination of the (proposed) merger by an expert is not granted, this fact must be stated, if such member so requests, in the notarial deed on the general meeting's resolution on the merger.
- (5) Advisory notice to members under section 220d(1) need not be published. The documents under section 220d(2), if required, shall be sent to the members, except for an expert's report under section 69a(6). The company shall advise its members that such report is available at the company's seat, where it can be inspected. Documents which are required to be sent to the members must be despatched at least two weeks before the day of the general meeting which is to decide on a merger, unless a member waives his right to be sent such documents. The provisions of section 220b(5) shall apply as appropriate. Should the general meeting not be held, the necessary documents must be despatched at least two weeks before the day when the member receives (is delivered) the draft wording of a resolution to be taken outside the general meeting. The closing financial statements must be audited, if this is required by other statutory provisions.
- (6) As of the time when the general meeting (on a merger) is convened or the draft wording of the resolution to be adopted outside the general meeting is delivered to a member, the executive officer shall provide

information to any member who requests it on other participating companies which are important to the proposed merger. The provisions of section 220b(3) shall apply as appropriate. The notice convening the general meeting or a request for voting outside of the general meeting must include advice on this right of each member.

(7) At least three-quarters of the votes of all the members present at the general meeting of a participating company shall be required to pass a resolution supporting such merger. The provisions of section 220e(6) to (10) shall not apply. A deed of association may stipulate a higher number of votes in favour of such decision or compliance with other requirements. Should the deed of association of any participating company require more than a three-quarters majority of all the present members for a decision, such majority shall be required for the adoption of a resolution on a proposed merger, unless the successor company's deed of association requires the same majority when voting on the same matter. Should members' rights change due to a merger, the consent of all members whose rights will be affected shall be required for such merger. If a participating company's deed of association requires the consent of a particular member to transfer of a business share, such member's consent to the proposed merger shall be necessary. If the transfer of business shares after the merger could be more difficult, the consent of all affected members shall be required. If investment contributions to a participating company are not yet fully paid up, the consent of all other participating companies' members to such merger shall be required.

(8) Members who were not present at a general meeting may express their consent to the proposed merger outside the general meeting by the procedure under section 127(7) and (8).

(9) A resolution of the successor company's general meeting on a proposed merger by acquisition must include;

- (a) the decision to take over the merging companies' business assets;
- (b) approval of the merger contract or its draft terms;
- (c) approval of the closing financial statements and the opening balance sheet.

(10) The condition stipulated in section 220f(3) on the nominal values of shares shall apply to the sum of the amounts of investment contributions of a merging company's members to the successor company's registered capital. The sum of the investment contributions of a merging company's members to the successor company's registered capital may not exceed the net worth (net business assets), as established in an expert's report under section 69a(6).

(11) The provisions of sections 111 and 112 shall not apply. The provisions of section 220g(1) to (3) on the shares of the dissolved company shall apply, as appropriate, to business shares in the merging company, so that in the instances stipulated in these provisions it shall not be possible to exchange investment contributions and business shares in a successor company for business shares in a merging company. The provisions of section 220g(4) to (6) and (8) shall not apply.

(12) The provisions of section 220j(5) shall similarly apply to the paying up of investment contributions. A complaint under section 220k may be filed by any member. If a merging company was a member of the successor company, the successor company shall become the owner of its own business share. The provisions of section 113(5) and (6) shall apply as appropriate.

Commentary on sections 153a to 153e:

The new regulation of mergers of limited liability companies is based on the EV directive on mergers of public limited liability companies (Third Council Directive 78/855/EEC of 9 October 1978) and the Austrian statutory provisions on mergers of limited liability companies.

Section 153d stipulates that a limited liability company may be divided (by acquisition or by the formation of new companies). Draft terms of such division need not be examined by an expert if a company has no supervisory board.

Conversion of the legal form of a limited liability company is subject to sections 69d to 69g and 153e.

Section 153b Merger of a Limited Liability Company with a Joint Stock Company

(1) A joint stock company and a limited liability company may be merged by acquisition or by the formation of a successor limited liability company if the shareholders' shares in such joint stock company are exchanged for business shares in the successor limited liability company.

(2) Unless stipulated otherwise below, the provisions of section 153a shall similarly apply to a successor or merging limited liability company, while the provisions of sections 220a to 220n shall apply to a merging joint stock company. The provisions of section 69d(5)(g) shall apply as appropriate.

(3) Shareholders of a merging joint stock company who disagree with a proposed merger with a limited liability company shall be entitled to a cash settlement. The provisions of section 220u(1) and (3) shall apply

as appropriate to such settlement.

Section 153c

Winding-up of a Limited Liability Company with Transfer of its Business Assets to a Sole Member

(1) Unless stipulated otherwise below, the provisions of sections 153a(2)(first sentence), (3) to (5), (7)(first to third sentences), (8), (9)(a) and (b), (12) and 220h, 220j, 220l, 220p(1), (2), (4) to (8) shall apply to the winding-up of a limited liability company when its business assets are transferred to its sole member.

(2) The winding-up of a limited liability company with (concurrent) transfer of its business assets to its sole member shall be possible when such member's business share in the company represents at least 90% of its equity capital.

(3) Should a joint stock company be a member of a limited liability company and its business share (in such limited liability company) and thereto pertaining investment contribution reaches at least 90% of the company's registered capital, the provisions of section 220p shall apply.

Section 153d

Division of a Company

(1) Unless stipulated otherwise below, the provisions of sections 220r, 220s(1), (2) and (3)(first sentence), 220u, 220v, 220w, 220x, 220y and 220z shall apply, as appropriate, to the division of a limited liability company by the formation of new legal entities.

(2) A report by an executive officer (executive officers) shall furthermore not be required if all the members are executive officers. A report on examination of a (company's) division is not required if such company has not established a supervisory board. The documents stipulated in sections 220t(1) and 220d(2), if required, shall be sent to members, except for an expert's report under section 69c(5). The company shall notify its members that they can inspect the expert's report at the company's seat. Documents which are required to be sent to the members must be despatched at least two weeks prior to the day of the general meeting deciding on such division, unless a member waives his right to be sent such documents. If a general meeting is not held, the necessary documents

must be despatched at least two weeks before the day when the member receives (is delivered) a request for his consent to the proposed division. The provisions of section 220b(5) shall apply as appropriate. The financial statements must be audited only if this is stipulated by other statutory provisions.

(3) Unless stipulated otherwise, the provisions of section 153a(7) and (8) shall apply as appropriate, whereby a merger contract shall be replaced by the draft terms of division (a division plan), and the provisions of section 220s(1), (2) and (3)(first sentence) shall also apply.

(4) Unless stipulated otherwise, the provisions of subsections (1) to (3) and section 220za(2) to (5) shall apply, as appropriate, to a division by acquisition.

Section 153e

Conversion of Legal Form

(1) Unless stipulated otherwise below, the provisions of sections 69d to 69g shall apply to conversion of legal form. The decision-making of a limited liability company's members on conversion of legal form shall be subject, as appropriate, to the provisions of sections 153a(7)(first, third and fourth sentences) and (8) and 220e(II). Should a state authority's approval of conversion of legal form be required, the provisions of section 220a(2) shall apply as appropriate.

(2) A member who disagrees with conversion of legal form shall be entitled to a settlement share provided that after such conversion he does not exercise the rights of a member. The provisions of section 220u(1)(first and second sentences) and (3) shall similarly apply to instances when the company's legal form is converted to that of a general commercial partnership (i.e. unlimited partnership), limited partnership or co-operative.

(3) A member entitled to a settlement shall be liable (as surety) for the company's obligations as at the day when conversion of its legal form is entered in the Commercial Register, and to the same extent as before such change, but he shall not be liable for obligations which arise after the change of legal form is entered in the Commercial Register. **A member who is not entitled to a settlement shall be liable (as surety) for the company's obligations as at the day when conversion of legal form is entered in the Commercial Register, and to the same extent as before such conversion, unless the members' liability after the conversion of legal form is increased. Should the members' liability after conversion of legal form be increased, such liability is borne by the members who did not claim their right (o a settlement after the conversion of legal form was entered in the Commercial Register,**

Division V

Joint Stock Companies

Subdivision 1

Fundamental Provisions

Section 154

(1) A joint stock company (in Czech "akciová společnost") is a company whose registered capital is divided into a certain number of shares with a specific nominal value. The company is liable for a breach of its obligations (debts) with its entire property. A shareholder is not liable for the company's obligations.

(2) **The commercial name** of such company must include the designation "akciová společnost" ("joint stock company") or the abbreviation "akc. spol." or "a.s."

Commentary on section 154;

The provisions of the Join! Stock Companies Act were superseded by the provisions of the Commercial Code. Joint stock companies (also sometimes referred to as "stock corporations") are usually formed only for the purpose of carrying on business activities, but they may also undertake other activities. The legal form of a joint stock company was the legal form into which former state-owned enterprises were transformed and in which (he state was initially the sole owner (prior to their privatization). Other Acts stipulate that investment funds, investment companies, pension funds and banks (unless established as state pecuniary institutions) must be in the legal form of a joint stock company. The amount of a joint stock company's registered (share) capital corresponds to the total nominal value of its shares. The amount of registered capital (i.e. share capital) is entered in the Commercial Register. The property of a joint stock company does not belong to its shareholders, but solely to the company. However, once a shareholder has fully paid up his investment contribution to a joint stock company, he is not liable for the company's obligations (debts) during its existence, and after its dissolution he is liable only up to the amount of his liquidation share. The commercial name of a joint stock company must include an addendum specifying its legal form.

Section 155

(1) A share (in Czech "akcie") is a security to which is attached the right of the shareholder, as defined in this Code and in the company's statutes, to participate in its management and its profits, and also in the liquidation remainder, if the company is dissolved. **A person who participates in the company's registered capital is entitled to exercise shareholder's rights as a company member even if the company has not yet issued shares or interim certificates, and this right pertains to such person as of the date of entry of the registered capital (in which he participates) in the Commercial Register.**

(2) Shares may be issued in conformity with a particular Act either as "certificated shares" (i.e. "shares in a physical form"; in Czech "listinné akcie") or as "uncertificated shares" (i.e. "book-entry shares"; in Czech "zaknihované akcie").

(3) **The share must state the following particulars:**

- (a) **the commercial name and seat of the company;**
- (b) **the nominal value of the share;**
- (c) **an indication of the type of such share and, in the case of a registered share, also the shareholder's commercial name, designation or full name;**
- (d) **the amount of registered capital (i.e. share capital) and the number of shares at the date of issue;**
- (e) **the date of issue.**

(4) A certificated share must also state its numerical classification (designation) and bear the signature(s) of a member or members of the board of directors authorized to act in the company's name at the date of issue. An uncertificated share must contain a numerical classification (designation) where this is required by law.

(5) Shares of one and the same company may be issued in a different nominal value, unless another Act provides otherwise.

(6) Should more than one class of shares be issued, the shares shall contain an indication of their class; certificated shares shall also state the rights attached to such shares by at least a reference to the statutes. Shares to which no special rights are attached (i.e. "ordinary shares" or "common shares", in US terminology "common stock"; in Czech "kmenové akcie") need not carry an indication of the class of the share.

(7) **Unless this Code provides otherwise, identical rights must be attached to shares of the same class. Under the same conditions, a joint stock company must treat all shareholders of shares of the same class equally. Shares of classes other than those regulated by law may not be issued.**

Commentary on section 155:

In accordance with the Securities Act and the Commercial Code, a share is a security to which is attached a shareholder's right to participate in management of the joint stock company (a right exercised at the general

meeting of shareholders) and to share in its profits and in its liquidation remainder (balance), if the company is dissolved. This applies to common shares. A shareholder's rights in the case of another class of shares may be modified.

Under Czech law, there are ordinary shares (in US terminology "common stock"; in Czech "kmenove akcie") and preference shares, also known as "preferential shares"; (in US terminology "preference stock"; in Czech "prioritni akcie"). The Commercial Code no longer recognizes employee shares as a special class (see also section 158 and the Transitory Provisions).

Shares may be issued as certificated shares or uncertificated shares (book-entry shares). The latter form was determined for shares issued in connection with the voucher privatization scheme, under which Czech (previously Czechoslovak) citizens could acquire shares in privatized companies by using special vouchers (coupons).

Section 156

Share Types

(1) A share may be made out as a registered share or as a bearer share.

(2) If a company issues "registered shares" (in Czech "akcie na jme'no"), it keeps a list of shareholders in which it shall enter the class and type of the share, its nominal value, and, if the shareholder is a legal entity, its commercial name or designation and its seat and, if the shareholder is an individual, his name and residential address and, where appropriate, the numerical classification of the share and changes in the said data. In response to a shareholder's written request, and only against his reimbursement of the cost, the company shall provide such shareholder with a copy of the list of holders of registered shares or a required part of such list, and do so no later than seven days after receipt (delivery) of his request. If a company issues uncertificated shares, the statutes may determine that the shareholders' list shall be replaced by registry of uncertificated (book-entry) securities kept in conformity with another Act.

(3) Unless this Code provides otherwise, the rights attached to a registered share may be exercised in relation to the company by a person registered in the shareholders' list, except when it is proved that a particular entry in such list does not correspond to the actual situation. Where an entry does not correspond to the actual situation, the holder (i.e. owner) of such registered share is entitled to exercise shareholder's rights (as attached to his share). However, if such holder of a registered share is responsible for the fact that he is not entered in the list of shareholders, he cannot demand that a resolution of the general meeting be voided because the company did not allow him to participate in such general meeting or exercise his voting right.

(4) The statutes may restrict but not exclude the transferability of registered shares. Where the conditions laid down in the statutes for transfer of such shares are not met, a contract for the transfer of shares shall be void, except when the person acquiring such shares (the transferee) acted in good faith. The person who transferred the registered shares shall be liable for damage caused by his conduct. Where the transfer of shares depends on approval by the company's organ, the contract on transfer of shares may not take effect earlier than such organ approves it, unless some other time-limit is agreed in the contract. However, if the contract does not take effect within three months of its conclusion, any of the parties to the contract may withdraw from it. Where the statutes make transferability of a registered share dependent on approval by a particular company organ, they may also specify in which instances and under what conditions this organ shall approve the transfer, and in which instances it shall deny approval. Should this organ refuse to approve the transfer of a registered share in circumstances in which it was not bound to reject such transfer (according to the statutes), at the shareholder's request, the company shall redeem this share at a price appropriate to its value. Should the competent company organ fail to decide within two months of receiving a request (for approval of transfer of a specific registered share), such request shall be deemed to have been approved. The right to redemption of a share may be claimed within one month of the shareholder being notified that approval for his share transfer was denied, otherwise the right to redemption shall lapse. The provision of section 186a(6) shall apply to the procedure for concluding a contract on purchase of the shares as appropriate.

(5) Where transfer of registered shares is made dependent on approval by a particular company organ, this organ's approval shall also be required for the pledging of registered shares. A contract on pledging registered shares cannot take effect before such organ approves the pledging of the shares. Should the competent company organ not decide on the matter within (two months of receipt (delivery) of an application to the company, its approval shall be deemed to have been granted. Approval by such organ is not required to sell pledged registered shares when a lien on such shares is asserted.

(6) A certificated registered share shall be transferable by endorsement and delivery. An endorsement shall state the commercial name or designation and the seat of the legal entity, or the name and residential address of the individual, to whom (which) the share is transferred, and the date of its transfer. Endorsement shall otherwise be regulated, as appropriate, by the statutory provisions on bills of exchange. An entry recording a change in the person of the shareholder in the shareholders' list is required for transfer of a registered share to

become effective in relation to the company. The company shall make such entry without undue delay after such change has been proved to the company.

(7) The transferability of a bearer share (in Czech "akcie na majitele") is unrestricted. Rights attached to a certificated bearer share are exercised by the person who submits the share, or by a person who presents a written statement issued by the party undertaking custody or deposit of such person's share under other statutory provisions, whereby it is confirmed that the said person's share is deposited with the party under such other provisions. The statement must indicate the purpose for which it is issued and the day of issue. The party which issued the statement may not hand over the share (to which the statement relates) to the depositor or another party until expiry of the time prescribed for exercise of the right which was the subject of the statement, or until such right is exercised. Rights attached to an uncertificated bearer share are exercised by the person entered in the register of uncertificated (i.e. book-entry) securities under another Act.

(8) Transfers of shares shall otherwise be subject to the provisions of a special Act.

(9) A share may be owned by more than one person. Co-owners (joint owners) of a share must agree which of them will exercise the rights attached to the share or appoint a joint representative (**proxy**). **Mutual relationships between (among) co-owners of a share shall be subject, as appropriate, to the Civil Code's provisions on joint ownership (co-ownership).**

(10) **When a shareholder dies, his heir is entitled to exercise the rights attached to the share, unless this Code provides otherwise. If there is more than one heir, the provisions of subsection (9) shall apply as appropriate. Should the heirs fail to come to an agreement, the court shall, on the company's motion, nominate a person authorized to exercise the rights attached to the share until the conclusion of inheritance (probate) proceedings.**

Commentary on section 156:

The issuer of shares decides whether they are issued as bearer shares and/or as registered shares. The transferability of registered shares may be restricted. A registered share in certificated form is transferred by endorsement and on being handed over; such transfer becomes effective in relation to a joint stock company when the new owner is recorded in the list of shareholders. A bearer share is transferred on being handed over.

Section 156a

Separately Transferable Rights

(1) With the transfer of a share, all rights attached thereto are also transferred, unless the law provides otherwise.

(2) Each of the following rights may be transferred separately: the right (title) to be paid a dividend, the pre-emptive right to subscribe for shares (a rights issue), **convertible bonds and bonds with warrants attached (section 160)**, and the right, otherwise attached to a share, to be paid a liquidation share (hereafter only a "a separately transferable right").

(3) Such separately transferable right is transferred (assigned) by a contract on assignment (transfer) of a receivable. **The person who asserts (claims) a separately transferable right on the basis of a contract on assignment of a receivable shall prove that such right was transferred to this person by someone who was a shareholder of the company concerned when such right was transferred and who held the title to such separately transferable right, or someone who was not a shareholder but who held the title to such separately transferable right.**

(4) Should the company have instructed the entity keeping the register (registry) of uncertificated securities to enter a specific separately transferable right attached to an uncertificated share, this **right shall be transferred on registration of the transfer in** the register (registry) of uncertificated securities. The procedure relating to entry (registration) of a separately transferable right and its transfer shall be subject, as appropriate, to the provisions of another Act regulating the issue and transfer of uncertificated securities.

(5) Should the law so provide, a particular right otherwise attached to a share may be separated from the share and attached to a security issued against the share.

(6) Where a security relating to a particular share (in respect of a separately transferable right) was issued, or a separately transferable right was entered in the register of uncertificated securities, the right for which the security was issued under subsection (5) or registered under subsection (4) will not pass on together with the share. **Transfer of a separately transferable right must be noted on a certificated share or in the register (registry) of uncertificated securities.**

Commentary on section 156a:

Transferable rights attached to shares and/or bonds which may be assigned separately are:

- the right to payment of a dividend; this right may be transferred only after a resolution of the general meeting

on payment of the dividend was passed in accordance with section 178(10); the right is transferred on the basis of a coupon (sheet of coupons) issued by the company;

- the pre-emptive right to subscribe for shares (a rights issue) and to acquire convertible bonds and bonds with (sluire) warrants attached, provided that the warrants are issued in respect of such rights under section 217a (the rights can be assigned only after entry of the general meeting's resolution increasing, or conditionally increasing, the registered capital in the Commercial Register);- the right to a liquidation share, which may be transferred after the company's liquidation.

It is up to the joint stock company to decide whether separately transferable rights should be detached from shares and/or bonds. Securities which are issued in connection with separately transferable rights can only be made out to bearer; coupons are provided to shareholders in a certificated form, while share warrants may be issued in certificated and/or uncertificated form. Separately transferable rights are assigned when this is agreed by the initial beneficiary and the transferee (assignee), provided that such assignment complies with the terms stated above.

Section 156b

Decisive Day

In cases specified by law, a separately transferable right, or another right attached to an uncertificated security, may be asserted with the company only by a person who is entitled to exercise such right at a certain day stipulated by law ("the decisive day"; in Czech "rozhodny den"), even if such security is transferred after the decisive day. **If a company issued registered uncertificated (i.e. book-entry) shares and the rights attached to a registered share can only be , exercised by the person who had such rights at the decisive day, only the person who was entered in the list of shareholders at such decisive day or, if this list is replaced by the register (registry) under section 156(2), a person who is entered in such register (registry) at the decisive day, may exercise such rights.**

Commentary on section 156b:

The decisive day in the case of a separately transferable right or another right attached to an uncertificated security is the day at which the person is entitled to exercise such a right against the company. Section 87a(2) and (3) of the Securities Act reads as follows:

"(2) If a security is in the form of an uncertificated security, the right to yields from this security arises only to the person who owns the security on the day:

(a) when the general meeting approved payment of dividends on shares;

(b) when yields from a participation certificate or bond are due.

(3) The provisions of subsection (2) shall not apply if the issuer of a particular security decides that the right to yields from a security accrue to a person who is a security owner (holder) on a day determined in another manner, which:

(a) in the case of a share, may not be earlier than the day when a resolution of the general meeting was passed on payment of dividends, and which may not be later than the day when dividends become payable;

(b) in the case of a bond or a participation certificate, may not be earlier than one month prior to the day on which the yields become payable, and which may not be later than the day of maturity for payment of yields."

Section 157

The statutes must determine the nominal value of all classes of shares which are to be issued. The total nominal value of such shares must correspond to the amount of the registered capital.

Commentary on section 157:

Each joint stock company may issue only shares which are regulated by law and prescribed in its statutes, determining the nominal value of the shares, whose total is to correspond to the amount of the registered {share} capital. A joint stock company may issue ordinary shares and preference shares (see section 159).

Section 158

(1) The statutes of a company may determine that its employees may acquire shares of this company on especially advantageous terms (conditions).

(2) The statutes or a general meeting's resolution on increasing the registered capital may determine that employees need not pay the full issue price of shares issued under subsection (1) or the full price for which the company bought such shares for its employees, if such price difference is to be met from the company's own resources. The total of those portions of the issue price or the purchase prices of all shares which are not subject to fullpayment by employees may not exceed 5% of the registered capital at the time when the

decision on subscription to such shares by employees is being made.

(3) **Special rights under subsection (1) can be asserted (exercised) only by the company's employees and retired employees.**

Commentary on section 158:

Under the new wording of section 158, employee shares cannot be issued any longer as a separate class of shares. However, the company may issue shares on especially advantageous terms to its current and former (retired) employees within the limits stipulated by law, its statutes and/or a resolution passed by the general meeting of shareholders. (See also the Transitory Provisions [point 25] at the end of this Code.)

Section 159

(1) The statutes may determine the issue of shares to which priority rights in relation to dividends or a proportionate part of the liquidation balance are attached, but the total nominal value of such preference shares ("prioritní akcie") may not exceed one-half of the registered (share) capital,

(2) Shares cannot be issued which confer a right to fixed interest, regardless of a company's financial results.

(3) Unless the statutory provisions of another Act stipulate otherwise, a company's statutes may determine the issue of preference shares to which no voting rights at the general meeting are attached, unless voting according to specific classes of shares is required by law. Owners (holders) of preference shares shall otherwise have all the other rights attached to shares. As of the day after the day when the general meeting decides that no preference dividend will be paid, or as of the day when the company is in default on payment of a preference dividend, the shareholder acquires voting rights until such time as the general meeting decides to pay a preference dividend or, if the company is in default on payment of a preference dividend, until the time the dividend is paid. Holders of preference shares who temporarily acquired voting rights are still entitled to vote on the full agenda of a general meeting which will decide on payment of a preference dividend.

(4) Repealed

Commentary on section 159:

Preference shares can be issued up to 50% of the registered capital of a joint stock company. They grant shareholders priority rights with regard to payment of dividends and a liquidation share (i.e. a proportionate part of the liquidation balance).

Section 160

Convertible Bonds and Bonds with Warrants Attached

(1) Where the statutes so stipulate, a company may, on the basis of a resolution of its general meeting, issue bonds (debentures) which entitle the holder to exchange them for shares in **such** company ("convertible bonds"; in Czech "vymenitelné dluhopisy") or for bonds carrying preemptive rights to share subscription ("bonds with **warrants** attached" or priority bonds"; **in Czech** "prioritní dluhopisy"), provided that the general meeting concurrently decides to conditionally increase the company's registered (share) capital (section 207).

(2) A resolution of the general meeting under subsection (1) must be passed by a two-thirds majority of the attending shareholders, unless the statutes require a higher majority, and contain:

- (a) the nominal value of the bonds and a determination of the yield per bond;**
- (b) the number of bonds;**
- (c) the place and time-limit for exercising the right from a convertible bond or from a bond with warrant attached, together with a determination of when such time-limit starts to run; the time-limit for exercising the right (option) to exchange bonds for shares (referred to as "exchange right"; in Czech "vymenne pravo") or the pre-emptive right to share subscription may not be shorter than two weeks;**
- (d) the class, type, form, nominal value and number of shares that can be exchanged or subscribed for one bond; the nominal value of shares which are to be exchanged for convertible bonds may not be greater than the total of the nominal values of such bonds;**
- (e) the issue price of shares being subscribed for through the exercise of pre-emptive rights on the basis of bonds with warrants attached or (the empowerment of the board of directors to determine their issue price, except when this is excluded or restricted by the shareholders' pre-emptive right to acquisition of such bonds,**

(3) Where the company issues convertible bonds or bonds with warrants attached as uncertificated securities, the right of exchange or the pre-emptive right may be exercised by the person who is **entered** in the registry of uncertificated securities as the entitled person (beneficiary) on the day when such right could be claimed for the first time (the decisive day).

(4) A "(share) warrant" ("opcfn list"; section 217a) must be issued to allow separate transferability of a pre-

emptive right attached to a bond which is in the form of an uncertificated security.

(5) Pre-emptive rights carried by bonds with (share) warrants attached shall be subject to the provisions of section 204a(1) to (5), as appropriate. The provisions of the Bonds Act shall apply to convertible bonds and bonds with (share) warrants attached, unless this Code provides otherwise. Where a company issues bonds as uncertificated securities, the conditions for the issue of convertible bonds and bonds with warrants attached must contain the date of (the decisive day, so that the person entitled to exercise the rights from such bonds (the beneficiary) can be determined.

(6) Shareholders of the company have a pre-emptive right to acquire convertible bonds and bonds with warrants attached. The provisions of section 204a shall apply to this right of pre-emption as appropriate (*mutatis mutandis*).

(7) Bonds are otherwise subject to other statutory provisions.

Commentary on section 160:

The issue of bonds and the rights attached to them are generally subject to the provisions of the Bonds Act.

The Commercial Code regulates the issue of convertible bonds (in Czech "vymenitelné akcie" or "vyměnné akcie") and bonds with (share) warrants attached (also referred to as "priority bonds"; in Czech "prioritní dluhopisy") as part of its provisions on joint stock companies.

Each shareholder of a company which issues convertible bonds or bonds with (share) warrants attached has a pre-emptive right to acquire such bonds. This pre-emptive right may be detached from a share and is separately transferable (see also sections 156a, 204a and 217a).

Acquisition of Own Interim Certificates and Shares

Section 161

(1) A company may not subscribe for its own shares. The company may only acquire interim certificates and shares which it issues if the law so permits.

(2) Where shares are subscribed for by a person who acts in his own name but on the account of the company whose shares are being subscribed, such person shall be regarded as having subscribed the shares on his own account,

(3) Founders (promoters) or, in the case of an increase of registered capital, the members of the board of directors shall be obliged to pay up the issue price of shares which were subscribed for contrary to subsection (1) and become the holders (owners) of such shares. However, they shall be relieved of the said obligation if they prove they did not know and could not have known of such subscription.

(4) A person on whose account shares are regarded as subscribed for under subsection (2) and the person who is the holder of shares under subsection (3) are not entitled to exercise the rights attached to the shares so subscribed.

Commentary on section 161:

A joint stock company may acquire its own shares or interim certificates only in the cases stipulated by law.

Section 161a

(1) A company may acquire its own shares either itself or through another person acting in own name but on the company's account in the following circumstances:

- (a) if the general meeting passes a resolution on acquisition of own shares; this resolution must determine the details of such proposed acquisition of shares, and at the very least state:
 1. the maximum number of shares which the company can acquire;
 2. the time for which the company may acquire its shares, which may not be longer than IS months;
 3. the maximum and minimum prices for which the company may acquire such shares, if they are acquired for a consideration (i.e. against payment);
- (b) if the nominal value of all own shares in the company's property, including shares acquired by a person who is directly or indirectly controlled by the company, or by another person who acquired the shares in his own name but on the company's account (at its expense), does not exceed 10% of the company's registered capital;
- (c) if the company has resources (funds) to create a special reserve fund related to own shares under section 161d(2), and if the sum of the amount of the registered capital and the amounts under

section 178(2)(a) and (b) after the creation of a special reserve fund under section 161d(2) does not exceed the amount of equity capital.

(2) The condition stipulated in subsection (1)(a) need not be complied with if the acquisition of shares is necessary to prevent serious and imminent harm to the company. In such circumstances, the board of directors shall inform the next general meeting of the reasons for and the purpose of the effected purchases, the number and total nominal value of the acquired shares, the proportion of the company's registered capital they represent, and the prices paid for them. Shares which were acquired for the said reason must be disposed of within 18 months of their acquisition.

(3) The provisions of subsection (1)(a) shall not apply to the acquisition of shares by the company, or by another person acting in his own name but on the company's account, for the purpose of selling them to employees under section 158. Shares thus acquired must be sold no later than 12 months after their acquisition.

(4) The board of directors shall be responsible for discharging the duties under subsection (1)(b) and (c).

Commentary on sections 161a to 161f:

The amended wording of sections 161 a to 161 f is in compliance with the EU legislation (Second Council Directive 77/91/EEC of 13 December 1976).

Section 161b

(1) A company may acquire own shares and interim certificates even without meeting the conditions stipulated in section 161a, provided that it acquires them:

- (a) in order to implement a general meeting's resolution to reduce its registered capital;
- (b) as a legal successor assuming all the rights of the person who was their owner (holder);
- (c) in order to meet a duty imposed on such company by law or by a judicial decision whose objective was to protect minority shareholders, particularly in the case of a merger or division, a conversion of its legal form, a restriction of the transferability of registered shares or the cancellation of the public tradability (i.e. listing) of shares;
- (d) at a judicial auction when executing a writ to exact such company's receivable against a holder of its paid-up shares.

(2) Even without meeting the conditions stipulated in section 161a, the company may acquire its own shares if they are acquired without a consideration (free of charge). The provisions of subsection (1)(a) to (c) shall similarly apply to acquisition of own interim certificates. This shall also apply to interim certificates acquired from a subscriber who is in default with payment of his investment contribution, if the company decided to follow the procedure under section 177(3) to (7).

(3) Shares and interim certificates acquired under subsection (2) must be disposed of within 18 months of their acquisition by the company, and shares and interim certificates acquired under subsection (1)(b) to (d) must be disposed of within three years of their acquisition.

(4) Where the company does not dispose of its own shares and interim certificates within the time-limits stipulated in subsection (3) or in section 161a, it shall reduce its registered capital by their total nominal value without undue delay. The company shall also reduce its registered capital when its own shares, as shown in the balance sheet, and the sum of the amount of the registered capital and the amounts stipulated in section 178(2)(a) and (b) exceed the value of equity capital by at least an amount equal to such difference (balance). Should the company fail to reduce its registered capital, the court may, even without any motion to that effect, wind up the company and order its liquidation.

(5) When the company acquires an interim certificate, the obligation to pay the full issue price of the share(s) which such interim certificate replaces shall not expire, unless the company decided to acquire them in connection with the reduction of its registered (share) capital.

Section 161c

(1) An act in law (legal transaction) which was made contrary to sections 161a and 161 b shall not be void, provided that the other party was acting in good faith.

(2) A company shall dispose of shares or interim certificates acquired contrary to the provisions of sections 161a and 161 b within one year of the day when it acquired them, otherwise it shall have to reduce its registered capital by their total nominal value. Should the company fail to meet this duty, the court may, even without a motion to this effect, wind up the company and order its liquidation.

Section 161d

(1) Should a company acquire own shares or interim certificates itself, it cannot exercise the voting rights and pre-emptive rights attached to such shares and interim certificates.

(2) Where the company declares own shares or interim certificates in its balance sheet, it must create a

special reserve fund in the same amount. Such fund shall be cancelled or reduced if the company disposes of its own shares or interim certificates fully or partly, or uses them for a reduction of its registered capital. The said special reserve fund cannot be used in another way.

(3) The company may make discretionary use of retained profits or other funds to create or top up the special reserve fund for the purposes set out in subsection (2).

(4) The duty to create and top up the reserve fund under section 217(2) shall not be affected by the provisions of subsections (2) and (3).

(5) Where the company acquires own shares or interim certificates itself, the report under section 192(2) of its property position presented to the general meeting shall also contain at least the following information:

- (a) the grounds for acquiring shares during *the* accounting period;
- (b) the number and nominal value of shares acquired and disposed of in the course of the accounting period;
- (c) the sum of the purchase and sale prices of the purchased and sold shares in the accounting period, including details of the lowest and highest prices if the shares were acquired for a consideration (i.e. against payment);
- (d) the number and total nominal value of all the company's shares which are in its ownership and the proportion of the registered capital they represent, both at the beginning and the end of the accounting period.

Section 161e

(1) A company may not grant advance payments, loans and credits for the purpose of acquiring its shares, and it may not secure credits or loans for such purposes or other obligations (debts) relating to acquisition of its shares.

(2) The company may only accept its own shares as a pledge (security) under the conditions stipulated in sections 161a(l) and (4), 161b, 161d and 161e(l); this restriction shall not apply to banks.

(3) The provisions of subsection (1) shall not apply to acquisition of own shares for employees of the company under section 158(1). The provisions of subsections (1) and (2) shall also apply to interim certificates.

Section 161f

(1) The provisions of sections 161, 161a(l) and (2), 161b(l)(b) to (d),

(2) and (5), 161c(l) and 161e shall apply to subscription, acquisition and pledging of a controlling person's shares or interim certificates by a person controlled by such controlling person.

(2) Should a controlled person acquire shares or interim certificates of the controlling person, it shall dispose of them within the time-limits stipulated in sections 161a to 161c, otherwise, even without a motion to that effect, the competent court may order that such person (entity) be wound up and go into liquidation. The provisions on reduction of registered capital shall not apply. The provisions of section 161d(2) to (5) shall apply as appropriate. A controlled person may not exercise the voting rights and pre-emptive rights attached to shares of the controlling person.

(3) The provisions of subsection (1) shall not apply if a controlled person:

- (a) acts on someone else's account, except when this person acts on the account of a person controlling the former or on the account of a person whom (which) this person controls, or when this person acts on the account of someone else controlled by this person;
- (b) is a brokerage house, and such activity is effected within the framework of the brokerage house's activity; or after
- (c) acquired the status of a controlled person only acquisition of such shares or interim certificates.

(4) The voting rights attached to shares or interim certificates acquired under subsection (3) may not be exercised, and such shares and interim certificates shall be included in the 10% share of registered capital under section 161a(l)(b),

(5) The provisions of sections 161a to 161d and 161e shall also apply when shares or interim certificates are acquired by a third person acting in his name but on the account of the company which issued them, or on the account of a person controlled by this company.

Subdivision 2

Formation and Incorporation of a Joint Stock Company

Section 162

(1) A joint stock company may be formed (founded) by a single person if such person is a legal entity; otherwise by two or more persons. The concentration of shares in the hands of one individual (natural

person) shall not cause the nullity of such company or be the ground for the company's winding-up by a court order.

(2) Should a joint stock company be formed by two or more founders, they shall conclude an agreement (deed) on the company's formation. A single person (entity) shall form the company by means of a deed of formation (a founding deed).

(3) The registered capital of a joint stock company being formed by a public offer of shares for sale must be at least CZK 20 million, unless other statutory provisions stipulate a higher amount. The registered capital of a joint stock company formed without a public offer of shares for sale must be at least CZK 2 million.

(4) If a joint stock company whose registered capital is less than CZK 20 million wishes to increase its registered capital by a public offer of shares for sale, it must increase its capital to no less than CZK 20 million.

Commentary on section 162:

A joint stock company may be formed by one legal entity, or by two or more individuals and/or entities. However, another Act may stipulate that a joint stock company which is to engage in a particular business activity (e.g. a stock exchange) must have a different minimum number of founders.

Until the end of 2000, the minimum amount of a joint stock company's registered capital required by the Commercial Code was CZK 1 million. Joint stock companies incorporated by 31 December 2000 do not have to increase the amount of their registered capital according to the new wording of section 162 (see point 18 of the Transitory Provisions relating to Act 370/2000 Coll.), unless subsection (4) above is applicable.

Section 163

Deed of Formation

(1) A deed on the formation of a company must contain the following particulars:

- (a) its commercial name, seat and objects (the scope of its business or other activity);
- (b) the proposed amount of its registered (share) capital;
- (c) the number of its shares and their nominal value, the form in which they will be issued (certificated or uncertificated), a determination of whether such shares will be registered in name or made out to bearer, and, if appropriate, the number of registered shares and bearer shares, whether shares of different classes are to be issued, along with their designation and a description of the rights attached to such shares, and information about any restriction concerning the transfer ability of registered shares;
- (d) the number of shares subscribed by each founder (promoter) and the issue price of these, and the manner and time-limit for paying up the issue price, and by what investment contribution (monetary or nonmonetary) such issue price is going to be paid up;
- (e) a description of each nonmonetary (i.e. in-kind) investment contribution which is to be used to pay up the issue price of shares, the object of each nonmonetary investment contribution, the manner of its providing and reckoning as payment for the shares, and the number, nominal value, form and type of shares to be issued for such nonmonetary investment contribution;
- (f) an estimate of the set-up expenses related to the company's formation and incorporation;
- (g) determination of the administrator (manager) of investment contributions under section 60(1);
- (h) the details under subsection (2)(a) to (g) if at least a part of shares is to be issued on the basis of a public offer of shares for sale;
- (i) the draft text of the statutes (by-laws).

(2) If a company is to be formed on the basis of a public offer of shares for sale (public offering), the company's valid formation (founding) shall be conditional on approval of its prospectus by the (Czech) Securities Commission in accordance with other statutory provisions. In addition to information under subsection (1), a public offer of shares must also include the following:

- (a) the place and time of subscription for such shares, which may not be less than two weeks;
- (b) the procedure to be observed in the subscription for shares, in particular whether the effectiveness of the share subscription on its attaining of the amount of the proposed registered (share) capital, or its oversubscription, will be considered according to the time when the shares were subscribed, or whether the number of shares subscribed by individual subscribers at the same time can be curtailed according to the proportion of the total nominal value of the shares subscribed by them;
- (c) the procedure to be followed if the proposed registered (share) capital is oversubscribed, if subscription exceeding the amount of the proposed registered capital is admitted;
- (d) determination that the issue price of shares can only be paid up by monetary contributions;

- (e) the place, time and, if possible, the bank account number for paying the issue price of the shares;
- (f) the issue price of shares to be subscribed for or the method of determining it; the issue price or the method of its determination must be the same for all subscribers, unless the law provides otherwise;
- (g) the method of convening the constituent general meeting and its venue;
- (h) the method of creating a reserve fund;
- (i) the conditions for exercising voting rights.

(3) Nobody can be relieved of his obligation to pay up his investment contribution, except when the registered (share) capital of the company is reduced. A company cannot apply set-off to payment of an investment contribution, except when this is approved by a general meeting increasing the company's registered capital.

(4) No special advantages can be granted to persons who participated in the formation of the company or in obtaining authorizations (licences, permissions) required for the company's activity.

Commentary on section 163:

Subsection (!) stipulates the essential particulars of a deed of formation (founding agreement) in the case of a joint stock company which is formed without a public offer of shares for sale; if shares are to be subscribed on the basis of a public offer of shares, the requirements under subsection (2) must be met.

Section 163a

Issue Price of a Share

(1) **The issue price of a share may not be lower than the price for which the company issues its shares. The issue price may not be lower than the nominal value of a share.**

(2) Should the issue price of shares be higher than their nominal value, the difference between them is a share premium (in Czech "emisní ážio"). Where part payments are made towards settlement of the issue price of shares, or where the amount of a nonmonetary investment contribution which was provided is lower than the issue price, the part payment is first accounted for in respect of the share premium. Where the amount paid towards part payment of the issue price, or the amount of a nonmonetary investment contribution, is insufficient to pay for the nominal value of all the subscribed shares, it shall be accounted for successively as part payment of the payable portion of the nominal value of individual shares, unless some other arrangement is agreed in conformity with the statutes.

(3) The difference between the amount of a nonmonetary investment contribution and the nominal value of shares to be issued to a shareholder as counterperformance is considered as a share premium, unless the statutes, the deed of formation or the founding deed, or a resolution of the general meeting stipulates **that such difference, or its part, must be paid out by the company to the subscriber concerned or that it is going to be used for the creation of a reserve fund.**

(4) **Monetary investment contributions by which the issue price of shares is being paid up must be paid into a special bank account opened by the administrator of contributions for that purpose in the commercial name of the company being formed. The bank shall not allow disposal of the paid-up amounts in such account before entry of the company in the Commercial Register, except when it is proved that set-up expenses are involved or the contributions are refunded to subscribers.**

Commentary on section 163a:

Section 163a(l) of the Commercial Code states that the issue price of a share is the pecuniary (monetary) amount for which the company issues the share. The issue price of a share may not be lower than its nominal (face) value. Where the issue price of a share is higher than its face value, the difference is a share premium ("emisní dlio"). A share premium is not part of an investment contribution; it does not affect the amount of the registered (share) capital, but it does belong to the company's equity and increases the company's business assets. In the case of an in-kind (nonmonetary) investment contribution, the difference between the valuation of the investment and the nominal value of the shares subscribed by this investment contribution is regarded as a share premium, unless the company's documents determine otherwise.

Formation of a Company Based on a Public Offer of Shares

Section 164

(1) **The founder (promoter) or founders (promoters) arrange for the creation of registered capital over and above the nominal value of shares subscribed by them through a public offer of shares.**

(2) **A public offer of shares must be published (advertised) in an appropriate manner and its contents may not be changed.**

(3) **The draft terms of the statutes must be available for inspection at every subscription place.**

(4) Should shares of a company be subscribed through a public offer of shares, the relevant prospectus must be published no later than concurrently with such offer, as stipulated in other statutory provisions, and meet the requirements of other statutory provisions. A copy of the prospectus must be delivered to the Securities Commission before the prospectus is published. A public offer of shares may not be published before the prospectus is approved by the Securities Commission.

Commentary on section 164:

When the founders' (promoters') investment contributions are insufficient to create the registered (share) capital, a public offer of shares is advertised, after the relevant prospectus has been approved by the Securities Commission.

Section 165

(1) A share is regarded as subscribed through a public offer of shares under section 164(1) when it is entered in the subscribers' list. The entry shall include the number, nominal value, type, form and, if appropriate, the class of the subscribed shares, their issue price, the time-limits for part payments of the subscribed shares, the commercial name or designation and seat of the subscriber if it is a legal entity, and the full name and residential address of a subscriber, who is an individual, and the subscriber's signature, otherwise the subscription is ineffective [section 167(2)]. The signature on the list of subscribers need not be authenticated.

(2) Shares subscribed through a public offer cannot be settled by nonmonetary investment contributions.

(3) Each subscriber shall pay the share premium and at least 10% of the nominal value of the subscribed shares into a bank account within the time-limit specified in the public offer of shares. If the subscriber fails to meet this duty, his subscription is null and void [section 167(2)].

Commentary on section 165:

A share is subscribed for on the basis of a public offer of shares when the name of the subscriber and all necessary details concerning his person and the requested shares are recorded in the list of subscribers. Only monetary payments are now permissible when shares are subscribed for in this manner.

Section 166

(1) After the proposed registered (share) capital has been subscribed, the founders (promoters) or founder (promoter) may reject any subsequent subscriptions, unless the deed of formation (founding deed) provides otherwise. Should they not do so, the constituent general meeting shall decide whether to accept or reject share subscriptions which exceed the full subscription of the proposed registered capital. Should such subscriptions be rejected, the founders (promoters) shall be jointly and severally liable to return to each subscriber concerned, without undue delay, the amount which he paid (after full subscription of the shares were fully subscribed) and to add interest to such amount. The interest shall be computed according to the rate of interest granted by banks to customers under current account contracts at the place where the company has its seat on the day when the duty to return the said amount arose.

(2) The founders (promoters) or founder (promoter) must reject any subsequent subscription if the deed of formation (founding deed) did not permit subscription of shares in excess of the proposed registered capital.

Commentary on section 166:

Subscription for shares may have the following results:

- *the shares are subscribed to the full amount of the proposed registered (share) capital;*
- *the shares are oversubscribed, i.e. their total amount exceeds the amount of the proposed registered capital;*
- *the shares are insufficiently subscribed, i.e. their total amount is below the amount of the proposed registered capital. It is for the founders (promoters) to specify in their public offer whether subscription above the amount of the proposed registered capital will be admitted and, if not, the rules for curtailing oversubscription. Part payments relating to rejected oversubscribed shares will be returned to the subscribers concerned together with interest.*

Section 167

(1) Subscription for shares is considered ineffective if, by the end of the time-limit set for subscription, the nominal value of the effectively subscribed shares fails to reach the amount of the proposed registered capital, unless the shortfall of shares is subsequently subscribed by the founders (promoters), or some of them, within one month.

(2) If subscription for shares under this Code is ineffective, the subscribers' rights and duties arising from such subscription shall become void, and the founder (promoter) or founders (promoters) are obligated jointly and

severally to return to each subscriber, without undue delay, the amount paid at the time of subscription and the appropriate interest. As of the day when the duty to return the paid amount arose, interest shall be computed according to the rate of interest granted by banks to customers (clients) under current account contracts at the place where the company planned to have its seat.

Commentary on section 167:

Subscription for shares is ineffective if within the fixed time-limit, the shares are not subscribed in the amount of the proposed registered capital and the founders (promoters) do not subscribe for the remaining shares within one month of the deadline fixed for the share subscription. The consequences of an ineffective share subscription are borne by the founders (promoters). Amounts paid up by subscribers, together with interest, must be returned to them without undue delay.

Section 168

(1) Subscribers who have subscribed for shares on the basis of a public offer under section 164(1) shall pay for them by part payments made within the time-limits set out in the subscribers' list. Subscribers who subscribed for shares according to a deed of formation (founding deed) shall pay for the shares within the time-limits stipulated therein. A share premium, if any, and at least 30% of the nominal value of the shares subscribed by. monetary contributions must be paid no later than the beginning of the constituent general meeting.

(2) When a contribution is partly paid up prior to entry of the company in the Commercial Register (i.e. prior to incorporation), the administrator of contributions (section 60) shall provide the subscriber with a written receipt, which shall include:

- (a) the class, type, form, number and nominal value of the subscribed shares;
- (b) the total amount of the issue price of the subscribed shares;
- (c) the extent to which the issue price of the subscribed shares has been paid up.

(3) After the company's entry the Commercial Register, the company shall exchange this receipt without undue delay for an interim certificate, in the case of subscribed shares whose issue price has not yet been paid in full, or for shares, if their issue price has been fully paid up.

Commentary on section 168:

Subscribers are to make their part payments within certain time-limits. A share premium (if applicable) and at least 30% of the nominal value of shares subscribed must be paid up prior to the beginning of the constituent general meeting.

The administrator (manager) of investment contributions has to issue a written receipt to each subscriber who pays up his investment contribution in full or in part. The receipt must include all necessary details of the shares subscribed, their issue price and the extent to which such shares have been paid up. After the company's entry in the Commercial Register, a receipt confirming part payment will be exchanged for an interim certificate, while a receipt confirming full payment of the issue price of the shares will be exchanged for shares.

Constituent General Meeting

Section 169

(1) Subscribers who have discharged their duty under sections 165 and 168 are entitled to attend the constituent general meeting. The founders (promoters) shall convene such meeting within 60 days of the day on which the proposed registered capital is effectively subscribed. (2) If the founders (promoters) fail to meet the time-limit laid down in subsection (1), the share subscription shall be considered ineffective (null and void) and result in the consequences stipulated in section 167(2).

Commentary on section 169:

All subscribers who have paid up the full amount of the share premium (if applicable) and at least 30% of the nominal value of shares are entitled to attend and vote at the constituent general meeting. The constituent general meeting must take place within 60 days of a successful share subscription, otherwise the subscription is rendered void.

Section 170

(1) The constituent general meeting may be held if shares in the amount of the proposed registered (share) capital have been effectively subscribed and if the share premium, where appropriate, and at least 30% of the nominal value of the shares have been paid up.

(2) There shall be a quorum at the constituent general meeting if it is attended by subscribers representing at least one-half of the subscribed shares, provided that these subscribers have the right to participate in the constituent general meeting [section 169(1)] and to vote at it. On its opening, it is chaired by the founder (promoter) or one of the founders (promoters) authorized thereto by the other founders or their representative, until a chairman is elected.

- (4) A decision (i.e. resolution) of the constituent general meeting shall require the approval of a majority of the votes of subscribers who attend and are entitled to participate in the constituent general meeting. The provision of section 171(2)(last sentence) shall not be thereby affected. A decision (resolution) passed by such majority may determine in which instances a different majority will be required or the approval of all the subscribers present and entitled to vote will be required. **The provisions of section 186c shall apply as appropriate.**

Commentary on section 170:

Only the votes of subscribers who attend the constituent general meeting and are entitled to vote (or the votes of their proxies) are taken into account. There is a quorum if subscribers with at least 50% of the votes attend the meeting or are represented by their proxies. Resolutions are passed by a simple majority of the attending subscribers, unless agreed otherwise.

Section 171

The constituent general meeting shall:

- (a) decide to form the company;**
- (c) approve its statutes (by-laws);**
- (d) elect those company organs which the general meeting has the power to elect under the statutes.**

The provisions on electing supervisory board's members by employees shall not apply.

(2) If the constituent general meeting decides to admit (permit) subscriptions for shares over and above the amount of the originally proposed registered capital, the meeting shall concurrently determine the new amount of the registered capital. In this case, the subscription for shares by those who subscribed shares up to the newly determined amount of the registered capital and met the duty under section 168(1) shall be effective. If shares were subscribed for by two or more persons at the same time, the number of shares subscribed by them shall be proportionately curtailed. Should a public offer (call) allow curtailment of the number of subscribed shares, it shall be effected according to the proportion of the shares' nominal value up to the amount of the registered capital. Where subscription for shares did not become effective, the provisions of section 167(2) shall apply as appropriate. A subscriber who subscribed shares over and above the amount of the originally proposed registered capital shall acquire the right to vote if the constituent general meeting decides on a new amount of registered capital, thereby determining that the registered capital also includes the shares subscribed by such person; the right to vote is in this case acquired as of the moment of such decision (resolution).

(3) On the basis of an expert's report, the constituent general meeting shall approve the valuation of nonmonetary (i.e. in-kind) investment contributions and the number of shares to be issued as counterperformance in respect of any such contribution.

(4) Apart from increasing registered capital, the constituent general meeting may only depart from the provisions of the deed of formation (founding deed) with the consent of all the attending subscribers.

(5) The course of the constituent general meeting shall be certified by a notarial deed, accompanied by a list of subscribers, which shall also include the nominal value of the shares subscribed by each of them, as well as the amount of the paid-up part of the shares and a list of the elected members of the company organs. The notarial deed recording the constituent general meeting's resolution shall also include the wording of the approved statutes.

Commentary on section 171:

The constituent general meeting adopts a resolution on the company's formation, approves its statutes and elects the company organs. It does not vote on the amount of the (proposed) registered capital if shares have been subscribed in the corresponding amount. Where shares are oversubscribed and the oversubscription is admitted by the founders (promoters), the constituent general meeting must pass a resolution on the new amount of the (proposed) registered (share) capital.

A notarial deed, including a list of subscribers and other details specified by the law, certifies the formation of a company; the notarial deed must be enclosed (together with other documents) with the petition for the company's entry in the Commercial Register.

Founding a Company without a Public Offer of Shares

Section 172

(1) If the founders agree in the deed of formation (founding deed) to pay up the entire proposed registered capital in agreed proportions by part payments, a public offer of shares and a constituent general meeting are not required.

(2) The founders have the same legal status as the constituent general meeting of a joint stock company formed on the basis of a public offer of shares for sale.

(3) The decision of the founders under subsection (1) must already be included in the deed of formation (founding deed). The provisions of section 170(1) shall not apply.

(4) The provisions of subsections (1) to (3) apply, as appropriate, to the formation of a joint stock company

by a single legal entity without a public offer of shares for sale.

Commentary on section 172:

A joint stock company is formed without a public offer of shares for sale if the founders themselves (possibly with co-founders invited by them) subscribe the full amount of the proposed registered (share) capital. However, until incorporation of the company (i.e. until the company comes legally into being) the founders must remain the only subscribers.

The resolution on the formation of the company must be certified by a notarial deed.

Section 173

Statutes

The statutes (also referred to as “by-laws”; in Czech “stanovy”) must contain:

- (a) the commercial name and seat of the company;**
- (b) its objects (the scope of its business activity);**
- (c) the amount of its registered (share) capital and the method of paying up the issue price of the shares;**
- (d) the number and nominal value of shares, their form, and an indication of whether they are registered (in the name of the holder) or made out to bearer, together with the numbers of registered shares and bearer shares;**
- (e) the number of votes attached to one share and the method of voting at general meetings; if the company issued shares in different nominal values, the number of votes pertaining to a share of a particular nominal value;**
- (f) the procedure for convening a general meeting [section 184(4)], its powers and the rules governing its decision-making (the adoption of resolutions);**
- (g) the number of members of the board of directors, the supervisory board and any other organs, their tenure, their powers (competence) and the rules governing their decision-making, if such organs are established;**
- (h) the method of creating a reserve fund and the amount (level) at which it must be maintained (topped up), together with the manner of such topping up;**
- (i) the method of distributing a profit and compensating a loss;**
- (j) the consequences of breaching the duty to pay up subscribed shares on time;**
- (k) the method of increasing or reducing the registered (share) capital, particularly the possibility of reducing registered capital by withdrawing shares from circulation on the basis of a drawing of lots;**
 - (1) the procedure for supplementing and amending (altering) the statutes;**
- (l) any other facts required by law.**

(2) Should the company decide to increase or reduce its registered capital, split shares or merge several shares into one share, change the type or class of shares or restrict the transferability of registered shares or change it in another way, the appropriate amendment to the statutes shall become effective as of the day of entry of such facts in the Commercial Register. Other changes to the statutes shall become effective as of the moment when the general meeting decides on them, unless the general meeting's decision (resolution) or the law provides for a later effective day.

(3) If a general meeting adopts a resolution (decision) as a result of which the content of the statutes changes, such resolution shall replace a resolution amending the statutes. Should it not ensue from the general meeting's resolution whether, and in what way, the statutes should be amended, this shall be decided by the board of directors in compliance with the general meeting's resolution.

(4) If the content of the statutes changes on the basis of any legal fact, the board of directors shall draw up the (new) full wording of the statutes without undue delay after any member of the board of directors learns thereof.

(5) If any class or type of share changes, the rights attaching to such class or type of share shall also change as of the effective date of the amendment of the statutes, irrespective of the day when shares are exchanged. If the form of shares changes, the legal status of the shareholder shall only change on exchange of the shares or when shares are pronounced void.

Commentary on section 173:

The statutes regulate relations between shareholders and the company, the internal relations of the company organs and determination of the regulations (rules) which are not included in the law or, if included, are not mandatory. The details which are to be included in the statutes are laid down in subsection (1). The statutes can be altered by a general meeting's resolution.

Section 174

If necessary, the statutes shall also regulate:

- (a) the issue of different classes of shares, provided that their issue is permitted by law, their designation, their number and the rights attached to them;
- (b) the rules for the issue of bonds in accordance with section 160, and the rights attached to them;
- (c) the rules for advantageous acquisition of shares by the company's employees.

Commentary on section 174:

The statutes may also include provisions on the issue of different classes of shares and rules for issuing bonds which the company only wishes to issue in the future (the number of securities and the corresponding amounts being supplemented later). When a certain class of shares or bonds is to be issued, the general meeting first passes a resolution supplementing the statutes and then a resolution correspondingly increasing the registered (share) capital.

Incorporation of a Company

Section 175

(1) The competent registration court only permits entry of a joint stock company into the Commercial Register if it is proved that the company has complied with the following requirements of this Code:

- (a) the constituent general meeting has been duly held, if such is required;**
- (b) subscribers have subscribed the entire amount of the registered capital, paid any share premium and at least 30% of the nominal value of all shares whose issue price is being paid up by monetary contributions, and paid up in full any nonmonetary contributions;**
- (c) the statutes of the company have been approved;**
- (d) all the members of the board of directors and supervisory board have been elected;**
- (e) the statutes and the formation of the company are not contrary to the law;**
- (f) the public offer of shares for sale and the prospectus have been published in compliance with the Securities Commission's approval, if the company was formed as a result of such public offer of shares.**

(2) An application for entry of the company in the Commercial Register (i.e. incorporation) shall be filed by the board of directors and signed by all of its members.

(3) The application (petition) for such entry shall be accompanied by the deed of formation (founding deed), a copy of the notarial deed on the resolution approving the statutes, a copy of the notarial deed on the holding of the constituent general meeting and, where appropriate, an expert's or experts' report on the valuation of any nonmonetary contribution, the prospectus under other statutory provisions approved by the Securities Commission, the public offer of shares and other documents certifying facts to be entered in the Commercial Register.

Commentary on section 175:

A joint stock company comes into legal existence on being entered in the Commercial Register, i.e. its incorporation. Prior to registration, the registration court must check compliance with subsection (1) on such entries.

A petition for entry in the Commercial Register is filed by the board of directors with the registration court within whose jurisdiction the seat of the company will fall. All necessary documents required by law must be enclosed with the application (together with, where appropriate, an expert's valuation of any in-kind contribution, a trade certificate or trade licence, and the residence permit of a foreigner who is to be a member of a company organ, etc.).

Section 176

Interim Certificates

(1) Should a subscriber not **have** paid up the full issue price of a subscribed share prior to the company's entry in the Commercial Register ("a not fully-paid share"; in Czech "nesplacena akcie"), the company shall issue to the subscriber, without undue delay after the company's entry in the Commercial Register (incorporation), an interim certificate in lieu of all the shares of one class subscribed but not fully paid up by such subscriber.

(2) The interim certificate shall contain:

- (a) the designation "interim certificate" (in Czech "zatimni list");**

- (b) the company's commercial name and seat and the amount of its registered capital;
- (c) the commercial name or designation and seat or the full name and residential address of the holder of the interim certificate;
- (d) the nominal value represented by the sum of all nominal values of subscribed but not fully-paid shares;
- (e) the number, form and type of shares being replaced by such interim certificate and, if appropriate, also the class of such shares;
- (f) the paid and unpaid parts (portions) of the issue price of the shares and the time-limits for their payment;
- (g) the date of issue of the interim certificate and the signature(s) of a member or members of the board of directors authorized to act in the name of the company.

(3) An interim certificate is a security to order, to which are attached rights arising from the shares which such interim certificate replaces and a duty to pay their issue price. Should the owner of an interim certificate transfer it to another person prior to payment of the issue price of not fully paid shares, he shall guarantee payment of the unpaid part of the issue price. Should an interim certificate or its endorsement be in the name of two or more persons, such persons shall be jointly and severally liable for payment of the unpaid part of the issue price of the shares which the interim certificate replaces.

(4) The provisions on registered shares shall apply to interim certificates as appropriate. If an interim certificate replaces registered shares whose (ransferability is restricted by the company's statutes, the transferability of such interim certificate shall be restricted to (he same extent.

(5) After payment of the issue price of previously not fully paid shares, the board of directors shall invite the shareholder concerned, without undue delay, to present the interim certificate for exchange for shares, or, at the shareholder's request, it shall exchange his interim certificate for shares. If the issue price of only some shares has been paid, the company shall exchange such interim certificate for shares whose issue price has been fully paid and for a new interim certificate whose nominal value shall be the sum of the not fully paid shares which such interim certificate represents. The provision of section 213a(2) shall apply, as appropriate, to the exchange of an interim certificate for shares and a new interim certificate. If an interim certificate is to be exchanged for uncertificated shares, the company shall issue uncertificated shares in conformity to another Act, without undue delay, after the interim certificate has been returned.

Commentary on section 176:

A subscriber ("upisovatel") is referred to as a shareholder ("akciondr") as of the incorporation of a company. An interim certificate (also referred to as "a provisional certificate"¹¹; in Czech "zatfmmf list") is issued to a shareholder who has not fully paid up his share(s), whereas shares are issued to a shareholder who has paid up his shares in full.

Interim certificates are issued as certificated securities and can be transferred by endorsement to order of another person or by their handing over. The transferability of an interim certificate is restricted where the transferability of a share which it replaces is restricted. When the holder of an interim certificate has fully paid up the issue price of shares subscribed by him, the board of directors will exchange the interim certificate for shares.

Section 177

(1) A subscriber shall pay the issue price of the shares subscribed for by him, and do so within the time-limit fixed in the statutes, but no later than one year after the company's incorporation. This shall not affect the provision of section 175(1)(b).

(2) If a subscriber breaches his duty to pay the issue price of the subscribed shares, or a due portion thereof, he shall pay interest on the amount in default as determined in the statutes or otherwise at an annual rate of 20%.

(3) Should a subscriber fail to pay the issue price of the subscribed shares or the due amount, the board of directors shall invite him to pay the amount in arrears within the time-limit fixed in the statutes, or otherwise within 60 days of delivery of the board of directors' invitation.

(4) Should the time-limit under subsection (3) expire in vain (i.e. without the subscriber paying the arrears), the board of directors shall expel the subscriber from the company and ask him to return his interim certificate within an appropriate time-limit fixed by the board. The expelled subscriber shall be liable to the company for full payment of the issue price of the shares subscribed by him.

(5) Should an expelled subscriber not return his interim certificate within the fixed time-limit, the board of directors shall declare it void. This decision shall be published by the board of directors in the manner stipulated by law and the statutes for convening a general meeting; written notice thereof shall be sent to the subscriber at the time when the said decision is published.

(6) When the board of directors invalidates an interim certificate, it shall issue in its stead either a new interim

certificate or shares to a person approved by the general meeting, if such person pays up the issue price of these shares,

(7) Assets, which the company acquires by selling the returned interim certificate, or by the issue of a new interim certificate or shares under subsection (6), shall be used to refund the amount to the expelled member which he partly paid towards settlement of the issue price of the subscribed shares, after setting-off claims (expenses) which arose to the company due to his breach of duty.

Commentary on section 177:

The deed of formation (founding deed) sets out the time-limits for part payment of the issue price of shares. Shares must be fully paid up within one year of the company's incorporation. At least 30% of monetary investment contributions must be paid up and 100% of in-kind contributions provided prior to incorporation.

If a subscriber (shareholder) is in default with a part payment, he must pay interest on the arrears and cannot exercise his voting rights. Should a subscriber (shareholder) fail to pay the outstanding amount within 60 days of being invited to do so by the company, he will be excluded from the company. The excluded shareholder is nevertheless liable as surety for payment of shares subscribed by him.

Subdivision 3

Rights and Duties of Shareholders

Section 178

Sharing in a Company's Profit

(1) A shareholder (or "stockholder"; in Czech "akcionář") is entitled to a proportion of the company's profit which the general meeting approved for distribution to shareholders (i.e. a dividend), taking into account the company's financial results (trading result). Unless the provisions of the statutes on preference shares state otherwise, this proportion shall be determined as the ratio between the nominal value of the shareholder's share(s) and the (total) nominal value of all the shareholders' shares. The company may not pay out advances on shares in a profit.

(2) A company may not distribute profit or other own resources among shareholders when, its equity capital, as established in ordinary or extraordinary financial statements, is or, due to the distribution of profit, would be lower than the registered (share) capital of the company, increased by:

- (a) the subscribed nominal value of shares, if the company's shares were subscribed in order to increase its registered capital, and the new registered capital was not entered in the Commercial Register at the day when the ordinary or extraordinary financial statements were drawn up;
- (b) such portion of the reserve or reserve funds which, under the law and its statutes, the company may not use for payment to shareholders.

(3) The portion of members of the board of directors and the supervisory board in the company's profit (emoluments) may be determined by the general meeting from the profit approved for distribution.

(4) Unless another Act provides otherwise, the company's employees may share in the distributed profit in conformity with the statutes. The statutes may determine that their portion of the profit can only be used for part settlement of the issue price of shares which are subject to payment by employees under section 158^o of the price of shares purchased on behalf of employees by the company, and this in the form of set-off.

(5) The provisions of subsections (1) and (2) shall also apply, as appropriate, to the determination of (directors') emoluments arising from profit and to the portion of profit earmarked for employees ("profit-sharing"). The provisions of subsection (8) shall apply as appropriate.

(6) The amount determined as profit share for distribution may not be higher than the trading result for the accounting period shown in the financial statements, reduced by the mandatory allocation to the reserve fund under section 217(2) and unsettled losses from previous years, and increased by retained (i.e. undistributed) profit from preceding years and funds created from profit which the company may use at its discretion.

(7) Unless the statutes or a resolution of the general meeting determine otherwise, dividends and emoluments shall be payable within three months of the day when the general meeting passes the relevant resolution on distribution of profit.

(8) Unless the statutes or a resolution of the general meeting or an agreement with a shareholder determines otherwise, the company shall pay out a dividend at its own cost (expense) and risk at the shareholder's address, as recorded in the shareholders' list, on the day when the dividend is payable, if it issued registered shares or at the address recorded in the register of uncertificated securities (issuer's section) at the decisive day, if it issued uncertificated shares to bearer. If the company issued

certificated shares to bearer, the place for payment of the dividend shall be determined by the statutes or a resolution of the general meeting, unless it was agreed otherwise. If the place for payment was not determined, the company shall pay the dividend to a shareholder at the company's seat.

(9) If a company issued shares which are listed (quoted) or not listed (quoted) but issued to bearer, the board of directors shall issue a notice stating the day of dividend payment, the place and method of such payment, and possibly also the decisive day, and such notice shall be published in the manner specified by law and the statutes for the convening of a general meeting, unless the statutes stipulate otherwise. If a company issued shares registered in name and the statutes do not determine the maturity day when dividends are to be paid, the board of directors shall notify the shareholders of the day when dividends are to be paid without undue delay after the holding of the general meeting which decided on such dividend payment, unless the company sends the dividend to shareholders at its own cost and risk.

(10) The right to a dividend payment is separately transferable under section 156a as of the day when the general meeting passes a resolution on payment of a dividend. If coupons were or are to be issued, the right to the dividend payment attached to such coupon is only transferable together with the coupon. Coupons may be issued by the company even before a general meeting takes a resolution on profit distribution for the accounting period to which such coupon relates.

(11) Contracts (agreements) whose purpose is to grant advantages to any shareholder to the detriment of the company or other shareholders shall be null and void. This shall not affect the provisions of sections 66a, 190a to 190d.

Commentary on section 178:

Every shareholder is entitled to a portion of the company's profit (a dividend) as approved by the general meeting for distribution. Dividends may also be paid from the retained profits of previous years and/or from funds created from profits and not determined for another particular purpose. The general meeting also determines the emoluments which are to be paid to members of the board of directors and the supervisory board from the profit approved for distribution.

The general meeting may also approve the distribution of a certain portion of profit to employees, or stipulate that it be used for part payment of shares determined for employees.

Section 179

(1) A shareholder is not bound to refund to the company any dividend accepted in good faith. In case of doubt, good faith is presumed. The board of directors may not decide to pay a dividend or other shares (portions) in profit contrary to the provisions of sections 65a and 178, even if such distribution was approved by a general meeting's resolution. If such shares (portions) in profit are paid out, the members of the board of directors cannot relieve themselves of their responsibility (liability) for any damage caused thereby to the company. If other shares in profit other than a dividend are paid out contrary to the provisions of section 65a and 178, the recipient is bound to return such paid-out share, and the members of the board of directors shall be jointly and severally liable for discharge of this obligation.

(2) During the company's existence, even if it is wound up, a shareholder may not demand the return (refunding) of his investment contribution. An investment contribution is not deemed to have been refunded when payment is made:

- (a) due to a reduction of registered (share) capital;
- (b) on the redemption of shares by the company if the statutory requirements are met;
- (c) on return of an interim certificate, or on invalidation of such certificate (section 177);
- (d) on distribution of a liquidation share.

(3) In the case of the winding-up of a company and its liquidation, each shareholder of the company is *entitled* to a liquidation share.

(4) The company may only transfer an asset (property) to a shareholder without a consideration (free of charge) in the instances expressly permitted by law.

Commentary on section 179:

A shareholder is not obliged to refund a dividend accepted in good faith to the company.

A shareholder may not demand the return of his investment contribution(s) to a company.

On liquidation of a company, a shareholder is entitled to receive a liquidation share, provided that the company's liquidation ends with a surplus.

Section 180

(1) Every shareholder is entitled to attend the general meeting, to vote, to ask for explanations and to receive answers to questions about matters concerning the company, if such matters are on its agenda, and to make

proposals and counterproposals. Unless the statutes stipulate otherwise, the general meeting shall vote first on a shareholder's counterproposal.

(2) A voting right is attached to a share. The statutes must stipulate the number of votes pertaining to a share, so that the same number of votes pertains to shares with an identical nominal value. Should the company issue shares with various nominal values, the number of votes pertaining to these shares shall be determined in the same proportion as the nominal values of such shares. The statutes may restrict the exercise of a voting right by determining a maximum number of votes per shareholder binding on every shareholder or a shareholder and persons controlled by him.

(3) A shareholder present at a general meeting is also entitled to explanations under subsection (1) about matters concerning persons (undertakings) controlled by the company.

(4) Explanations (and information provided as part of them) must be definitive and sufficiently clearly describe the situation. If according to business consideration, the providing of certain information could cause detriment to the company, or if such information is confidential under another Act, or if it is the object of a trade secret of the company or an official secret under another Act, it may be withheld, wholly or in part. It shall be left to the board of directors to decide whether such information is involved. Should the board of directors refuse to give the requested information due to the stated reasons, it may only be provided if the supervisory board approves. Where the supervisory board disapproves of the requested information being provided, a shareholder may file a complaint with the competent court, thereby enabling it to rule on whether the company is bound to provide the requested information. The provisions of special legislation on the protection of information shall not thereby be affected.

(5) If at the general meeting a shareholder intends to make counterproposals to proposals whose content was stated in the invitation to such general meeting or in a notification of its holding, or if a notarial deed must be drawn up on such general meeting's decision (resolution), he is obliged to deliver the written wording of his proposal or counterproposal to the company at least five working days before the holding of the general meeting. This shall not apply if nominations for the election of specific persons to company organs are involved. The board of directors shall publish the counterproposal, together with its opinion, if possible three days before the scheduled date of the general meeting.

Commentary on section 180:

A shareholder is entitled to attend the general meeting and vote unless his right to vote is restricted. The number of his votes corresponds to the proportion of the nominal value of his shares in the company's registered capital, unless the maximum number of votes per shareholder and persons (undertakings) controlled by him is restricted in the statutes.

Section 181

(1) A shareholder or shareholders of a company whose registered (share) capital is higher than CZK 100 million and who have shares with a total nominal value exceeding 3% of the registered capital, and also a shareholder or shareholders of a company whose registered capital is CZK 100 million or less and who have shares with a total nominal value exceeding 5% of the registered capital, may ask the board of directors to convene an extraordinary general meeting to discuss proposed matters,

(2) The board of directors shall convene the extraordinary general meeting so that it is held no later than 40 days after it received the request for its convening. The time-limit under section 184(4) shall be shortened to 15 days. The board of directors is not entitled to change the agenda proposed for the general meeting. The board of directors may supplement the proposed agenda only with the consent of the persons who asked for a general meeting to be convened under subsection (1).

(3) If the board of directors fails to meet its duty under subsection (2), the court, acting on the basis of an application filed by the shareholder or shareholders referred to in subsection (1), shall authorize the shareholders to convene an extraordinary general meeting and to effect all the acts related thereto. The court may concurrently appoint a chairman for the extraordinary general meeting even without a motion to that effect.

(4) The invitation to the extraordinary general meeting, or the notice announcing that such meeting is to be held, must include the verdict of judicial ruling under subsection (3) and state which court issued it and the day when the ruling became legally effective. For the purposes of arranging such extraordinary general meeting, the authorized shareholders are entitled to request a statement from the registry of uncertificated securities.

(5) If the court authorizes (empowers) particular shareholders to convene an extraordinary general meeting, the cost of the judicial proceedings and the holding of extraordinary general meeting shall be settled by the company. The members of the board of directors shall be liable jointly and severally for the obligation to settle the costs of the judicial proceedings and the holding of such extraordinary general meeting. The company has the right to claim compensation for damage which arose to the company due to settlement of the

said costs from the members of the board of directors.

Commentary on section 181:

Section 181 protects the rights of minority shareholders. They can in writing request the board of directors to convene an extraordinary general meeting. Should the board of directors not convene an extraordinary general meeting so that it takes place within 40 days of receipt of the minority shareholders' request (application), the shareholders may petition the court to authorize them to convene the extraordinary general meeting themselves.

The costs of both the judicial proceedings and the convening of the extraordinary general meeting are to be settled by the company.

Section 182

(1) At the request of the shareholder or shareholders referred to in section 181(1):

- (a) the board of directors shall include the proposed matters on the agenda of the general meeting; if such request (application) is delivered after the sending out of invitations to the general meeting or after the publishing of a notice that such general meeting is to be **held**, the board of directors shall publish supplementary information on other matters to be included in the agenda of the general meeting at least 10 days prior to the general meeting. Such notice must be published in the manner determined by Law and the statutes for convening a general meeting of shareholders; should the publishing of such notice be impossible, the matter may only be included in the agenda of the general meeting if the procedure under section 185(4) is used;
- (b) the supervisory board shall examine the performance of the board of directors in the matters raised in the request (application);
- (c) the supervisory board will assert any right to compensation for damage (damages) which the company has against a member of the board of directors;
- (d) the board of directors will file a complaint (with the competent court) concerning outstanding part payment of the issue price against shareholders who are in default with **such** payment, or will apply the procedure under section (77).

(2) Should the supervisory board or the board of directors fail to comply with a request by a shareholder(s) without undue delay, such shareholder(s) [section 181(1)] may assert the right to damages or to settlement of the outstanding amount of the issue price (by filing a complaint with the competent court). **A person other than a shareholder who filed such complaint, or a person empowered (authorized) by him, may not perform acts in law in the proceedings for the company or in the name of the company.**

(3) **Shareholders under section 181(1) may petition the court for appointment of an expert to examine a report on the relations between a controlled person and related persons under section 66a(12) if there are serious reasons for such examination, even when the prerequisites stipulated in section 66a(13) are not met.**

Commentary on section 182:

The board of directors will include matters raised by minority shareholders [as defined in section 18J(1)] in the agenda of the general meeting.

The minority shareholders may also ask the board of directors either to file a complaint with the competent court against shareholders who are default on paying up the issue price of their shares or to proceed against them in accordance with section 177.

The supervisory board may be requested by the minority shareholders to review the performance (discharge) by the board of directors of duties specified in the shareholders' request and to claim damages against a member of the board of directors who is liable for such damage in the name of the company.

Should the board of directors or the supervisory board fail to comply with requests made by the minority shareholders, the shareholders can file a complaint with the court in the name of the company concerning damages or amounts outstanding on the issue price of shares.

Section 183

Nullity of a General Meeting's Resolution

(1) **The provisions of section 131 shall apply, as appropriate, to the nullification of a general meeting's resolution.**

(2) **The fact that an invitation to a general meeting or a notification of the holding of a general meeting failed to state all the particulars under section 184(5)(c) or section 202(2)(a) and (d) shall constitute only a minor violation of a person's rights in the meaning of section 131(3)(a).**

Commentary on section 183:

A shareholder or member of the board of directors or supervisory board who lodges a protest against a

certain resolution during a general meeting and asks for the protest to be duly recorded, or a shareholder who votes against the resolution, may file a petition with the court asking the court to nullify the resolution if it was passed contrary to the statutory provisions and/or the statutes. However, a general meeting's resolution shall not be nullified due to a minor violation.

Section 183a

Tender Offer

(1) A tender offer ("nabidka převzetí") means the public offer of a contract to buy securities (hereafter "the public offer of a contract"; in Czech "veřejný návrh smlouvy") with attached rights to participation in a specific joint stock company (hereafter "the target company"; in Czech "cfluva společnost"), to the holders of such securities. The proposing party thereby manifests its will to acquire participating securities of the target company (hereafter "the participating securities") to the extent necessary for such party to acquire control of the target company, unless it is a compulsory (mandatory) tender offer under section 183b to pay cash according to their price or exchange them for other securities. Participating securities ("licastnicke cenne papi'ry") shall mean shares and interim certificates or transferable securities through which shares or interim certificates of the target company can be acquired.

(2) The proposing party is allowed to make a tender offer only after it receives a statement of the opinion of the target company's board of directors under subsection (II)(d), except when such statement is not delivered in time or when this Code provides otherwise, and provided that it has or will have at its disposal at the time of maturity sufficient funds to pay the price of the participating securities being acquired on the basis of such tender offer. The proposing party shall publish its tender offer in the manner laid down by law or by the target company's statutes for convening a general meeting and at least in one daily circulated nationally (country-wide), even if the general meeting (of the target company's shareholders) is not convened in this way. Should a state authority's approval be required for the acquisition of the participating securities, the public tender can only be publicized after such approval is granted.

(3) Unless stipulated otherwise below, the terms of a tender offer may include a restriction determining the maximum number of participating securities involved, or a condition that a specific minimum number of the participating securities will be attained, computed on the basis of notices of acceptance (of the tender offer), and stating the specific number of participating securities (under each notice of acceptance). The provision of subsection (1) (second sentence) shall not thereby be affected.

(4) A tender offer shall be drawn up and published in such a way that the addressees can decide on it timely and duly with full knowledge of the matter. It shall contain at least the following particulars:

- (a) the proposing party's commercial name or designation and seat or full name and residential address and, if appropriate, the extent of its existing participation in the target company and its percentage of voting rights in such company under section 183d;
- (b) a specification of the participating securities which such offer concerns, their class, type, form and, where appropriate, their nominal value and restriction or condition under subsection (3) and, in the case of listed participating securities also their ISIN;
- (c) the price being offered for one participating security, or the class, type, form or nominal value and exchange ratio of those securities for which the participating securities will be exchanged, and the methods employed to determine the price or exchange ratio, with the price or exchange ratio being the same for all interested parties in the case of an identical interchangeable participating security;
- (d) the method of advising acceptance of the tender offer, or the designation of the public market where such contract shall be concluded;
- (e) the period of time for which the tender offer is binding, which may not be less than four weeks or longer than 10 weeks from the day of its publication in a daily newspaper circulated nationally, unless the Securities Commission permits such period to be shortened on application by the proposing party;
- (f) procedure for transfer of securities and payment terms for the price;
- (g) rules of procedure under subsection (8);
- (h) the proposing party's plans concerning the target company's future activity, its employees and the members of its organs, including planned changes with regard to employment conditions;
- (i) financial resources and the method of financing the cost (of acquisition).

(5) A tender offer can be withdrawn or modified only if this is expressly stated in its terms and only due to serious reasons and, unless it involves increasing the price or exchange ratio, or improvement of purchase terms for interested parties, only until the proposing party receives the first notice of acceptance of the tender offer unless it is stipulated below otherwise. Withdrawal or modification of the terms of such offer must be

published in the same manner as the tender offer. In the case of an increase in the price or exchange ratio, the prices or exchange ratios in contracts already concluded on the basis of the tender offer shall be correspondingly amended. In the case of an increase in price or exchange ratio or an increase in the number of participating securities, the period of time for which the tender offer is binding, shall run anew as of the publication of such modification of the terms, (6) When a contract based on a tender offer is concluded on a public market, it shall be concluded in accordance with the public market organizer's rules. A contract based on a tender offer which is not concluded on a public market shall be concluded:

- (a) on delivery to the proposing party of a notice advising acceptance of the tender offer, such delivery being effected in the way stipulated in the terms of the tender offer, provided that such offer is not restricted to a certain number of participating securities; if the terms of the tender offer include the condition under subsection (3), the proposing party shall notify all persons who accepted the tender offer whether the condition under subsection (3) was met or not;
- (b) on delivery of the proposing party's confirmation of conclusion of the contract (to the extent stated in such confirmation) to the person who advised the proposing party of acceptance of such offer in the determined manner if it relates only to a certain number of participating securities; in the case of participating securities whose number was restricted in the terms of the tender offer to a specified number under subsection (3), the proposing party shall confirm conclusion of the contract(s) to the full extent, provided that the number of participating securities according to the notice or notices of acceptance (of the tender offer) does not exceed the number specified in the terms of , the tender offer; if the specified number of participating securities advised in the notice or notices of acceptance exceeds the specified number, the proposing party shall confirm conclusion of the contract to each person who accepted the tender offer proportionately, with the proportionate number of participating securities being rounded down to a whole participating security, thereby the total number of participating securities may differ from the number specified in the terms of the tender offer by the difference resulting from such rounding.

(7) The proposing party shall state whether the condition under subsection (3) was met or confirm acceptance of the tender offer in the manner and within the period of time stated in the terms of such offer, and this no later than one month after expiry of the time for which it was binding, otherwise the condition shall be regarded as met or acceptance of the offer confirmed. The proposing party may not confirm the conclusion of a contract before expiry of the time-limit for which the tender offer is binding.

(8) Every person who accepted the tender offer is entitled to withdraw his acceptance until the time when the contract is concluded. This shall not apply if such withdrawal is excluded by the rules of the organizer of the public market where the contract is being concluded. If a contract was concluded, the person who accepted the tender offer may withdraw from the contract until expiry of the time-limit for which such tender offer is binding.

(9) The tender offer, notice of its acceptance or the notice stating that the condition has been met, withdrawal of such acceptance and withdrawal from the contract under subsection (8) must be in writing. This shall not apply if the rules determined by the public market organizer stipulate otherwise.

(10) In proceedings related to the tender offer:

- (a) all holders of participating securities in a target company of the same legal status must be treated equally;
- (b) sufficient information must be accessible to those to whom the tender offer is addressed (the addressees) for an appropriate period of time, so that they can decide with full knowledge of the matter;
- (c) the members of the target company's board of directors and supervisory board shall act in the interests of all holders of the participating securities, as well as in the interests of its employees and creditors;
- (d) the target company may not be burdened by the tender offer for an unduly long time;
- (c) the proposing party shall see to it that, in preparing its tender offer and in the course of its implementation, no confidential information is made use of and that distortion of the capital market is avoided, and it shall also carefully and duly draw up and publish the required information.

(11) Without undue delay, the proposing party shall inform the target company's board of directors and supervisory board that its competent organs have decided to make a tender offer and, in the case of a mandatory tender offer (section 183b), also state the reasons which oblige it to make such offer, and deliver (he draft terms of such offer to the target company's board of directors and supervisory board along with the information under subsection (4), after approval of these draft terms by the proposing party's competent organs. After the members of the target company's board

of directors and supervisory board have been informed of the plan for such offer, they are bound:

- (a) not to adopt any measures which could result in its shareholders not having an opportunity to decide on such offer at their own discretion and with knowledge of the matter;
- (b) to desist, until publication of the results of the tender offer, from doing anything to frustrate or complicate such offer, in particular not to authorize the issue of participating securities which could prevent the proposing party gaining control of the target company, except when this is approved by a resolution of the general meeting during the period of time when the tender offer is binding;
- (c) to draw up a written statement of their standpoint on the proposed offer [under subsection (4)] within five days of its delivery and to indicate in such statement whether the tender offer is in the interests of its shareholders, employees and creditors, and the factual reasons for their standpoint (opinion);
- (d) to present the proposing party with the statement of their position under letter (c) within two days of drawing it up, and to publish it in the same manner as the tender offer, either as part of such offer or separately, but no later than publication of such offer.

(12) During the time when the tender offer is binding, the proposing party and persons involved in concerted conduct with it may not:

- (a) contractually acquire the target company's participating securities, except when this is permitted by the Securities Commission and:
 1. in exchange for convertible bonds owned by the proposing party before it decided to make its tender offer;
 2. due to exercise of a pre-emptive right or option or a right arising from an agreement to conclude a future contract on the acquisition of participating securities, if the proposing party acquired such right in good faith before the obligation under section 183b(1) arose, or before the proposing party's competent organ took the decision to make such offer;
 3. due to another person's exercise of his right, if such right was established by the proposing party at a time when its competent organ had not yet decided to make such offer and the proposing party was under no obligation to make it; or
 4. due to other important reasons;
- (b) alienate the target company's participating securities, except when this is permitted by the Securities Commission and they are acquired under the conditions under letter (a) (points 2 and 3);
- (c) acquire or alienate options to the target company's participating securities, or conclude agreements on future contracts for alienation of the participating securities.

(13) If the proposing party acquires the target company's participating securities or options (warrants) or alienates them or concludes an agreement on a future contract contrary to the provisions of subsection (12), during the period for which the tender offer is binding the proposing party may not exercise the voting rights attached to such securities or rights related to such option. If the price for which the proposing party acquired or alienated the target company's participating securities during the period when the tender offer was binding or their price based on an option or agreement on a future contract was higher than the price stated in the tender offer, the proposing party shall have to pay such higher price for participating securities acquired on the basis of the tender offer.

(14) Without undue delay after expiry of the period for which the tender offer was binding, the proposing party shall publish the results of such offer in the manner under subsection (2) and send a written report thereof to the target company's board of directors and supervisory board. In the case of a mandatory offer and the conclusion of contracts based on such offer which were conditional on attainment of a specified minimum number of participating securities under subsection (3), the period for which

the tender offer is binding shall be extended by 10 working days after publication of its results. After expiry of this period, the proposing party shall make public the results of such offer during the extended period when the tender offer was binding in the manner stipulated in the first sentence.

Commentary on sections 183a to 183H:

The provisions of these sections in the existing wording were introduced by Act No. 370/2000 Coll. A tender offer must now be made on acquisition of 40% voting rights (or other stipulated levels) in a joint stock company by one shareholder or two or more shareholders involved in concerted conduct if the company issued listed securities,

Section 183b
Mandatory Tender Offer on Acquiring Control of a Target Company

(1) If a target company's participating securities are listed, a company shareholder who either solely or jointly with other persons (parties) involved in concerted conduct (section 66b) with him acquires a percentage of voting rights (section 183d) which enables him to control the company (section 66a) shall be bound to make a tender offer to all holders of the target company's participating securities within 60 days of the day following the day when the shareholder gained or exceeded such percentage. Should such shareholder file an application under subsection (9) or (11), the time-limit shall be extended by 20 working days. The same obligation shall pertain to a shareholder and persons (parties) involved in concerted conduct with him if their percentage (proportion) of participating securities or voting rights acquired according to the first sentence attains or exceeds two-thirds or three-quarters of the voting rights. The obligation to make a tender offer shall arise on the day following the day when the shareholder reaches or crosses this threshold.

(2) For the purposes of these provisions;

- (a) preference shares to which no voting rights are attached under the statutes shall be regarded as shares with no voting rights, even when such shares temporarily acquire voting rights under the law;
- (b) concerted conduct shall also mean, in addition to the instances under section 66b, co-operation between the proposing party and another person (party) or the target company and another person undertaken on the basis of a concerted manifestation of these persons' will, made explicitly or implicitly, orally or in writing, which is aimed at gaining control of the target company or frustrating the successful outcome of a tender offer.

(3) The obligations (duties) under subsection (1) shall not apply to:

- (a) the Czech Republic, state organizations, the National Property Fund of the Czech Republic, the Land Fund of the Czech Republic, cities, towns and villages, local regional administrative areas and the Czech National Bank, if the participating securities in question were transferred to them or they acquired them in connection with the privatization of state-owned property;
- (b) a legal successor who assumes all the rights and obligations of a shareholder who has already discharged his obligation (duty) under subsection (1);
- (c) persons (parties) involved in concerted conduct, if their total percentage (share) in the target company's voting rights does not change and changes only occur in the internal structure of such percentage, or if only the number of the persons (parties) involved in concerted conduct is being reduced or the number of persons in a holding-type group is being decreased; or
- (d) a shareholder or persons involved in concerted conduct with him, if another shareholder and persons involved in concerted conduct with such have a higher percentage (share) of the target company's voting rights than the former shareholder and persons involved in concerted conduct with him.

(4) A percentage (share) of the voting rights under subsection (1) shall not include:

- (a) in the case of a brokerage house (brokerage firm), voting rights attached to the target company's securities,
 - 1. if such securities are not the object of the brokerage house's reporting duty under section 183d(8);
 - 2. if they are being acquired (obtained) for the purpose of their sale to another person, provided that the brokerage house does not exercise the voting rights attached to such securities or did not allow another person to exercise such rights, and published this information and informed the target company of it, and provided that the brokerage house disposed of (sold) these securities no later than one year after their acquisition;
- (b) in the case of an investment company, the voting rights attached to the target company's participating securities held in a unit trust, provided that such rights are not exercised, and this fact is published;
- (c) in the case of an investment fund, a pension fund, an insurance company or a bank, the voting rights attaching to the target company participating securities held by such funds, company or bank, provided that the voting rights attached to these securities are not exercised and this fact is published and the target company advised of it.

(5) In the case of exercise of voting rights attached to the target company's participating securities held in a unit trust, such rights shall be included in the percentage of the investment company's voting rights. The investment company shall make a mandatory tender offer in its name and on its account. Voting rights attached to participating securities owned by the persons under subsection (4)(c) are exercised, the person (party) who has such voting rights at his disposal shall be bound to make a tender offer.

(6) If the obligation (duty) under subsection (1) arose to a shareholder due to his inheritance of shares, the time-limit stipulated therein shall start running on the day which follows the day when the court ruling on such inheritance took legal effect.

(7) Unless otherwise stipulated, the provisions of sections 183a, 183c, 183e to 183g shall apply to a tender offer under subsection (1).

(8) The duty (obligation) to make a tender offer under subsection (1) shall lapse if the Securities

Commission so decides on the basis of a written application by a shareholder who reduces his percentage (share) of voting rights below the threshold which gives rise to his duty (obligation) under subsection (1) or (4) by transferring participating securities to another person with the aim of not exercising decisive influence on the target company himself (solely) or through other persons.

(9) The provisions of subsection (8) shall not apply if the participating securities are transferred to a person whom the shareholder controls or who controls such shareholder, or to a person who is involved in concerted conduct with such shareholder or if such shareholder's property-related party or personnel-related party. This shall apply when the right to dispose of voting rights [section 66a(6)] was left to this person. Acting on a request by such shareholder, the Securities Commission shall decide whether the criteria mentioned above are met. It shall decide on the request within 15 working days of its delivery (receipt) or invite the applicant to supplement his request. He must identify the persons to whom the participating securities were transferred or the persons who are entitled to dispose of the voting rights attached to the participating securities, or he must confirm that the stated persons are not persons as referred to in the first sentence of this subsection. Should the Securities Commission not decide within 15 days of delivery of such request and not invite the applicant to supplement his request, it shall be regarded as approved.

(10) A property-related party shall mean a person's (party's) investment contribution to another person's registered capital in the amount of no less than 10% of such other person's registered capital or such contribution to a shareholder's registered capital. A personnel-related party shall mean that either the same individual or a person close to him is the statutory organ (or a member of such) of both the shareholder and another person (party), or that an individual who is a shareholder is concurrently another person's statutory organ (or a member of such), or that the participating securities were transferred to an individual or exercise of the voting rights is at the discretion of an individual who is simultaneously the shareholder's statutory organ (or its member),

(11) The duty (obligation) to make a tender offer shall also lapse if the Securities Commission, acting on the basis of a shareholder's application, shall decide that such shareholder is not obliged to make a tender offer because a determined percentage (share) in the voting rights will be attained due to an increase of the registered capital to avert the company's bankruptcy or to attain or maintain the (required) capital adequacy or to secure its commitments (obligations). The application must be filed prior to a decision by the company's competent organ to increase the registered capital or prior to the transfer of securities as a purpose of safeguard. Should the Securities Commission not decide on the matter within 15 working days of delivery of the application or not invite the applicant to supplement his application within the same time-limit, the application is considered as approved.

(12) When a percentage (share) of voting rights was acquired under subsection (1) by concerted conduct, all the persons involved in such conduct have the duty (obligation) under subsection (1); this duty shall be regarded as discharged if any of the persons involved in the concerted conduct makes a tender offer which will include information about all the persons involved in such conduct. The persons involved in concerted conduct shall be bound jointly and severally by contracts based on such tender offer, and this shall even apply to persons (involved in concerted conduct) who were not mentioned in the tender offer. However, this shall not apply if concerted conduct under section 66b(3)(e) and (f) is involved. In such case, the duty to make a tender offer shall only pertain to an investment company or brokerage house which must make a tender offer in its own name and on its own account.

(13) Where persons were involved in concerted conduct before acquiring participation (a business share) or a certain percentage (share) of the voting rights in the target company, the duty to make a tender offer shall arise on the day which follows the day when the persons involved in the concerted conduct acquired such participation or percentage (share), or when they could have learned of such acquisition. If such persons were involved in concerted conduct only after they had acquired such participation or share of voting rights, the duty to make a tender offer shall arise on the day following the day when such concerted conduct occurred.

(14) The duty under subsection (1) pertains also to a person who either alone or together with other persons involved in concerted conduct acquires control of a shareholder, who either alone or together with the other persons involved in the concerted conduct has a percentage (share) of the target company's voting rights to the extent stipulated in subsection (1).

(15) The duty to make a tender offer shall not arise if a shareholder alone or together with other persons involved in concerted conduct acquired control of a company on the basis of an unconditional and unrestricted tender offer made in compliance with this Code and for a price stipulated under section 183c(3).

(16) On the basis of a proposal (draft) submitted by the Securities Commission, the Ministry may lay down in a decree detailed rules for performance of the duty (obligation) to make a tender offer, including the particulars of any such offer.

Section 183c

Joint Provisions for Mandatory Tender Offers

(1) If a tender offer is made because the proposing party is bound by a legal duty or by a state authority's decision (ruling) or by the company's statutes (hereafter "a mandatory tender offer"; in Czech "povinná nabídka převzetí") to do so, such offer may not be restricted to a certain number of shares or include a condition under section 183a(3), and it must state the reason why it is being made.

(2) Withdrawal of a mandatory tender offer is impermissible, and after its publication it can only be modified in a manner which will make it more advantageous to the interested parties. The time-limit for transfer of securities and payment of the purchase price may not be longer than 60 days following conclusion of the contract.

(3) The price or exchange ratio stated in a mandatory tender offer must be commensurate with the value of the shares. When determining the price for the purposes of a mandatory tender offer to acquire control of a company, account shall be taken of the weighted average of the prices for which the securities (of such company) were traded in the six-month period preceding the day when the duty to make a tender offer arose based on the prices recorded by the Securities Centre under subsection (4) (hereafter only "the average price"; in Czech "průměrná cena"). If the shareholder or the person involved with him in the concerted conduct acquired securities in the last six months which the tender offer concerns for a price higher than their average price (hereafter only "the premium price"; in Czech "premiová cena"), the price stated in the tender offer may not be lower than the premium price reduced by 15%, if the statutes do not exclude or regulate more strictly such variation (divergence). A premium price reduced in this way may not be lower than the average price.

(4) The Securities Centre shall record the prices of transactions in listed participating securities of which it was notified or which were published, and inform any person (within three working days of delivery of the person's application) of the average price under subsection (3), computed at the day stated in the application.

(5) The adequacy of the price or exchange ratio for securities in a mandatory tender offer must be supported by an expert's report. Even when the price stated in the mandatory tender offer was not adequate, the contract shall be valid. The person who accepted such tender offer shall be entitled to demand payment of the difference between the price stated in such offer and an adequate price. A judicial ruling under which the right to payment of the said difference is accorded to one person (party) shall also be accorded to other parties (as the basis of such right) which accepted the tender offer, and it shall be binding on the party which proposed the tender offer (the proposing party).

Section 183d

Reporting Duty

(1) A person who acquires or disposes of (alienates) a participating security in a company which has its seat in the Czech Republic and whose shares are listed (hereafter only "participation in a company"; in Czech "úcast na společnosti"), and whose share (percentage) in the company's voting rights due to this acquisition or alienation attains or exceeds the threshold of 5%, 10%, 15%, 20%, 25%, 30%, one-third, 40%, 45 %, 50 %, 55 %, 60 %, two-thirds, 70 %, 75 %, 80 %, 90 % or 95 % of all such rights, or falls below any of the said thresholds, shall notify this fact in writing to the company, the Securities Commission and the Securities Centre, which will publish the information in accordance with other statutory provisions.

(2) The person to whom the reporting duty (obligation) under subsection (1) arose (hereafter "the reporting person" or "the reporting party"; in Czech "oznamovatel") shall report (he attaining, exceeding or reducing of its share (percentage) in the voting rights within three working days after this person learns or could have learnt of the acquisition or alienation of his (its) participation in the company under subsection (1). The reporting duty shall be discharged if a written notice is despatched within the - said time-limit. A reporting person who defaults on performance of his reporting duty may not contractually acquire further participating securities. A contract concluded contrary to these provisions shall not be void, however the person who is in default with discharge of his reporting duty may not exercise the voting rights attached to participating securities which he acquired over and above any of the thresholds under subsection (1) and which he had previously reported, or otherwise the voting rights attached to all of the participating securities which he acquired.

(3) A notice under subsection (1) must include the commercial name or designation and seat or the full name and residential address of the reporting person (party) and the amount of his percentage (share) in the voting rights, according to the structure of the voting rights under subsections (1) and (4), stating the day when any of the said percentages (shares) of voting rights was attained or exceeded or when it fell below the fixed thresholds.

(4) For the purposes of the reporting duty under subsection (1), voting rights derived from participation in a certain company shall also include voting rights attached to participating securities:

- (a) which are held in someone else's name but on the reporting person's (party's) account;

- (b) which are at the disposal of a person controlled by the reporting person (party);
 - (c) which are at the disposal of another person who concluded an agreement with the reporting person, or with a person controlled by the former, whereby these persons have undertaken to pursue a common policy concerning the (target) company's management and for that purpose jointly exercise the voting rights which are at their disposal;
 - (d) which are held by a third party (person) on the basis of an agreement with the reporting person or a person controlled by him (it), if this agreement presupposes temporary exercise of the third party's voting rights by the reporting person, or a person controlled by the former, for a consideration (payment);
 - (e) of the reporting person, if these securities were provided as safeguards (for securing purposes), except when the voting rights should be exercised at the discretion of the party which has such securities in its custody or property, and this party declared publicly that it would exercise such voting rights; in this case, the voting rights shall be computed as pertaining to the party which has such securities in its custody or property;
 - (f) of another person, if such person exercises the voting rights in his name in accordance with the reporting person's (party's) instructions, based on an agreement on the exercise of such rights;
 - (g) which the reporting person or a person under letters (a) to (f) can acquire due to an explicit agreement (arrangement) based on a unilateral manifestation of will; in this case, the time-limit for performance (discharge) of the reporting duty shall run as of the day when such agreement (arrangement) was made;
 - (h) which the reporting person administers or manages, or which are deposited with him on the basis of a contract on the deposit of securities, if the owner of such securities gave him no instructions regarding voting.
- (5) An increase or reduction in a percentage (share) of voting rights caused by an increase or reduction of registered capital shall also be subject to the reporting duty under subsection (1). An increase in a percentage (share) of voting rights shall not be subject to the reporting duty under subsections (1) and (4) if:
- (a) the voting right cannot be exercised due to reasons (grounds) stipulated by law, or the statutes or a state authority's decision (ruling);
 - (b) preference shares are involved and the company's statutes exclude the attachment of voting rights to such shares, except when, for reasons stipulated by law or the statutes, voting rights are (temporarily) acquired on the basis of these shares.
- (6) If the persons involved in concerted conduct attained or exceeded any threshold stipulated for a percentage (share) in the voting rights under subsection (1), or if they reduced their percentage (share) in the voting rights below any such threshold, their shares of such rights shall be added together for the purposes of the reporting duty. Such duty is discharged if the reporting is effected by one of the persons involved in concerted conduct and in his report he also gives the required information concerning the other persons involved in such conduct (including each such person's share in the voting rights). Changes in the shares of such rights pertaining to individual persons involved in concerted conduct shall also be subject to the reporting duty to the extent giving rise to such duty, even when the total share (percentage) of all such persons in the voting rights did not change.
- (7) The reporting duty shall not apply to:
- (a) a person who is a controlled person if this controlled person's reporting duty is discharged by the controlling person when discharging his own reporting duty;
 - (b) a person who is a holder (owner) of uncertificated shares, and his pertaining share (percentage) in voting rights can be ascertained from the Securities Centre's registry, and who concluded a contract with the Securities Centre whereby the latter could discharge the person's reporting duty in towards the company and the Securities Commission;
 - (c) a brokerage house when the Securities Commission relieved such brokerage house of the reporting duty.
- (8) The Securities Commission may relieve a brokerage house of its reporting duty at its request if such brokerage house:
- (a) provides services in the Czech Republic or in member states of the European Union;
 - (b) acquired, or intends to acquire, participating securities for the short-term with the aim of making use of the spread (the difference between the buying price and the selling price); and
 - (c) declares that it will not exercise the voting rights attached to these securities and communicates this fact to the company.
- (9) The voting rights attached to participating securities which a brokerage house acquired under subsection (8) may not be exercised during the time these securities are in the brokerage house's property.
- (10) After receiving a notice under the preceding subsections, the Securities Centre shall publish the

information on a share (percentage) of the voting rights in a manner stipulated in other statutory provisions without undue delay, but no later than nine calendar days after receipt of such notice or the day when the Securities Centre ascertains this fact itself. The Securities Centre shall inform the Securities Commission of discharge of this duty without undue delay.

(11) On the basis of the Securities Commission's proposal, the Ministry may lay down in a decree detailed rules for discharge of the duty to report a certain share (percentage) in the voting rights.

Section 183e

Procedure for a Tender Offer concerning Listed Securities

(1) The proposing party shall take measures to prevent premature and uneven distribution of information about its intention of making a tender offer for certain listed securities or intentions which may give rise to the duty of making such offer. The proposing party must advise persons who are aware of these intentions that they cannot make use of such confidential (insider) information, and it shall take all necessary organizational measures to prevent their use and check that the information is not used. Without undue delay, the proposing party shall inform the Securities Commission in writing of the measures adopted and of any suspicion that confidential (insider) information is being misused,

(2) The proposing party shall state in its tender offer the average price, or the premium price, in addition to the particulars stipulated in sections 183a(4) and 183c(1).

(3) The proposing party shall notify the Securities Commission in writing, without undue delay, of its decision regarding its intention of making a tender offer or the fact that it has a duty to make a tender offer, and shall publish information about its intention of making such offer in the appropriate manner.

(4) If there were considerable fluctuations (in the prices of the target company's securities) or speculations about an envisaged tender offer, and it can be expected that they may influence the preparing of such offer or purchase of the participating securities, (he proposing party shall in an appropriate manner publish information about its intention of making a tender offer or the facts which gave or might give rise to its duty to make a tender offer, without undue delay after it ascertained such fact and notified the target company's board of directors and supervisory board of it.

(5) On the basis of the proposing party's application and with due regard to the interests of the holders of participating securities, the Securities Commission may permit postponement of the duty to publish the information under subsection (3) or (4) if the legitimate interests of the proposing party or the persons involved with it in concerted conduct could thereby be put at risk (jeopardized).

(6) The members of the target company's board of directors and supervisory board shall be duty-bound to maintain confidentiality regarding information acquired from the proposing party in connection with the tender offer until the time such information is published. The provisions of subsection (1) shall apply as appropriate. However, the target company's board of directors shall be bound to publish the acquired information if this prevents the misuse of confidential (insider) information and distortions on the capital market, or if there were considerable fluctuations in the prices (of the company's securities) or speculations about an envisaged tender offer, or it can be expected that preparation of the tender offer or the subsequent purchase of shares might be thus influenced. The target company's board of directors shall deliver a statement of its opinion (standpoint) regarding the tender offer under section 183a(II)(c) to the Securities Commission within two working days of drawing up such statement.

(7) A tender offer involving listed securities may be published only with the approval of the Securities Commission. The proposing party shall present its tender offer under section 183a(4) to the Securities Commission within five working days of publishing its intention to make such offer, or after being granted approval by the competent state authority under other statutory provisions to make such offer, and ask the Securities Commission for its approval of the content of the offer or approval for its acquisition of the target company's participating securities, if such approval is required under other statutory provisions. When another state authority's approval is required for the offer, the proposing party shall also present the ruling (decision) granting such approval. If examination of the price or exchange ratio by an expert is required, his report must also be submitted. If the proposing party is a foreign person, it (he) must appoint a representative which must be either a brokerage house or a lawyer seated in the Czech Republic.

(8) The Securities Commission may require the proposing party, within five working days of its offer's submission, to modify within a determined time-limit:

- (a) the proposed price or exchange ratio of shares so that it takes account of the customary objective criteria used in valuation and the special characteristics of the target company;
- (b) the minimum number of participating securities whose attainment is a condition for conclusion of a contract under section 183a(3); or
- (c) the class and number of the securities offered for exchange.

(9) Should (he Securities Commission's opinion on the tender offer not be delivered to the proposing party within the time-limit under subsection (8), or should it not grant the required approval for acquisition of the target company's participating securities or prohibit such tender offer, it shall be deemed to have approved (he tender offer; in the case of procedure under subsection (8), the time-limit shall start running anew as of the delivery of such amended (modified) tender offer. The Securities Commission may supplement or amend its opinion (standpoint) within the time-limit under subsection (8). Within the same time-limit the Securities Commission may notify the proposing party of extension of the time-limit under the preceding sentence due to important reasons, but by no more than five working days.

(10) The Securities Commission may prohibit a tender offer:

- (a) within the time-limit under subsection (8), if such offer is contrary to the statutory provisions; or
- (b) within three working days of the day when the time-limit determined for modification of such offer under subsection (8) expires in vain, or if the modification made does not correspond (o the change required.

(11) The Securities Commission is entitled (o require (hat the proposing party prove the origin and sufficiency of funds for discharge of commitments which might arise from its tender offer, or that an appropriate advance sum be deposited in a bank account. Should the proposing party fail to meet this requirement, the Securities Commission may prohibit such tender offer.

(12) If the law requires the Securities Commission's approval of acquisition of the participating securities, a tender offer may only be published after approval under subsection (9) is granted, and the contract based on such offer may only be concluded on a public market. The proposing party shall publish its tender offer under section 183a(2), including an expert's report, no later than 15 working days after the day when approval is granted.

(13) The target company's board of directors shall, without undue delay:

- (a) inform employee representatives of the proposing party's decision (o make the tender offer which the board of directors was informed of under section 183a(12);
- (b) hand over to the employee representatives copies of the documents received under section 183a(12);
- (c) hand over to the employee representatives the target company's statement of its opinion (standpoint) on such offer under section 183a(11)(c).

(14) The duty to observe confidentiality under subsection (6) shall also apply to the target company's shareholders and employees who acquired information under subsection (6).

Section 183f

Competitive Tender Offers

(1) A competitive tender offer shall be an offer made by another proposing party within the binding period of the original tender offer.

(2) The provisions on tender offers shall similarly apply to a competitive tender offer, but the price in such competitive offer must be at least 2% higher than (he price in the original offer.

(3) If, during the period for which the competitive tender offer is binding, the party proposing the original tender intends to increase its price, it must increase it by at least 2% above the price quoted in the competitive offer, and it is not entitled to sell participating securities which it acquired on the basis of the tender offer by adopting the competitive tender offer.

Section 183g

Sanctions for Breaching Duties Related to a Tender Offer

(1) If the proposing party made a mandatory tender offer contrary to the law, or if it made no such offer at all, persons to whom a right to redemption of their participating securities arose and who did not accept such offer, are entitled, within one month of the day when the proposing party made its offer contrary to the law, or within six months of the day when the time-limit during which the proposing party was bound to make its offer expired in vain, to propose the conclusion of a contract for purchase of the participating securities for an adequate price and, if such offer (proposal) is not accepted within fifteen days of Us delivery, it may demand conclusion of such contract at the competent court or compensation for damage caused by breach of the obligation (duty) to conclude such contract. Persons who accepted a tender offer which was made contrary to the law may demand from the proposing party compensation of damage caused to them. The provisions of section 183c(5) shall not thereby be affected.

(2) If the proposing party made a tender offer contrary to the law, the contract concluded on the basis of such offer shall not be void, but the proposing party may not exercise voting rights in the target company. The Securities Commission may rule that a proposing party which was guilty of only a minor violation of the law may exercise voting rights in the target company under certain conditions stated in such ruling.

(3) If the proposing party which made a tender offer was guilty of a major violation of the law, the Securities Commission may rule that such party is not entitled to exercise even other rights attached to participating securities in the target company. The Securities Commission shall also deliver this ruling to the target company. If the proposing party may not exercise property rights attaching to participating securities in the target company on the basis of the said ruling, the right to performance lapses on the day of their maturity.

(4) If the proposing party which made a tender offer was guilty of a major violation of the law, the seller is entitled to withdraw from the contract based on such offer. If the seller withdraws from the contract, he is obliged against return of the securities to do any of the following:

- (a) pay the purchase price which he received;
- (b) pay an amount corresponding to the price of the participating securities at the time of his withdrawal from the contract; or
- (c) pay an amount corresponding to the price of the participating securities at the time of their return.

Section 183h

Redemption Offers

(1) At the request of a minority shareholder, the Securities Commission may order a shareholder or shareholders involved in concerted conduct to offer minority shareholders an opportunity to redeem the target company's participating securities (hereafter only "a redemption offer"; in Czech "nabídka na odkoupení") provided that the following conditions are met:

- (a) the shareholder or shareholders involved in concerted conduct participate in the company to the extent of having 95% of the voting rights;
- (b) the participating securities are listed;
- (c) the applicant is not a person involved in concerted conduct with the majority shareholder; and
- (d) it is warranted by serious facts.

(2) The Securities Commission shall ask the target company for a statement of its opinion on an application under subsection (1). The Securities Commission shall dismiss an application under subsection (1) if the situation on a public market allows sale of the target company's participating securities at any time.

(3) A shareholder who alone or together with persons involved with him in concerted conduct has at his disposal the voting rights under subsection (1)(a) is entitled to make a redemption offer which will lead, on discharge of the obligations arising from such offer, to cancellation of the listing of the participating securities. A redemption offer according to the preceding sentence shall replace a procedure to cancel the listing of participating securities under section 186a(1) and (2).

(4) The provisions on tender offers shall apply, as appropriate, to a redemption offer, whereby determination of the price shall be subject, as appropriate, to the provisions of section 186a(4)

Subdivision 4

Joint Stock Company Organs

General Meeting

Section 184

(1) **The** supreme organ of a joint stock company is the general meeting of its shareholders (also referred to as the "general assembly"; in Czech "vatna hromada")- A shareholder (stockholder) participates in the general meeting in person or through a representative (proxy) holding a written power of attorney (hereafter "the attending shareholder"; in Czech "prftomny akcionaf"). A shareholder may not be represented by a member of the company's board of directors or supervisory board.

(2) Where the company issued uncertificated shares, the statutes or a resolution of the preceding general meeting may determine the day which shall be decisive for participation in the general meeting. Such decisive day may not precede the day of the general meeting by more than seven days. Should the decisive day not be determined in this manner, the seventh calendar day prior to the general meeting is deemed to be the decisive day. The board of directors shall apply for an abstract (extract, statement) from the statutory registry of securities as valid on the decisive day.

(3) A general meeting is held at least once a year within the time-limit stipulated in the statutes, but no later than **six** months after the end of the last day of the accounting period. It is convened by the board of directors or by one of its members if the board of directors fails to agree on its convening without undue delay and the law stipulates a duty to convene a general meeting, or if the board of directors lacks a quorum long-term, unless this Code provides otherwise.

- (5) The board of directors shall publish (advertise) an invitation to (he general meeting or a notice convening the general meeting in the manner determined by the law and the statutes. In the case of a joint stock company with registered shares, the board of directors shall publish such invitation by sending an invitation to each shareholder's seat or residential address, as entered in the shareholders' list, at least 30 days prior to the holding of the general meeting. **In the case of a joint stock company with bearer shares, the board of directors shall publish notification of the holding of the general meeting in an appropriate manner stipulated in the statutes within the same time-limit, but at least in one daily newspaper circulating nationally which is specified in the statutes. If a holder of bearer shares establishes a lien on at least one share in favour of the company as security for settlement of the cost of sending him notices of the holding of a general meeting to the address stated in his application, the company shall send him such notices to the stated address at his expense.**
- (5) An invitation to attend the general meeting or a notice of it shall include at least the following information:
- (a) **the commercial name** and seat of the company;
 - (b) the venue, date and hour of the general meeting;
 - (c) whether it is an ordinary (regular), extraordinary or substitute general meeting that is being convened;
 - (d) the agenda of the general meeting;
 - (e) the decisive day for participation in the general meeting, if the company has issued uncertificated (i.e. book-entry paperless) shares.
- (6) The venue, date and hour must be determined in such a manner as not to restrict the possibility of shareholders' attendance at such general meeting.
- (7) A general meeting may be revoked or postponed. Revocation or postponement of the general meeting must be communicated in the manner determined by the law and the statutes for convening a general meeting no later than one week prior to the day scheduled for its holding, otherwise the company is obligated to reimburse all the purposefully incurred expenses of shareholders who came in accordance with the original invitation or notice. An extraordinary general meeting convened under section 181 may be revoked or postponed only if the shareholders concerned so request. When the new date of the general meeting is determined, the time-limit under subsection (4) or under section 181(2) must be complied with,
- (8) **Should changes to the company's statutes be on the agenda of the convened general meeting, the invitation to such general meeting or notice of its holding must at least outline the essential aspects of such proposed changes (amendments), and the draft amendments must be available for inspection at the company's seat within the time-limit stipulated for convening a general meeting. A shareholder is entitled to ask for a copy of the draft text to be sent to him at his own expense and risk. The shareholders must be advised of these rights in the invitation to such general meeting or in the notice of the holding of this general meeting,**

Commentary on section 184:

A shareholder who is an individual can attend a general meeting in person or be represented by a proxy; if the shareholder is a legal entity, it shall be represented by a member of its statutory organ or his proxy. The term "shareholder" in this section means a person entitled to vote at a general meeting of the company's shareholders. The general meeting of the company's shareholders is the highest organ in a joint stock company, it must take place at least once a year. It is convened by the board of directors in the manner stipulated by the Commercial Code and the statutes.

Section 185

- (1) The general meeting has a quorum if it is attended by shareholders whose shares have a total nominal value exceeding 30% of the registered capital of the company, unless the statutes require a higher attendance,
- (2) The attending shareholders sign an attendance list containing the following details: **the commercial name** or designation and seat, if the shareholder is an entity, or his full name and residential address, if the shareholder is an individual or a shareholder's proxy, the identification numbers of certificated shares and the nominal value of shares which entitle the attending person to vote, and, if appropriate, the information that a share does not entitle its holder to vote. Should the company refuse to enter a certain person in the list of attending shareholders, this fact shall be noted in the list together with the reason for his exclusion. The correctness of the attendance list shall be verified by the signatures of the chairman of the general meeting and the minutes clerk, elected in compliance with the statutes.
- (3) If the general meeting falls short of a quorum, the board of directors shall convene a substitute general meeting. The board of directors shall convene such meeting by means of a new invitation or notice (announcement) issued in the manner set out in section 184(4), but the time-limit stated therein shall be shortened to 15 days. An invitation must be sent, or notification of such meeting published, no later than 1-5 days after the day for which the original general meeting was convened. The substitute general meeting must be held within six weeks of the day of the originally convened general meeting. It shall have the same agenda and constitute a quorum irrespective of the

provisions of subsection (I). If the company issued uncertificated shares, it need not ask for a new extract from the register of uncertificated securities, and any person who has (in the meantime) acquired such share (a transferee) is entitled to prove his right to participate in the substitute general meeting in another manner.

(4) Matters not placed on the proposed agenda of the general meeting may be decided only in the presence, and with the consent, of all the shareholders of the company.

Commentary on section 185:

There is a quorum at a general meeting of shareholders if it is attended by shareholders whose shares have a total nominal value of 30% of the company's registered (share) capital.

The requirement that attending shareholders must own shares whose nominal value exceeds 30% of the registered capital if there is to be a quorum applies to ordinary and extraordinary general meetings, whereas at a substitute general meeting there is automatically a quorum.

It is important to note that a matter which has not been put on the agenda of a certain general meeting can only be included if all the company's shareholders attend the general meeting and agree on this, and if such matter is within the competence of the general meeting according to section 187.

Section 186

(1) **The general meeting passes resolutions by a majority vote of the attending shareholders, unless this Code requires a different majority.** The statutes may determine that a higher number of votes is required to pass a resolution.

(2) Matters under section 187(1)(a), (b) and (c) and the winding-up of the company with liquidation and a plan for distributing the liquidation remainder (balance) shall be decided by a two-thirds majority vote of the attending shareholders. Should the general meeting decide to increase or reduce the registered capital, it shall require approval by no less than a two-thirds majority of the attending shareholders of each class of shares issued by the company or of interim certificates issued in lieu.

(3) Approval by at least a three-quarters majority of the votes of attending shareholders owning the appropriate shares shall be required for a decision by the general meeting to change the class or type of shares or the rights attached to a particular class of shares, or to restrict the transferability of registered shares or cancel the listing of the company's shares.

(4) Approval by at least a three-quarters majority of the votes of the attending shareholders shall be required for cancellation or restriction of the pre-emptive rights attached to convertible bonds or bonds with share warrants attached, for cancellation or restriction of pre-emptive rights to subscribe for new shares under section 204a, for a controlling contract (agreement) under section 190b, for a contract on profit transfer under section 190a or their amendments (changes to these), or for an increase in registered capital by nonmonetary contributions. If a company issued more than one class of shares, approval by at least a three-quarters majority of the votes of the attending shareholders owning each class of shares shall be required for a decision of the general meeting.

(5) A general meeting's resolution on consolidation of shares also requires approval by all shareholders whose shares are to be consolidated.

(6) A notarial deed must be drawn up of decisions (resolutions) taken under subsections (2) to (5). A notarial deed of amendments to the statutes must include the approved wording of such amendments.

Commentary on section 186: A general meeting passes resolutions (decisions) by a simple majority of the attending shareholders' votes, unless the Commercial Code or the statutes require a higher majority. However, where the law stipulates that a qualified majority (of either two-thirds or three-quarters of the attending shareholders' votes) is necessary, the statutes cannot reduce such requirement.

A notarial deed (in accordance with section 77 of the Notaries Act) must be drawn up in the case of resolutions passed by a qualified majority.

Section 186a

(1) Should the general meeting decide to revoke the listing of participating securities, then within 30 days of such decision the company shall make a public offer to purchase such securities. Such offer must be made to all persons who were shareholders of the company on the day of the holding of the general meeting and who did not vote for revocation (cancellation) of the listing of the participating securities or who did not attend the general meeting; such public offer shall relate to participating securities which the said persons held (owned) at the day when the general meeting was held and such persons did not waive their right to sell these securities to the company. The provisions of section 220b(5) shall apply as appropriate. In case of doubt, it shall be presumed that a person who accepted such public offer was a shareholder of the company at the time when the general meeting was held and was the holder of the number of participating securities stated in his acceptance of the public offer. The notarial deed about the general meeting's resolution shall include the names of all shareholders who voted for cancellation of the listing.

(2) Without undue delay, the general meeting's resolution to revoke the listing of the participating securities shall be communicated by the board of directors to the Securities Commission and the organizer of the public market on which such securities are traded, and it shall be publicized in the manner stipulated by the law and the statutes for convening a general meeting.

(3) Should the general meeting pass a resolution to change a class of shares or to restrict the transferability of registered shares or to introduce stricter rules for their transferability, the company must make a public offer within 30 days of entry of these facts in the Commercial Register. This public offer (i.e. an offer to purchase) shall be made to all holders of shares, or interim certificates replacing them, which are of the class or type which the general meeting decided to change or, in the case of registered shares to restrict their transferability, provided that these persons were shareholders of the company on (the day of such general meeting and did not vote in favour of the change in the class of shares or the restriction of transferability of registered shares, or did not attend the general meeting; the public offer shall relate to shares and interim certificates owned at the day of the general meeting by shareholders who did not waive their right to sell them to the company. The provisions of section 220b(5) shall apply as appropriate. In case of doubt, it shall be presumed that a person who accepted such public offer was a shareholder of the company and was the holder of the number of shares or interim certificates stated in his acceptance of the public offer. The notarial deed about the general meeting's resolution must include the names of shareholders who voted in favour of changing the class of shares or restricting the transferability of registered shares. The board of directors shall issue a notice of the changing of the class of shares and the restriction of transferability of shares in the manner prescribed by the law and the statutes for convening a general meeting without undue delay after these facts are entered in the Commercial Register.

(4) The company shall be bound to purchase the participating securities one month after the day following the day when the binding character of the public offer expired. The company shall purchase the shares for a price commensurate with the value of such shares. The adequacy of the price must be supported by an expert's report. The provisions of sections 183a, 183c, and 183e to 183g shall apply, as appropriate, to the procedure under subsections (1) and (3).

(5) Should the company default on making a public offer, the person to whom this offer should have been addressed, is entitled

to make a written offer to the company regarding to the participating securities which this person would have been entitled to sell on the basis of a public offer for the price determined under subsection (4).

(6) Should the company not accept a written offer under subsection (5) within 15 days of its receipt (delivery), the shareholder is entitled to file a petition with the competent court for conclusion of a contract or seek compensation for damage caused to him by the company's breach of its obligation to conclude such contract. He may also demand compensation for purposefully incurred expenses.

(7) Those shareholders of the company who voted in favour of changing the class of shares, restricting the transferability of shares or introducing stricter rules for their transferability or for revoking the listing of the participating securities shall be bound to buy securities from the company which it acquired under the preceding provisions at the price which the company paid for them, increased by the rate of interest required by banks for the granting of an equivalent loan (credit) at the time when the company made the public offer; they shall have to buy the said securities from the company within three months of the day when the company purchased them. This shall not apply if the company can *sell* such securities on more advantageous terms (i.e. for a better price).

Commentary on section 186a:

The purpose of section 186a is to protect the rights of minority shareholders and the creditors of a company when its general meeting approves changes in the fundamental character of the company's shares and other securities.

Section 186b

(1) If a general meeting passes a resolution to change the class or type of shares or to split the shares into more shares of lower nominal value, or to consolidate two or more shares into one, the company may issue new shares and set a time-limit for presenting certificated shares for exchange, but only after this change has been entered in the Commercial Register.

(2) The provisions of section 214 shall apply to the procedure for exchanging shares of one class for shares of another class or type, or for exchanging them after they have been **split or after the consolidation of two or more shares into one**. The provisions of section 213a(2) and (3) shall also apply as appropriate.

Commentary on section 186b:

The company may issue new shares and exchange old shares for new ones if the general meeting of shareholders passes a resolution to change the class or type of shares or to split shares, or to consolidate two

or more shares into one, and this change was entered in the Commercial Register. Where a share is to be exchanged for two or more shares of a lower nominal value, the total nominal values of the new shares must correspond to the value of the shares being split, and a similar rule applies to the consolidation of shares.

Section 186c

(1) When considering whether a general meeting can pass resolutions (i.e. whether there is a quorum) and voting at a general meeting, no account is taken of shares and interim certificates which carry no voting rights, or of shares and interim certificates which carry voting rights that cannot be exercised, or voting rights which are not exercised by a brokerage house or another person under 183b(4).

(2) A shareholder cannot exercise a voting right;

- (a) if it is attached to an interim certificate and he is in default on part payments towards the issue price of not fully-paid shares; or
- (b) if the general meeting is deciding on valuation of his nonmonetary investment contribution;
- (c) if the general meeting is deciding whether to conclude a contract with him or with another person with whom he is involved in concerted conduct outside usual business contacts, except when it is a company conversion contract [section 69(1) and (2)], a contract on profit transfer (section 190a), a controlling contract (section 190b), a contract on sale of an enterprise or a part of such (section 476), or a contract on lease of an enterprise or a part of such (section 488b), or when it is being decided whether to grant him or a person with whom he is involved in concerted conduct an advantage or whether he or such other person should be released from performance of an obligation, or recalled from office of a company organ due to breaching a duty when performing such office; decision-making on the appointment of a company organ or a member of such shall not be regarded as deciding on the conclusion of a contract;
- (d) if he breached his obligation to make a tender offer under section 183b;
- (e) if he breached his obligation under section 183d;
- (f) in other cases stipulated by law.

(3) A prohibition on the exercise of voting rights under subsection (2)(b) to (d) shall also apply to a shareholder involved in concerted conduct with another shareholder who is not allowed to exercise his voting right.

(4) A prohibition on the exercise of voting rights under subsections (2) and (3) shall not apply if all of the shareholders are involved in concerted conduct (section 66b).

Commentary on section 186c:

Shares and interim certificates to which voting rights are not attached, or to which they are attached but cannot be exercised (e.g. when a shareholder is in default with part payment of the issue price), are not taken into account when considering whether or not there is a quorum at a general meeting.

Section 186d

Agreements on the Exercise of Voting Rights

(1) An agreement shall be void if it binds a shareholder:

- (a) to follow instructions given by the company or any of its organs on how to vote; or
- (b) to vote for proposals tabled by company organs; or
- (c) (0)
- (c) **to use his voting right in a predetermined manner, or not to vote, in exchange for advantages granted to him by the company.**

(2) The provisions of statutes which bind shareholders to the procedure under subsection (1) shall be void.

Commentary on section 186d:

Any agreement which binds a shareholder to exercise his voting rights in the manner specified in subsection (1) is invalid (void). Similarly, any provisions of the statutes binding shareholders to proceed in accordance with subsection (1) are also ineffective, because they are contrary to the mandatory provisions of the Commercial Code.

Section 187

(1) It is within the powers of the general meeting to:

- (a) **decide to modify (change, amend) the statutes, except when such modification (change) is the result of an increase in the registered capital by the board of directors under section 210, or when such modification is made on the basis of other legal facts;**

- (b) decide to increase or reduce the registered capital, or to authorize the board of directors under section 210, or to set off a receivable from the company against a receivable relating to the amount of an issue price;
 - (c) decide to reduce the company's registered (share) capital and to issue bonds under section 160;
 - (d) elect and recall members of the board of directors, unless the statutes determine that such members are elected and recalled by the supervisory board [section 194(1)];
 - (e) elect and recall members of the supervisory board and other organs, with the exception of members of the supervisory board elected under section 200;
 - (f) approve the company's ordinary and extraordinary financial statements and consolidated financial statements and, when so prescribed by law, interim financial statements, and to decide on the distribution of a profit, the making good of a loss or the determination of emoluments;
 - (g) decide on the financial remuneration of members of the board of directors and the supervisory board;
 - (h) decide to apply for the listing of the company's participating securities under another Act, or to revoke their listing;
 - (i) decide to wind up the company in conjunction with its liquidation and to decide on the appointment and recall of a liquidator, including his remuneration, and on the distribution of a liquidation remainder;
 - (j) decide on a merger, transfer of business assets to a sole shareholder or on a division, or on a change (conversion) of legal form;
 - (k) decide whether to conclude a contract if its object is the transfer of an enterprise or a part of such, or lease of an enterprise or a part of such, or whether to conclude such contract with a controlled person;
 - (l) approve transactions made in the name of the company before its incorporation under section 64; (m) approve a controlling agreement (section 190b), an agreement on profit transfer (section 190a) and a silent partnership agreement, and their amendments;
 - (m) decide on other matter which this Code or the statutes entrust to the competence of the general meeting.
- (2) The general meeting may not reserve the right to decide on a matter which neither the law nor the statutes entrust to its competence.

Commentary on section 187:

The general meeting of shareholders can take decisions on any matter concerning the company under the conditions specified by the law and the statutes. The general meeting passes resolutions on all amendments to the statutes, unless they are amended ex lege. When the company's statutes are amended, the board of directors must arrange that the full new wording of the statutes is filed in the registry of documents in accordance with section 27a(2)(a).

Section 188

- (1) The general meeting shall elect a chairman, a minutes clerk, two persons to verify the minutes (verifiers) and persons to count votes cast (tellers or scrutineers). Until a chairman is elected, the general meeting shall be presided over by a member of the board of directors appointed for the purpose by the board of directors, **unless this Code provides otherwise.**
- (2) The minutes of the general meeting shall include:
- (a) **the commercial name** and seat of the company;
 - (b) the place and time of the general meeting;
 - (c) the names of the chairman of the general meeting, the minutes clerk, the verifiers and the tellers;
 - (d) comments made on individual items on the agenda;
 - (e) resolutions (decisions) of the general meeting and a record of voting;
 - (f) protests lodged by shareholders or members of the board of directors or supervisory board which relate to decisions of the general meeting, if the person lodging such protest so requests.
- (3) Proposals and statements presented for discussion at the general meeting **and a list of the attending shareholders** shall be attached to the minutes of the general meeting.

Commentary on section 188:

The Commercial Code does not include any detailed rules for proceedings at the general meeting. Members of the supervisory board are bound to attend the general meeting, but the Commercial Code does not require members of the board of directors to be present. A distinction is made between the minutes (record) of the general meeting under subsection (2) and the notarial deed on the proceedings. The notarial deed does not replace the minutes of the general meeting, which means that both a notarial deed and the minutes are required.

Section 189

(1) The board of directors shall arrange for the minutes of a general meeting to be written up within 30 days of the end of the general meeting. The minutes must be signed by the minutes clerk, the chairman of the general meeting and the two elected verifiers.

(2) Any shareholder may ask the board of directors for a copy, or abstract of the minutes of a general meeting held during the company's existence. Unless the statutes determine otherwise, a copy of the minutes or its part is made at the expense of the shareholder who requests such copy.

(3) The minutes of each general meeting, together with the notices or invitations issued in respect of such meeting and the attendance lists, are kept in the company's archives for the entire period of its existence. When appropriate, the liquidator shall arrange for such archives to be kept for another 10 years after dissolution of the company. Should the company be wound up without liquidation and its business assets pass to a legal successor, the minutes shall be kept in the archives of the legal successor in the same manner as the minutes of such successor.

Commentary on section 189:

The minutes of each general meeting must be written up by a minutes clerk within 30 days of the end of the meeting, and the board of directors must see to it that this duty is complied with. Each shareholder who can exercise shareholder's rights is entitled to ask for a copy or abstract of the minutes of any general meeting held during the lifetime of the company of which he is a shareholder.

A joint stock company's archives are subject to the provisions of the Act on Archives.

Section 190

(1) In the case of a single-person joint stock company, no general meeting is held and the powers of the general meeting are exercised by the sole shareholder. Decisions of the shareholder when he exercises the powers of the general meeting must be in writing and signed by the shareholder. A notarial deed is required only in the cases stipulated in section 186(5). **The provisions of section 186c(2) and (3) shall not apply.**

(2) The single shareholder has the right to require that the board of directors and the supervisory board take part in decision-making under subsection (1). Any written decision of the single shareholder must be delivered to the board of directors and (he supervisory board. (3) Contracts concluded between the company and its single shareholder when this shareholder also acts in the name of the company **must be either in the form of a notarial deed or in writing and signed before an authority concerned with legalization (to authenticate such signature).**

Commentary on section 190:

The provisions on general meetings of shareholders do not apply to single-person joint stock companies because the sole shareholder can decide at any time to exercise the same rights which shareholders exercise at their general meetings. The provisions on voting rights under section 186c are therefore not applicable.

The supervisory board's attendance is not mandatory when the only shareholder takes decisions which would otherwise be taken by a general meeting, but the shareholder may ask both the board of directors and the supervisory board members to attend when such decisions are made. They must be in writing and delivered to the board of directors and the supervisory board. Both the board of directors and the supervisory board must have at least three members. The right to act in the name of a one-shareholder joint stock company belongs to the board of directors. The sole shareholder can act in the company's name if he is either a board member entitled to do so or a representative appointed for this purpose. Contracts between a person who is a sole shareholder and the company also represented by the sole shareholder must be in the form of a notarial deed or in writing with authenticated signature.

Section 190a

Contract on Profit Transfer

(1) **Under a contract on profit transfer ("smlouva o převodu zisku"), after making an allocation to a reserve fund, if its creation is required by law or the deed of formation, a managed person undertakes to transfer the remaining profit or a part of such in favour of (he managing person. A contract on profit transfer must also include an undertaking by the managing person to shareholders who are not parties to such contract (hereafter "outside shareholders" or "outside member"; in Czech**

"mimo stojfci licastm'ci") to provide them with an adequate settlement, except when the company has no such shareholder (member).

(2) An adequate settlement under subsection (1) must be provided annually during the lifetime of the contract, in the minimum amount which, according to the company's current and envisaged future trading results, taking into account adequate depreciation and adjustments, could probably be distributed as a profit share pertaining to the shares of a certain nominal value or pertaining to a business share (holding) of such shareholder (member). If the contract on profit transfer applies only to part (portion) of the profit, the amount of adequate settlement shall be proportionately reduced.

(3) A contract on profit transfer shall be valid even if a settlement under subsection (1) is not adequate. Outside shareholders (members) are entitled to require that the amount of adequate settlement be determined by a court ruling. A complaint must be filed with the (competent) court within three months of publication of the fact the contract on profit transfer was deposited in the registry of documents, otherwise this right shall lapse. The court ruling on the amount of adequate settlement of an outside shareholder (member) shall be binding on the managing person on the basis of the accorded right also in relation to other outside shareholders.

Commentary on sections 190a to 190d:

According to the new wording, a contract on profit transfer and a controlling contract must be in writing. These contracts are related to section 66a.

Section 190b

Controlling Contract

(1) Under a controlling contract (or "controlling agreement"; in Czech "ovladaci smlouva"), one contracting party ("the managed person"; "h'zena osoba") agrees to be subject to common management by another person ("the managing person"; "fidici osoba"). Should a controlling contract also include an undertaking by the managed person to transfer profit, or a part of such, to the managing person, the contract shall also be subject to section 190a as appropriate.

(2) The managing person's statutory organ is entitled to give instructions to the controlled person's statutory organ, including some which might be disadvantageous to the managed person, if such instructions are in the interest of the managing person or another person within a holding-type group. The duty (obligation) of the persons forming the managed person's statutory organ to proceed with due managerial care are not thereby affected.

(3) Persons who give instructions in the name of the managing person to the managed person's statutory organ are obliged to proceed with due managerial care. Should they breach this duty, they shall be liable jointly and severally to compensate any resulting damage caused to the managed person. If their due managerial care is disputed, they shall bear the burden of proof (evidence). The managing person shall be liable for discharge of the obligation to provide such compensation for damage (i.e. damages).

(4) The right to damages may also be claimed by any of the managed person's shareholders (members) acting in the name of the company. The provisions of section 182 shall apply as appropriate.

(5) If due to a breach of duties under subsection (3) damage is caused to a managed person's creditors, the persons who breached such duty shall be jointly and severally liable for the damage caused to these creditors, provided that the creditors' claim cannot be satisfied from the managed person's property. The managing person shall be liable (as surety) for compensation of the damage.

(6) Persons who are the managed person's statutory organ (or members of such) and failed to proceed with due managerial care shall be jointly liable with the persons under subsections (3) and (5) for damage caused. However, these persons shall not be liable for such damage if they proceeded according to instructions given in compliance with the provisions of subsection (2).

Joint Provisions on a Controlling Contract and a Contract on Profit Transfer

Section 190c

(1) At the written request of outside shareholders (members), a controlling contract or a contract on a profit transfer, both of which must be in writing, shall contain an undertaking towards outside shareholders (members) that a contract will be concluded to transfer their shares, interim certificates or business shares for a consideration (hereafter "a contract on transfer for a consideration"; in Czech "smlouva o uplatnem pfevodu") for a price commensurate with the value of such shares, certificates or business shares (hereafter "Indemnity" or "indemnification"; in Czech "odškodnen"), except when there is no such shareholder (member). The provisions of section 186a(6) shall apply as appropriate. The time-limit for payment of such indemnity may not be longer than one month after conclusion of the contract on transfer for a consideration. The amount of indemnification or the method of its calculation must be stated in the controlling contract or the contract on profit transfer. The right to require conclusion of

the contract on transfer for a consideration may be restricted to a certain period of time. However, the time-limit for claiming this right may not be shorter than three months after publication of a notice that the relevant controlling contract or contract on profit transfer was deposited in the registry of documents.

(2) Should the amount of indemnification not be determined in the controlling contract or in the contract on profit transfer in compliance with subsection (1), such contract shall still be valid. The outside shareholders may require that the amount of adequate indemnification be determined by a court ruling. A complaint must be filed with the (competent) court within three months of publication of the notice that the relevant controlling contract or contract on profit transfer was deposited in the registry of documents or after conclusion of the contract on transfer for a consideration, otherwise (his right shall lapse. A court ruling determining the amount of adequate indemnification of an outside shareholder (member) shall be binding on the managing person on the basis of the accorded right and also on other outside shareholders (members).

(3) A controlling contract or a contract on profit transfer may only be revoked with effect from the end of the accounting period. Retroactive effectiveness is not permissible. The act in law (legal transaction) on which revocation of a contract is based shall be in writing. If a contract is to be revoked on the basis of an act in law, such act must be approved by the general meeting and outside shareholders (members) to be effective when the controlling contract or contract on profit transfer includes an undertaking to settle or indemnify. The provisions of section 190d(8) shall apply as appropriate.

(4) A managing or managed person may only withdraw from a controlling contract or contract on profit transfer for serious reasons with effects from the day when a written notice of such withdrawal is delivered to the other party in particular when the other party is not able to perform its obligations under such contract. A managed person may also withdraw from such contract if, under a court ruling, the indemnification accorded to outside shareholders (members) in the controlling contract or the contract on profit transfer is inadequate, and it may do so within two months of the effective date of this ruling.

(5) If a controlling contract or a contract on profit transfer has been concluded and the managed person's trading result is a loss, the managing person shall have to settle this loss if it cannot be settled from the managed person's reserve fund or other disposable resources.

Section 190d

(1) In the case of a joint stock company or a limited liability company, a controlling contract or a contract on profit transfer must be approved by the general meeting by a three-quarters majority of the votes of the attending shareholders (members), irrespective of whether such company is a managing or managed person, unless the statutes require a larger majority, otherwise the contract is void. A notarial deed *must* be drawn up on a resolution of the general meeting which approved a controlling contract or a contract on profit transfer. In the case of a general commercial partnership or a limited partnership, a controlling contract or a contract on profit transfer must be signed by all members bearing unlimited liability.

(2) The statutory organs of the entities which concluded a controlling contract or a contract on profit transfer shall draw up a detailed report explaining the reasons for the conclusion of such contract and in particular the amount of the settlement and indemnification. The supervisory organs, if any, of the entities which concluded the controlling contract or contract on profit transfer shall examine the contracts and compile a report thereof. The provisions of sections 153a(3) and 220b(1)(last sentence), (2)(last sentence) and (3) to (5) shall apply as appropriate.

(3) A controlling contract or a contract on profit transfer must be checked by two independent experts. The provisions of section 220c(1). (2), (4), (6) to (8) shall apply as appropriate.

(4) An expert's report under subsection (3) must also contain, in addition to the particulars required by other statutory provisions, the conclusion that the proposed settlement and indemnification (indemnity) are adequate. The report must also state:

- (a) the methods which were employed to determine such settlement or indemnification;
- (b) the reasons why the application of such methods is appropriate;
- (c) the settlement or indemnification which ensues from the use of particular methods, if more than one method was used; at the same time, it must be specified how much importance was attached to particular methods and the results derived from their use and the difficulties encountered when ascertaining the amount of the settlement or indemnification.

(5) As of the day when a notice is published about the holding of a general meeting or an invitation to attend it is despatched, or at least five days before the signing of the contract in the case of a general commercial partnership and a limited partnership, all shareholders (members) are entitled to familiarize themselves, at the entity's seat, with:

- (a) **the controlling contract or contract on profit transfer;**
- (b) **the statutory organs' reports under subsection (2), if such reports are required;**

- (c) the supervisory organ's (board's) report and the expert's report under subsection (4), if these are required;
 - (d) the annual reports and auditors' reports, if the financial statements are subject to auditing, for the last three accounting periods, provided that the managing or managed person has been in existence for such time or, if relevant, with the financial statements and auditors' reports on their legal predecessors, if any.
- (6) The provisions of sections 220d(4), 220e(2) and (3) and 2201 shall apply as appropriate.
- (7) A controlling contract or contract on profit transfer shall take effect as of the day of publication of a notice that such contract was deposited in the registration court's registry of documents.
- (8) A controlling contract or contract on profit transfer may only be modified with the general meeting's approval, in the case of a joint stock or limited liability company, or with the approval of partners bearing unlimited liability, in the case of a general commercial or unlimited partnership. The provisions of subsections (1) to (7) shall similarly apply. In addition to the general meeting resolution approving the amount of a settlement or indemnification, it must be approved by a three-quarters majority of the votes of outside shareholders (members) attending the general meeting.

Board of Directors

Section 191

(1) The board of directors (in Czech "představenstvo") is the statutory organ which manages a company's activity and acts in its name. It decides all company matters, unless they fall within the powers of the general meeting **or supervisory board** under this Code or the company's statutes. Unless the statutes provide otherwise, any member of the board of directors may act in the name of the company towards other parties. The names of the members of the board of directors whose acts are binding on the company and the nature of such acts are entered in the Commercial Register.

(2) The statutes, general meeting resolutions, or supervisory board decisions may restrict the right of the board of directors to act in the name of a company. However, such restrictions are not effective towards third parties.

Commentary on section 191:

Every joint stock company must have its board of directors, which is a collective statutory organ deciding all company matters not within the competence of the general meeting or supervisory board.

Section 192

(1) The board of directors ensures proper management of the company's business, including bookkeeping, and in compliance with the statutes submits ordinary, extraordinary, consolidated, and if relevant, interim financial statements to the general meeting for its approval, together with a proposal for distribution of a profit or settlement of a loss. The financial statements, or selected data from such, together with information about when and where shareholders can view the financial statements in full, shall be sent to shareholders who have registered shares at least 30 days prior to the general meeting. If the company issued bearer shares, essential data from the financial statements shall be published within the same time-limit in the manner specified by law and the statutes for convening the general meeting, together with details of the time and place where the full financial statements can be viewed by the company's shareholders.

(2) Within the time-limits stipulated by the statutes, but at least once during the accounting period, the board of directors shall submit a report to the general meeting on the business activity (or activities) of the company and the status of its property. This report shall form part of an annual report prepared according to another Act.

Commentary on section 192:

The board of directors shall submit both the company's financial statements (together with an auditor's report and the opinion of the supervisory board) and a proposal for distribution of a profit or settlement of a loss to the general meeting for its approval. Profit may include not only after-tax profit for the accounting period for which the financial statements are being approved, but also retained profit from previous years, provided that it can be freely distributed in accordance with a resolution of the general meeting. A loss is usually covered from the reserve fund or, if need be, by a reduction of the registered capital.

Section 193

(1) The board of directors shall convene a general meeting, without undue delay, when it ascertains that a settlement of a loss shown in any of the financial statements from the company's disposable funds would still leave an unsettled amount representing half of the company's registered capital, or that could be envisaged taking

account of all the circumstances, or if the board establishes that the company has become insolvent, in which case it will recommend the general meeting to wind up the company or adopt another measure, unless other statutory provisions specify otherwise.

(2) The supervisory board's approval shall be required for the conclusion of a contract on the basis of which the company would acquire or dispose of (i.e. alienate) property whereby the value of the property which it is proposed to acquire or dispose of within one accounting period would exceed one-third of the company's equity capital according to the last ordinary financial statements or consolidated financial statements, if the company compiles consolidated financial statements. If the company issued listed participating securities, the general meeting's approval for such contract shall be necessary. The provisions of section 196a(4) shall apply as appropriate,

Commentary on section 193:

When the total unsettled loss of a joint stock company represents one half of its registered (share) capital or the company becomes insolvent, the board of directors must convene a general meeting of shareholders without undue delay. Should it not do so, any member of the board of directors is entitled to convene an extraordinary general meeting; alternatively, it can be convened by the supervisory board. At the general meeting the board of directors must propose how to settle the loss or that the company be wound up and liquidated, unless the filing of a bankruptcy petition is required by law. Bankruptcy proceedings are subject to the Bankruptcy and Composition Act, No. 328/1991 Coll., as subsequently amended.

Section 194

(1) Members of the board of directors are elected and recalled by the general meeting. The statutes may determine that members of the board of directors shall be elected and recalled by the supervisory board in a manner stipulated therein. The tenure of members of the board of directors is given in the statutes and may not exceed five years. Unless the statutes determine another tenure for members of the board of directors, their term of office shall be five years. Should the members of the board of directors be elected by the supervisory board, the persons elected as members of the supervisory board shall elect members of the first board of directors before filing a petition for entry of the company in the Commercial Register. The procedure for electing members of the board of directors shall be subject, as appropriate, to the provisions of the statutes governing the proceedings of the supervisory board.

(2) If a member of the board of directors dies, resigns, or is recalled, or his term of office otherwise terminates, the competent company organ must elect a new member within three months. If the board of directors is not able to execute its functions for this reason, the (competent) court shall replace the missing member or members (of the board of directors), acting thereby on a petition filed by a person who proves his legal interest on the matter; such member or members shall be appointed for the period before a new member or members are elected by the competent company organ, otherwise the court may wind up the company, even without a petition to that effect, and order its liquidation. The provisions of section 71(2)(second, third, fourth and fifth sentences), (6) and (7) shall similarly apply. The court competent to appoint a member of the board of directors shall be the court which is relevant to the company's seat; the parties to the proceedings shall be the petitioner, the company, if there is a person who is authorized to act in the name of the company or on its behalf, and the person who is to be appointed by the court as a member of the board of directors. The office of member of the board of directors shall terminate on the election of a new member of the board of directors, but no later than three months after the end of such member's tenure. The statutes may stipulate that a board of directors whose members do not fall below one-half may appoint alternative members to serve until the next general meeting.

(3) A board of directors shall have no fewer than three members; this shall not apply in the case of a company with only one shareholder. The members of the board shall elect a chairman. The board of directors shall take decision by a majority vote of its members, with the majority being specified in the statutes, or else by a simple majority of all the members. Each member shall have one vote.

(4) The board of directors shall follow the principles and instructions approved by the general meeting, provided that they conform to the statutory provisions and the statutes. Any breach of these principles and instructions shall have no bearing on the effect of transactions undertaken by members of the board with third parties. Unless (his Code provides otherwise, no person is authorized to give instructions to members of the board of directors concerning management of the company's business.

(5) Members of the board of directors shall exercise their range of powers with due managerial care and not disclose confidential information and facts to third parties, if such disclosure might be detrimental to the company. If there is a dispute about whether a particular member of the board of directors exercised due managerial care (due diligence), onus probandi (the burden of proof) shall be borne by such member.

Members of the board who caused damage to the company by breaching legal duties while exercising their powers shall be liable for such damage jointly and severally.

A contract between the company and a member of the board of directors, or statutes, which exclude or limit the liability of a member of the board of directors, shall be null and void. However, members of the board of directors shall only be liable for damage caused by their execution of a specific instruction of the general meeting if such instruction was contrary to the statutory provisions.

(6) Members of the board of directors, who are responsible to the company for damage, shall be jointly and severally liable (as sureties) if the board member concerned failed to settle such damage (i.e. damages) and creditors cannot satisfy their claims (receivables) from the company's property due to its insolvency or because the company stopped making payments. The extent of such liability shall be limited by the extent of the duty of the board's members to provide compensation for damage. Liability of the board's member is discharged when he settles the damage caused.

(7) A member of the board of directors may be only an individual (a natural person) who has attained the age of 18, is fully legally competent, is of unimpeachable character (in the meaning of the Trades Licensing Act) and if there is no impediment to his carrying on a trade in the meaning of the Trades Licensing Act. An individual who does not meet the said requirements or on whose side there is an impediment to his performance of the office shall not become a member of the board of directors, even if the competent organ so decided. If a member of the board of directors ceases to meet the requirements stipulated by this Code or other statutory provisions for performance of the office, such performance shall thereby be terminated. This shall not affect the rights of third parties acquired in good faith.

Commentary on section 194:

Only individuals can become members of the board of directors. They must meet the general requirements of the Trades Licensing Act (a minimum age of 18, legal competence and a clean criminal record), while particular Acts may provide further conditions.

Members of the board of directors are elected and recalled by a simple majority of the shareholders attending the general meeting, unless they are elected and recalled by the supervisory board in accordance with the statutes.

Members of the board of directors must follow principles and instructions approved by the general meeting, even if they are appointed by the supervisory board.

Section 195

(1) The minutes of any meeting of the board of directors and its decisions shall be signed by the chairman of the board of directors and the minutes clerk.

(2) The minutes of any meeting of the board of directors must include the names of those members of the board who voted against individual decisions (resolutions) of the board or abstained from voting. Unless it is proved otherwise, it shall apply that members not so recorded voted in favour of a particular decision (resolution).

Commentary on section 195:

The minutes of board meetings must be provided and signed by the chairman of the board, even if he did not attend a meeting, and the minutes clerk. The minutes have to specify which members of the board voted against individual resolutions and which members abstained from voting; such records are important when damages are claimed against members of the board of directors.

Section 196

Prohibition of Competitive Conduct

(1) **Unless the statutes or a resolution of the general meeting impose further restrictions, a member of the board of directors may not:**

- (a) carry on a business activity in an identical or similar line of business as the company or enter into business relations with the company;**
- (b) act as an intermediary (broker, agent) for other persons in transactions with the company;**
- (c) participate in the business activity of another entity (partnership) as a partner with unlimited liability or as a person controlling other persons engaged in an identical or similar line of business activity;**
- (d) act as, or be a member of, the statutory organ of another legal entity engaged in an identical or similar line of business as the company, unless such legal entity is a holding-type group.**

(2) Any violation of the above provisions shall bear the consequences set out in section 65.

Commentary on section 196;

The prohibition of competitive conduct is generally regulated in section 65, while section 196 stipulates in detail activities which cannot be undertaken by a member of joint stock company's board of directors.

Section 196a

(1) A company may only conclude a credit or loan contract with a member of its board of directors, supervisory board, procurator or another person authorized to act in the name of the company, or with persons close to them, or a contract on securing the obligations (debts) of these persons, or a contract for free-of-charge transfer of property from the company, only with the prior approval of the general meeting and only under the terms customary in business transactions.

(2) Should the persons under subsection (1) also be authorized to act in the name of another person, the provisions of subsection (1) shall apply, as appropriate, to any performance (payments) stipulated therein in favour of such persons. Approval by the general meeting is not required if a credit or loan is granted by the controlling person to the controlled person, or if the controlling person is to secure obligations (debts) of the controlled person,

(3) Where the company or a person controlled by the company acquires property for a consideration (payment) from its founders (promoters) or persons involved in concerted conduct with the former, or any other person under subsection (1), or a person controlled by the former or a person from the same holding-type group, or if the company transfers its property to any such person for a counterperformance in an amount equal to at least one-tenth of the company's subscribed registered capital at the day of acquisition, (he value of such property must be determined on the basis of a court-appointed expert's report. The appointment and remuneration of such expert shall be subject to section 59(3). Should this acquisition occur within three years of incorporation of the company, it must be approved by the general meeting.

(4) The provisions of subsection (3) shall not apply to property acquired within the framework of customary business transactions or to any acquisition initiated or supervised by a state authority or to property acquired on a stock exchange or similar public market. The provisions of subsection (1) on approval by the general meeting shall similarly apply to a free-of-charge transfer of property to a shareholder,

(5) The provisions of subsections (1) to (3) shall also apply to the assumption of suretyship.

Commentary on section 196a:

Each contract specified in subsections (1) and (3) between the persons stipulated in these subsections and a joint stock company is subject to the prior approval of the general meeting, otherwise the price of such contract must be at least based on the valuation contained in an expert's report. A credit contract is defined in section 497 of the Commercial Code, while a loan contract is subject to section 657 of the Civil Code. Contracts (agreements) on securing obligations (debts) are regulated by the provisions of the Civil Code, sections 546 and 552 to 554. A close person is defined in section 116 of the Civil Code as a relative in direct line of descent, a sibling or a spouse; other persons in a family or similar relationship are considered as close persons if a detriment suffered by one of them may justly be felt by the other person to be a detriment to himself.

Supervisory Board

Section 197

(1) The supervisory board (in Czech "dozorcf rada") shall monitor how the board of directors exercises its range of powers and how the business activity of the company is conducted.

(2) Members of the supervisory board are entitled to examine all documents and records relating to the company's activities and to check whether bookkeeping entries are made in accordance with the actual facts and that the business activities of the company conform to the statutory provisions, the statutes and the instructions of the general meeting.

Commentary on section 197:

The supervisory board of a joint stock company is primarily an inspection organ. The scope of the supervisory board's powers are stipulated in the Commercial Code and the statutes.

Section 198

The supervisory board shall examine ordinary, extraordinary and consolidated financial statements, and, if relevant, also interim financial statements, and the proposed distribution of a profit or settlement of a loss and submit its comments to the general meeting.

Commentary on section 198:

The supervisory board examines the financial statements and the proposal for a profit distribution or a loss

settlement in order to present its comments to the general meeting on whether the financial statements were drawn up in accordance with the statutory provisions, on the basis of property accounted for in the books of account and whether the proposal for distribution of a profit or settlement of a loss complies with all the statutory provisions, the statutes and the general meeting's instructions.

Section 199

(1) The supervisory board shall convene a general meeting whenever the interests of the company so require, and propose any necessary measures. The procedure for convening the general meeting shall be governed *mutatis mutandis* by the provisions of sections 184 to 190.

(2) The supervisory board shall appoint one of its members to represent the company in proceedings before courts and other authorities against a member of the board of directors. *Commentary on section 199:*

If the interests of the company so require, the supervisory board may convene an ordinary or extraordinary general meeting of shareholders in the same manner as the board of directors. In any legal action against a member of the board of directors an appointed member of the supervisory board represents the company.

Section 200

(1) The supervisory board shall consist of no fewer than three members; the number of its members must be divisible by three (without remainder). Two-thirds of its members shall be elected by the general meeting, and one-third by the employees of the company, provided that the company employs more than 50 people in an employment relationship and their working time exceeds half the weekly working time prescribed by other statutory provisions at the time when the general meeting is held. The statutes may stipulate that a larger number of members of the supervisory board shall be elected by the employees, but this number may not exceed the number of members elected by the general meeting. The statutes may also require that, even if there are fewer than 50 employees, they shall elect a member (members) of the supervisory board.

(2) Members of the supervisory board shall be elected for a term specified in the statutes. The term (tenure) may not be longer than five years. The tenure of the first members of the supervisory board shall be one year from incorporation of the company.

(3) The provisions of sections 194(2), (4) to (7) and 196 shall apply to members of the supervisory board as appropriate.

(4) A member of the supervisory board may not concurrently be a member of the board of directors, a procurator of the company, or a person authorized to act in the name of the company according to the entry in the Commercial Register.

(5) The right to elect members of the supervisory board only pertains to employees who are in an employment relationship with the company. Only an individual who at the time of the election is in an employment relationship with the company or an employees' representative, or a member of the employees' representative body under other statutory provisions, may be elected as a member of the supervisory board (representing the employees). For the election or recall of such member of the supervisory board to be valid, he must be elected in a secret ballot in which at least one-half of the eligible voters or their representatives vote in favour of his election or recall. The election of members of the supervisory board who represent the employees is organized by the board of directors in agreement with the trade union organization or the works council in such a manner as to enable the participation of the maximum number of voters. A proposal for the election or recall of a member of the supervisory board may be made by the board of directors, the trade union organization or the works council, if any, or jointly by at least 10% of the employees who meet the requirement under subsection (1).

(6) A member of the supervisory board elected by employees may be recalled by the employees. Recall of such employee from the supervisory board shall be subject to the similar provisions of subsection (5).

(7) The electoral code (rules) for election and recall of supervisory board members by the employees shall be drawn up and approved by the company's board of directors in co-operation with the trade union organization or the works council. If there is no trade union organization or works council, the electoral code (rules) shall be drawn up and approved by the board of directors and a meeting of the employees who meet to requirement under subsection (1).

Commentary on section 200:

The Commercial Code determines in general the minimum number of the supervisory board's members, but a particular Act may stipulate a higher minimum number. Two-thirds of the supervisory board's members are elected by the general meeting and one-third by employees of the company, if it employs at least 50 people. The statutes may increase the number of supervisory board members to be elected by the employees

up to one-half of the board's member Members of the supervisory board can be elected for a period of up to five years, unless it is the first supervisory board after the company's incorporation, in which case tenure is for one year only. The statutory provisions on employees' representatives and works councils are included in the Labour Code.

Section 201

(1) Members of the supervisory board attend general meetings of (he company's shareholders and report the findings of their inspection activity to the general meeting.

(2) Any difference of opinion expressed by members of the supervisory board elected by the company's employees must be reported to the general meeting, together with the conclusions of other members of the supervisory board.

(3) A simple majority of supervisory board members is required for resolutions (decisions) of the board, unless the statutes stipulate a higher majority. Each member of the board has one vote. Minutes of supervisory board meetings are drawn up and signed by its chairman. The minutes also record the views of the minority, if they so request, and always a different opinion of members who are elected by the employees.

(4) If the statutes require that specific transactions by the board of directors need the prior approval of the supervisory board or if the supervisory board exercises its right to prohibit the board of directors from undertaking specific transactions in the name of the company, the members of the board of directors shall not be responsible for any damage resulting from its compliance with such prohibition. Members of the supervisory board who voted in favour of such decision (resolution) shall be jointly a severally responsible for the damage thus caused if they did not proceed with due managerial care (due diligence).

Commentary on section 201:

Members of the supervisory board are required to attend the general meeting. If any of the elected employee representatives on the supervisory board take a different view of the results of the board's inspection (or other) activity, this opinion must be made known to

the general meeting, together with the conclusions of the other members.

The Commercial Code stipulates that the decisions (resolutions) of a supervisory board are taken on the basis of a simple majority (unless this is regulated differently in the statutes) and that the minutes of supervisory board meeting must be signed by its chairman. The frequency of such meetings is not regulated by the Commercial Code.

Subdivision 5

Increasing Registered Capital

Section 202

(1) An increase in a company's registered (share) capital is decided by the general meeting of the company's shareholders; the provisions of section 210 shall not thereby be affected.

(2) The invitation or notice on the convening of the general meeting shall state, in addition to the particulars under section 184(5), the following:

- (a) the reasons for the proposed increase in registered capital;**
- (b) the manner and extent of such increase;**
- (c) the proposed class, form, type and number of shares, if new shares are to be issued by the company;**
- (d) the nominal value of the new shares, or the new value of existing shares.**

(3) If the registered capital is to be increased by a subscription to new shares, the invitation or notice shall also include the time-limit for their subscription and the proposed issue price, or the method of its determination with substantiation, or the information that the board of directors is authorized to determine such price, including the minimum amount which the board of directors may fix for the issue price. If the issue of new shares is proposed, information must be provided about the rights attached to them and the consequences which the issue of new shares will have for the rights attached to shares previously issued.

(4) If a proposal is submitted to the general meeting:

- (a) (a) to restrict or exclude a pre-emptive right under section 204a, the invitation or notice shall specify the reason why (b) the pre-emptive right is to be restricted or excluded;**
- (b) to increase the registered capital by subscription for shares and to pay the issue price with nonmonetary (in-kind) contributions, the invitation or notice shall specify the object of such contributions and their valuation as proposed in the report of an expert or experts under section 59(4);**
- (c) to approve a set-off, the invitation or notice shall specify which of the company's receivables are to be used for such set-off, and the reasons for the proposed set-off.**

(5) The effects of such increase in registered capital shall become operative as of the day of its entry in the

Commercial Register. Commentary on section 202:

The decision on a company's registered (share) capital is taken by the general meeting of shareholders, unless this competence is transferred to the board of directors (see section 210). A resolution to increase registered capital requires a two-thirds (or higher) majority of the votes of shareholders attending the general meeting.

Registered capital is increased when there is a need to raise additional operating capital.

If can be increased:

- *by subscription for new shares*
- *conditionally*
- *from equity capital*
- *by combining any of the above methods.*

When registered capital is increased without a concurrent change in the company's net worth (net business assets), the increase is referred to as "nominal", but when the net worth is concurrently increased it is referred to as "effective".

Each of the existing shareholders of a joint stock company which increases its registered capital has a pre-emptive right to share subscription (a rights issue), unless this is restricted by the law or excluded by the general meeting.

A change in the registered capital becomes effective only on entry of its new amount into the Commercial Register.

Increasing Registered Capital by Subscription for New Shares Section 203

- (1) Registered capital may only be increased by a new share subscription (underwriting) if the shareholders of the company have paid up all previously subscribed shares. This restriction shall not apply if the registered capital is to be increased by a share subscription in which the issue price is to be paid only by nonmonetary contributions,**
- (2) A resolution of the general meeting to increase registered capital by subscription of shares shall state:**
 - (a) the amount by which the registered capital is to be increased and whether or not it will be permissible to subscribe for shares over and above the amount of the proposed increase in registered capital, either without restriction or subject to a specified restriction;**
 - (b) the number and nominal value, class, type and form of the shares to be offered for subscription;**
 - (c) the particulars as set out in section 204a(2) or, if the shares are to be underwritten by a brokerage house under section 204a(6), the place where and time-limit within which an entitled person may exercise his pre-emptive right (as stipulated in the resolution) and the price for which he may purchase such shares, or information on the exclusion or restriction of pre-emptive rights in such subscription; this shall not apply if all the shareholders waived their pre-emptive right to subscribe for new shares before voting on the increase of registered capital, or if the registered capital is to be increased under section 205;**
 - (d) an indication of whether those shares, or some of them which will not be subscribed by the exercise of a pre-emptive right will be subscribed by shareholders on the basis of an agreement under section 205, or whether they will be offered to a particular interested party or parties, stating (he name(s) of such party or parties, or the manner of selecting such party or parties, or whether they will be offered for subscription on the basis of a public offer;**
 - (e) the place and time-limit determined for subscription (without any exercise of pre-emptive rights) and the details of publishing the beginning of the running of such time-limit, the issue price of the shares to be so subscribed or the manner of its determination, or the fact that the board of directors is authorized to determine the issue price and also, if it is to be paid up cash, the minimum amount in which it can be fixed by the board of directors; the issue price or the manner of its determination must be identical for all subscribers, unless the law provides otherwise;**
 - (f) the bank account into which, and the time-limit within which, the subscriber (underwriter) must pay part of the issue price of the subscribed (underwritten) shares, or (he place and time-limit for providing a nonmonetary contribution;**
 - (g) if the issue of a new class of shares is approved, details of the rights attached to such shares;**
 - (h) if subscription for shares by nonmonetary contribution(s) is approved, the object of such in-kind contribution(s) and the amount of its (their) valuation, as stated in the report of an expert or**

experts, and the number, nominal value, form, type and class of shares to be issued for such nonmonetary (in-kind) contribution;

- (i) if subscription (underwriting) is permitted over and above the amount of the proposed increase of the registered (share) capital, a determination as to which company organ will decide on the final amount of such increase;
- (j) if a monetary (pecuniary) receivable from the company can be set off against (the company's) receivable for the issue price, the rules of procedure for conclusion of the contract on such set-off; should the issue price be exclusively settled by set-off, the details under letter (f) need not be stated.

(3) Should the resolution of the general meeting not contain the information under subsection (2)(d), these shares shall be offered for subscription on the basis of a public offer.

(4) Within 30 days of the general meeting's resolution to increase the registered capital, the board of directors shall file a petition (an application) for entry of such resolution in the Commercial Register. The share subscription (underwriting) may not commence prior to entry of the general meeting's resolution in the Commercial Register, except when such petition has already been filed and the share subscription depends on a condition subsequent in the form of a legally effective ruling dismissing the petition for such entry.

Commentary on section 203:

Increasing registered capital by a subscription for new shares effectively raises the amount of the company's registered (share) capital and its net worth. It can only take place if the issue price of previously subscribed shares is fully paid up, unless the increase is to be effected by only in-kind (nonmonetary) investment. The Commercial Code stipulates the requisites for the general meeting's resolution on increasing the registered capital. The company can start the new share subscription only after the resolution to increase the registered capital is entered in the Commercial Register. Such entry does not change the amount of the registered capital yet.

Section 204

(1) Unless stipulated otherwise, the provisions of sections 163(3), 163a, 164,165(1) and (2), 166,167,168(2) and (3), 176 and 177 shall apply to the procedure for increasing registered capital by subscription for shares.

(2) Where shares are subscribed to increase registered capital by monetary contributions, the subscriber shall, within the time-limit fixed by the general meeting, pay a part of their nominal value determined by the general meeting, but no less than 30% and, if appropriate, the full amount of the share premium, otherwise his subscription shall be ineffective [section 167(2)]. Monetary (pecuniary) investment contributions must be paid into a special bank account opened by the company in its name for this purpose. This shall not apply if a contract (agreement) on set-off was concluded. Such contract must be concluded prior to the filing of a petition for entry concerning the increasing of the registered capital in the Commercial Register. The bank may not allow the company to use paid-up contributions deposited in this account before the increasing of the registered capital is entered in the Commercial Register.

(3) Nonmonetary contributions may only be used to subscribe for shares when registered capital is increased if the company has an important interest in this form of subscription. If registered capital is to be increased by nonmonetary contributions, the board of directors must present a written report to the general meeting in which it gives reasons why the shares should be subscribed for by nonmonetary (in-kind) contributions and substantiate the proposed issue price of the shares (in relation to such in-kind contributions) or the method to be used in determining this. Only shares approved by the general meeting can be subscribed by nonmonetary contributions. Nonmonetary contributions must be provided prior to the filing of a petition requesting entry of the increase of registered capital in the Commercial Register. If the nonmonetary contribution is in the form of real estate (immovable property), the owner must deliver a written statement under section 60(1) to the company prior to the increased registered (share) capital being entered the Commercial Register. Such a contribution is regarded as settled when this statement is delivered and the real estate is handed over to the company. The provisions of section 59(2) and (3) are not thereby affected.

(4) Based on the shares issued in connection with increasing the company's registered capital, an entitlement to a dividend on a profit shall arise in the year in which the registered (share) capital is increased, unless the statutes provide otherwise.

(5) A predetermined interested party or a sole shareholder shall subscribe for the shares when a contract on such subscription is concluded with the company. This contract must be in writing and the signatures must be authenticated. It must contain all the particulars under section 205(3). The time-limit for share subscription must be at least fourteen days after delivery of the proposal (offer) to conclude such contract.

(6) If the increased amount of registered capital was entered in the Commercial Register, the subscriber shall

pay up the issue price of the shares subscribed by him even if such subscription was invalid or ineffective. This shall not apply if the resolution to increase registered capital using a procedure under section 183 is invalidated by a court ruling.

(7) If a petition for entry of an increase of registered capital in the Commercial Register is dismissed (by the registration court), the share subscription is ineffective.

Commentary on section 204:

The provisions regulating share subscription on the formation of a company apply, as appropriate, when the registered capital is subsequently increased by subscription.

Section 204a

(1) Each shareholder has a pre-emptive right to subscribe for a part of the company's new shares (a rights issue; stock rights), if these are intended to increase registered capital, in proportion to his portion of the existing registered capital, provided that such shares are to be subscribed by monetary contributions.

(2) The board of directors shall publish information on such pre-emptive right in the manner stipulated in the statutory provisions and in the statutes for convening a general meeting, and such information shall include:

- (a) the place and time-limit for exercising pre-emptive rights; such time-limit may not be less than two weeks, and the shareholders shall be informed of when it starts to run;
- (a) the number of new shares which may be subscribed in relation to one existing share of a specific nominal value, or what portion of one new share pertains to one existing share of a specific nominal value, with a note stipulating that only entire shares can be subscribed;
- (d) the nominal value, class, type, form and issue price of shares to be subscribed by those having pre-emptive rights, or the manner in which the price will be determined or authorization of the board of directors to determine it; the issue price or the manner of its determination must be identical for all shares subscribed by the exercise of a pre-emptive right, although it may differ from the issue price of shares subscribed (underwritten) in another way;
- (e) the decisive day for exercising the pre-emptive right, if the company issued uncertificated (book-entry) shares.

(3) A pre-emptive right attached to a share is separately transferable as of the day when the relevant resolution of the general meeting is entered in the Commercial Register under section 203(4). If the transferability of shares is restricted, such restriction shall also apply to the transfer of a pre-emptive right. Where subscription for a new share does not pertain to one existing share, a pre-emptive right shall always be freely transferable. A pre-emptive right under subsection (1) shall lapse on expiry of the time-limit set for its exercise.

(4) If the company issued uncertificated shares, the decisive day for exercising a pre-emptive right shall be the day when this right may be exercised for the first time.

(5) Shareholders' pre-emptive rights may not be restricted or eliminated in the statutes; a resolution of the general meeting to increase registered capital may only restrict or exclude pre-emptive rights if there is a serious reason to do so on the part of the company. Pre-emptive rights may only be restricted to the same extent for all shareholders. Pre-emptive rights may - only be excluded for all shareholders. If the general meeting has to decide whether or not to exclude or restrict the pre-emptive right of shareholders, the board of directors must present written report to the general meeting in which it gives reasons for excluding or restricting such right(s) and substantiates the proposed issue price, the method of its determination or **authorization of the board of directors to fix the issue price of (new) shares.**

(6) It shall not be deemed to be a restriction or exclusion of pre-emptive rights if, in accordance with the general meeting's resolution, all shares are underwritten by a brokerage house on the basis of a contract to arrange for the issue of securities, provided that the contract includes an undertaking by such brokerage house to sell shares, at their request, to persons who have a pre-emptive right to subscribe for shares within the extent of such persons' pre-emptive rights under subsection (1) and to do so for a fixed price within the set time-limit. The provisions of subsections (2) to (4) shall apply to the procedure for sale of shares by such brokerage house to these shareholders.

(7) A shareholder may waive his pre-emptive right to subscribe for shares even prior to the general meeting's resolution on increasing registered capital. The provisions of section 220b(5) shall apply as appropriate.

Commentary on section 204a:

Each shareholder has a pre-emptive right to subscribe for new shares issued by the joint stock company of which he is a shareholder, so that his proportion of the company's increased registered capital can be maintained (a rights issue). This right is separately transferable. A general meeting of shareholders may only restrict or exclude the pre-emptive rights of all the existing shareholders if there are important reasons for doing so.

Section 205

(1) On the basis of a general meeting resolution under section 203(2)(d), all the shareholders of a company may agree on the extent of their participation in a subscription for the purpose of increasing registered-capital in an amount determined by the general meeting.

(2) A shareholders' agreement under subsection (1) shall replace the list of subscribers and must be made in the form of a notarial deed.

(3) An agreement under subsection (1) must include a statement that the shareholders are waiving their pre-emptive rights to subscribe for shares and specification of the number, class, type, form and nominal value of the shares being subscribed for by each subscriber, their issue price and (he time-limit for payment. Should shares be subscribed by nonmonetary contributions, an agreement under subsection (1) shall also state the object of such contribution and the amount of its valuation, as determined by a court-appointed expert or experts [section 59(3)]. *Commentary on section 205:*

When all the shareholders agree that the entire amount or a part of the amount by which the registered capital is to be increased will be provided by them, the agreement must be in the form of a notarial deed and will replace the list of subscribers. This agreement can only be made after the general meeting passes a resolution to increase the registered capital. This procedure is more likely to be used by a joint stock company which has a relatively small number of shareholders.

Section 206

The board of directors shall file an application for entry of the new amount of registered capital in the Commercial Register after the company's shares have been subscribed in an amount corresponding to the proposed increase of registered capital, and at least 30% of their nominal value, including any share premium, has been paid, in the case of monetary contributions, or after providing payment of all nonmonetary contributions.

Commentary on section 206:

The board of directors have to apply for entry of the increased registered (sliare) capital into the Commercial Register after the legislative requirements stipulated for such an increase have been met. Shares (or interim certificates) can only be issued after entry of the increased registered capital in the Commercial Register.

Section 207

Conditional Increase of Registered Capital

(1) When the general meeting decides to issue convertible bonds or bonds with warrants attached, it shall concurrently decide to increase the company's registered capital in the extent to which rights of exchange (conversion) from convertible bonds or pre-emptive rights from bonds with warrants attached may be exercised (hereafter "a conditional increase of registered capital"; in Czech "podminene zvyseni zakladniho kapitalu").

(2) The amount of the conditional increase of registered capital may not exceed one-half of the registered capital entered in the Commercial Register on the day when the general meeting passes its resolution on the issue of bonds, as set out in subsection (1).

(3) A resolution of the general meeting on a conditional increase of the registered capital shall state:

- (a) the reasons for such conditional increase;
- (b) determination of whether the conditional increase of the registered capital is intended for the exercise of exchange rights or pre-emptive rights attached to bonds;
- (c) the scope of the conditional increase of registered capital, and the class, form, type, number and nominal value of shares which can be issued for the purpose of increasing the registered capital.

(4) Within 30 days of the day when the general meeting passes the said resolution, the board of directors shall file a petition for **entry** in the Commercial Register of the general meeting's resolution to conditionally increase the registered capital. The issue of convertible bonds and bonds with share warrants attached cannot start until the general meeting's resolution is entered in the Commercial Register and published.

(5) The right to exchange a bond for shares is exercised by delivering a written application to the company for such exchange. Delivery of such application replaces subscription and payment for shares. A pre-emptive right from a bond with a share warrant attached is exercised by subscription for the company's shares. The procedure relating to share subscription shall be subject to the provisions of section 204.

(6) After expiry of the time-limit for exercising exchange rights or pre-emptive rights, the board of directors shall, without undue delay, file a petition for entry in the Commercial Register of the new amount of registered capital; this amount shall reflect only the exchange and pre-emptive rights which have been exercised(7) The company shall issue shares in the amount of the exercised exchange and pre-emptive rights after the increased registered capital has been entered in the Commercial Register. The procedure for exchanging bonds for shares shall be subject to the provisions of sections 213a(2) and (3) and 214 as appropriate.

Commentary on section 207:

When a general meeting of shareholders passes a resolution to issue convertible bonds ("vymenitelne

dluhopisy") and/or bonds with share warrants attached ("priority bonds"; in Czech "prioritni dluhopisy"), it must also decide on a corresponding conditional increase of the registered capital, but this cannot be by more than 50% of the existing registered (share) capital.

The board of directors of the company must file a petition with the registration court for entry of the resolution on the conditional increase of registered capital in the Commercial Register and an application with the Ministry of Finance for a licence for the issue of bonds. Regarding the different rights carried by convertible bonds and bonds with warrants attached, the rights arising from them are also exercised differently. Within a specified time-limit, the holder of a convertible bond exercises his right by delivery to the company of his written application seeking exchange of the bond for shares; this replaces share subscription and payment for shares, and the company reduces its debt by the amount of the bond. The holder of a bond with share warrant attached exercises his right by subscribing for shares; he must pay for the share subscribed but retains his bond, which entitles him to yields from the bond and its future repayment by the company. After expiry of the period specified for exercising rights from convertible bonds and/or from bonds with share warrants attached, the board of directors will file a petition with the registration court for entry of the new amount of the registered capital in the Commercial Register. Shares can only be issued after the entry has been made.'

Increasing Registered Capital from Equity

Section 208

- (1) After approving ordinary, extraordinary or interim financial statements, the general meeting may decide to use a net profit, or part of it after allotting the relevant amount to the reserve fund under section 217, or to use some other own resources shown in financial statements as equity capital, for increasing the registered capital. A net profit shown in interim financial statements may not be used for increasing the registered capital.**
- (2) The company may not increase its registered capital from own resources (equity) if the condition (requirement) under section 178(2) is not met.**
- (3) Reserve funds created for other purposes and equity capital intended for a particular purpose which the company is not allowed to change may not be used to increase the registered capital.**
- (4) An increase in registered capital cannot exceed the difference between the amount of equity capital and the sum of registered capital and reserve funds under subsection (2).**
- (5) A prerequisite for an increasing registered capital is the availability of financial statements under subsection (1), audited without reservations and compiled on the basis of data established no later than a day which preceded the day of the general meeting's resolution on increasing the company's registered capital by not more than six months. However, if the company ascertained from any interim financial statements that its equity capital had fallen, it cannot use the data from ordinary or extraordinary financial statements but must take into consideration such interim financial statements.**
- (6) A resolution of the general meeting to increase the company's registered capital from equity capital shall state:**
 - (a) the amount by which the registered capital will be increased;**
 - (b) the designation of own resource or resources (equity) from which the registered capital is to be increased, detailed according to the breakdown of equity capital shown in the company's financial statements;**
 - (c) determination of whether the nominal value of shares will be increased and the amount of such increase, or whether new shares will be issued, together with their number and nominal value;**
 - (d) the time-limit within which certificated shares are to be presented, if the company issued certificated shares, and the registered capital is to be increased by raising the nominal value of shares. The time-limit for presenting certificated shares may not start to run before the day when the increase of registered capital is entered into the Commercial Register.**
- (7) Shareholders participate in the increase of registered capital in proportion to the nominal value of their shares. The increase in registered capital also applies to own shares of the company which is increasing its registered capital, as well as to shares of such company owned by a person controlled by the company or a person controlled by such controlled person.**

Commentary on section 208:

When a joint stock company increases its registered capital from equity capital, its business property and its net worth do not change. A resolution of the general meeting to increase the registered capital from equity capital must include the requisites under subsection (6). Shareholders participate in the increase of registered capital pro rata to the nominal value of their shares.

Section 209

(1) An increase in registered capital is either effected by the issue of new shares, and their free distribution among shareholders in proportion to the nominal value of their (existing) shares, or by raising the nominal value of existing shares.

(2) The nominal value of existing shares will be increased either by an exchange of these shares or by noting a higher nominal value on the existing shares, along with the signature of a member or members of the board of directors authorized to sign in the name of the company. In the manner determined by the law and the statutes for convening a general meeting, the board of directors shall invite the shareholders who had certificated shares to present them within the time-limit set in the general meeting's resolution in order either to exchange them or to note on them the increased nominal value. Should a shareholder not present his shares within the specified time-limit, he is not entitled to exercise the rights attached to such shares until their presentment, and the board of directors shall proceed in accordance with section 214.

(3) The nominal value of the company's uncertificated shares will be increased on the basis of a company instruction by changing the entry relating to their nominal value in the legally defined register of uncertificated securities. An extract (excerpt, statement) from the Commercial Register confirming entry of the increased amount of the registered capital must be enclosed with the company's instruction.

(4) If new certificated shares are to be issued in connection with an increase of registered capital, the board of directors shall invite the shareholders in the manner stipulated by law and the statutes for convening a general meeting, without undue delay after the increased registered capital is recorded in the Commercial Register, to come and take over the company's new shares. Should a shareholder not take over the new shares within the time-limit under letter (c), his right to such shares becomes statute-barred. This shall not affect the right to payment (performance) under section 214(4). An invitation to the shareholders must state at least:

- (a) the amount by which the registered capital was increased;
- (c) the ratio in which the shares are to be distributed among shareholders;
- (d) a warning that the company is entitled to sell the new shares, should the shareholder not come and take them over within one year of the day when such invitation was published.

(5) If the time-limit under subsection (4)(c) expired in vain, the board of directors shall proceed according to section 214(4) as appropriate.

(6) If new shares are to be issued in uncertificated form, the board of directors shall instruct the person who keeps the register (registry) of uncertificated securities about the new issue of shares, and such instruction (order) shall be given without undue delay after the increased registered capital is entered in the Commercial Register.

Commentary on section 209:

After the new amount of the registered capital which was increased from equity is entered in the Commercial Register, the company may either issue new shares and distribute them among shareholders in proportion to the nominal value of their shares or increase the nominal value of the existing shares. In the case of uncertificated shares, their nominal value will be increased on the basis of an instruction (order) given to the Securities Centre ("Stredisko cennych papfru") by the company.

Section 209a

Integrated Increase of Registered Capital

(1) If registered capital is increased by a company whose shares are listed and whose price on a public market is below the nominal value of the shares at the time when the general meeting decides to increase the registered capital, or if the registered capital is increased by employees subscribing for shares, acting in accordance with the statutes, the general meeting may decide that a part of the issue price of the shares being subscribed will be covered from the own resources shown in the financial statements as equity capital. This shall not affect the provisions of section 158(2). In such case, it shall be impermissible to increase the registered capital by nonmonetary contributions, or to exclude or restrict the shareholders' pre-emptive rights.

(2) The general meeting's resolution shall state:

- (a) the amount by which the registered capital is to be increased;
- (b) the number and nominal value, class, type and form of the shares to be subscribed;
- (c) the data under section 204a(2) or, if shares are to be underwritten by a brokerage house under section 204a(6), the place where, and the time-limit within which, an entitled person may exercise his right, as determined in the resolution, and the price for which he may buy the share or the method of determining such price;
- (d) determination of whether all (the remaining) shares, or a part of such, not subscribed by the exercise of a pre-emptive right will be subscribed by shareholders on the basis of an agreement under section 205, or whether they will be offered to a particular interested party or parties, along with the names

of such party or parties or the manner of selecting such or whether they will be offered for subscription based on a public call (offer) for subscription;

- (e) the place and time-limit fixed for subscription for shares without use of a pre-emptive right, and details of when such time-limit begins to run, and the issue price of such shares or the method of its determination; the issue price or the method of its determination must be identical for all subscribers, unless the law provides otherwise;
- (f) the bank account into which, and the time-limit within which, the subscriber must pay a part of the issue price of the subscribed shares;
- (g) if the issue of shares of a new class is approved, determination of the rights attached to such shares;
- (h) if share subscription is permitted over and above the amount of the proposed increase of registered capital, determination of which company organ shall decide on the final amount of such increase;
- (i) what part of the issue price of the share is not subject to payment by the subscriber;
- (j) specification of which part of the company's own resources shown as equity capital in the financial statements will settle the part of the issue price which is not subject to payment by the subscriber.

(3) Within the time-limit fixed in the general meeting's resolution prior to entry of the increased amount of the registered capital in the Commercial Register, each subscriber must pay up no less than 50% of that part of the share issue price which will be borne by the subscriber, unless the statutes or the general meeting's resolution require a higher part payment.

(4) The board of directors of the joint stock company may only file a petition for the new amount of registered capital to be entered in the Commercial Register if the issue price of the subscribed shares was paid up as stipulated in subsection (3).

(5) An integrated increase of registered capital shall otherwise be subject, as appropriate, to the provisions of sections 203(1), (3) and (4), 204(1) and (4), (6) and (7), 204a(1) to (4) and (6), 205, **206** and 208(1) to (5).

Commentary on section 209a:

Under this section, a company's employees may subscribe for the company's shares in such a way that a part of their issue price is settled from the company's equity capital, provided that the general meeting passes a resolution to that effect, in compliance with the statutes. It should be noted that, under the amended wording of the Commercial Code, employee shares are no longer recognized as a separate class of shares,

Section 210

Integrated Increase of Registered Capital by Decision of the Board of Directors

(1) Under the conditions stipulated by this Code and the statutes, the general meeting may authorize the board of directors to decide that the registered capital should be increased by means of a share subscription or from the company's equity (with the exception of retained profit), but by no more than one-third of the amount of the registered capital at the time when the board of directors takes such decision (hereafter only "an authorization to increase the registered capital"; in Czech "povefeni zvyisit zakladnf jmeni"). Such authorization of the board of directors to increase the registered capital replaces the general meeting's resolution on increasing the registered capital. Acting within the framework of such authorization, the board of directors may increase the registered capital even more than once provided that the total amount of such increase does not exceed the fixed limit. If the board of directors is authorized to take a decision to increase the registered capital by means of nonmonetary contributions, such authorization must determine which company organ shall decide on the valuation of a nonmonetary contribution on the basis of a report by an expert or experts, such expert or experts having been appointed under section 59(3).

(2) A notarial deed shall be made of the board of directors' decision to increase the registered capital. Its decision (resolution) shall be

entered in the Commercial Register, whereas an authorization to increase the registered capital shall not be recorded in the Commercial Register. The procedure for increasing the registered capital under subsection (1) shall be subject to the provisions of sections 203 to 209 as appropriate.

(3) An authorization to increase registered capital may be conferred for a period of up to five years after the day when the general meeting's resolution authorizing an increase of the registered capital was adopted.

(4) If the statutes so provide, the general meeting may authorize the board of directors to increase the registered capital by means of subscription for shares by employees of the company, particularly after the adoption of a resolution on distribution of a profit, it may decide that the employees' proportion of the company's profit may only be used for part payment of such shares. The details shall be stipulated in the statutes. The provisions of subsections (1) to (3) shall similarly apply.

Commentary on section 210:

A resolution of the general meeting may authorize the board of directors to decide to increase the company's registered capital by up to one-third of its amount. Such an authorization may be conferred on the board of directors for a maximum of five years.

Subdivision 6

Reduction of the Registered Capital

Section 211

(1) Reduction of a company's registered capital is decided by the general meeting. The resolution of the general meeting must state at least:

- (a) the reason for reducing the registered capital and the method of using the amount of such reduction;
- (b) the amount by which the registered capital is to be reduced;
- (c) the manner in which such reduction of the registered capital will be effected;
- (d) if the registered capital is to be reduced by shares being withdrawn from the market (circulation), the rules governing such withdrawal and the amount to be paid for the withdrawn shares or the manner of determining it;
- (e) if the registered capital is to be reduced on the basis of a proposal (offer) made to shareholders, information as to whether it is to be a proposal for the withdrawal of shares for or without a consideration (payment), and if there is to be payment for the withdrawn shares, the amount of such payment or the rules for determining such amount;
- (f) if in connection with the reducing the registered capital certificated shares or interim shares are to be presented to the company, the time-limit for their presentation.

(2) Registered capital may not be reduced below the amount stipulated in section 162(3).

(3) The reduction of the registered capital may not impair the creditors' ability to recover their receivables (from the company).

(4) The resolution of the general meeting to reduce the company's registered capital shall be entered in the Commercial Register. The petition for such entry shall be filed by the board of directors within 30 days of the general meeting's resolution.

Commentary on section 211:

A resolution to reduce registered capital must be passed by a two-thirds' majority vote of the attending shareholders. The resolution must contain the requisites stipulated in subsection (1). The registered capital cannot be reduced below the amount stipulated in section 162(3). The company may commence implementation of the general meeting's resolution only after its entry in the Commercial Register.[^]

Section 212

The invitation to, or notice of, a general meeting shall also include, **in addition to the particulars under section 184(5)**, at least the information under section 211(1).

Commentary on section 212:

The wording of section 212 was amended so that it complies with section 184(5).

Section 213

(1) If a company is bound to reduce its registered capital, it shall use own shares and interim certificates for such reduction if it has them in ownership. Where there are other reasons for reducing the registered capital, the company shall make particular use of its own shares and interim certificates. Only if this procedure proves insufficient in reducing the registered capital to the extent determined by the general meeting, or if such procedure did not meet its purpose, can another procedure for reducing the registered capital be employed. Should the registered capital be reduced by employing only shares and interim certificates owned by the company, the provisions on separate voting by individual classes of shares shall not apply.

(2) The company shall use own shares or interim certificates to reduce its registered capital by destroying them if they were issued in certificated form, or by instructing the entity keeping the registry of uncertificated securities to cancel the appropriate shares issued in uncertificated form.

(3) If the company does not have own shares and interim certificates in its ownership, or if the use of own shares or interim certificates under subsection (1) is insufficient to reduce the registered capital, the company shall effect such reduction by reducing the nominal value of its shares and, if appropriate, also the nominal value of as yet not fully-paid shares for which the company issued interim certificates (section 213a),

or by withdrawing shares from the market (circulation), or by desisting the issue-of-the as-yet not fully-paid shares for which the company issued interim certificates (section 213d).

(4) Shares will be withdrawn from circulation (the market) by lot (section 213b) or by making an offer to shareholders (section 213c), Shares may only be withdrawn from circulation by lot if the statutes of the company at the time when such shares were subscribed permitted the reduction of registered capital by lot. Detailed rules for the withdrawal of shares from circulation (the market) shall be determined in the statutes and by the general meeting in its resolution to reduce the registered capital.

Commentary on section 213:

The provisions of section 213 stipulate the fundamental rules for reducing the registered capital of a joint stock company by withdrawing shares and interim certificates owned by the company, by decreasing the nominal value of shares and interim certificates, by withdrawing some of the shareholders' shares or by not issuing partly-paid shares in respect of which interim certificates were issued. The general meeting's resolution must conform to the statutes when the company's registered capital is reduced.

Section 213a

Reduction of the Nominal Value of Shares and Interim Certificates

(1) In the case of a reduction of the nominal value of shares, the nominal value of all the shares of the company concerned will be reduced, **except when the purpose of reducing the registered capital is to waive the obligation to settle the unpaid portion of the issue price of shares,**

(2) The nominal value of certificated shares or as yet not fully-paid up shares for which interim certificates were issued shall be reduced by an exchange of shares or interim certificates for shares or certificates with a lower nominal value, or by noting a lower nominal value on the existing shares or interim certificates, along with the signature(s) of the board member(s) authorized to act in the name of the company. In the manner prescribed for convening a general meeting by the law and the statutes, "the board of directors shall invite shareholders who own certificated shares or interim certificates to present them, within a time-limit fixed by the general meeting, for the purpose of their exchange or inscription with the reduced nominal value. If a shareholder fails to present his shares or interim certificates within (he fixed time-limit, he is not entitled to exercise the rights attached to such shares or interim certificates until they are presented, and the board of directors shall proceed in accordance with section 214.

(3) The nominal value of uncertificated shares shall be reduced by modifying the nominal value of such shares on the basis of a company instruction to the legally prescribed registry of uncertificated securities. The company must enclose with its instruction (order) an extract from the Commercial Register documenting entry of the reduced registered capital.

Commentary on section 213a:

A reduction of registered capital by reducing the nominal value of all of the company's shares is the method preferred by the Commercial Code. It may be used without being specified in the company's statutes; other methods of reducing registered capital can only be applied if the statutes so stipulate and the general meeting so decides.

Section 213b

Withdrawal of Shares from the Market by Drawing

(1) Drawing lots in order to reduce a company's registered capital may only be employed if this is allowed for in its statutes. A general meeting's resolution to withdraw shares by lot (a draw) must be published.

(2) If the company issued uncertificated shares, it must instruct the person keeping their registry to allocate numbers to such shares, and at the same time the company must request an extract from the registry containing the allocated numbers. While such numbers are being allocated to the shares, the right to dispose of the shares shall be suspended in accordance with another Act. The uncertificated share draw must take place no later than ten days after the day when the instruction to allocate numbers to the shares was given.

(3) The course and results, of, the draw of numbers allocated to the shares, together with the numbers of the shares drawn, must be certified by a notarial deed. The board of directors shall publish the results in the manner stipulated by the law and the statutes for convening a general meeting. Such notice shall state at least:

- (a) the numbers of the drawn shares;
- (b) the time-limit within which the company shall make payment for such shares, which may not take place before entry of the reduced registered capital in the Commercial Register and later than three months after such entry in the Commercial Register, unless another arrangement was agreed with the shareholder concerned;
- (c) the amount to be paid for the drawn shares.

(4) If the company issued certificated or uncertificated shares registered in name, the notice under subsection (3) must also contain data identifying the shareholder whose shares were drawn. If the company issued certificated

shares, the notice under subsection (3) must also include (he time-limit within which the drawn shares must be presented to the company; the shareholders shall present the drawn shares to the company within the fixed time-limit. Should a shareholder fail to present his drawn share(s) to the company within the fixed time-limit, he is not entitled to exercise rights attached to such share(s) until they are presented, and the board of directors shall proceed under section 214.

(5) The company shall pay for each drawn share at least the amount determined according to the rules stated in section 186a(4).

(6) If the company issued uncertificated shares, the board of directors shall notify the entity keeping the registry of uncertificated securities of the results of the draw, and at the same time instruct this entity to cancel the numbering of shares which were not drawn. A notarial deed confirming the results of the draw must be enclosed with such instruction. After entry of the reduced registered capital in the Commercial Register, the company shall instruct the person keeping the registry of uncertificated securities to cancel the drawn shares. An extract from the Commercial Register confirming entry of the new amount of the registered capital must be enclosed with such order.

Commentary on section 213b:

A company may only withdraw shares from the market (i.e. from circulation) by organizing a draw of such shares in order to reduce its registered capital if this is permitted by its statutes and a resolution passed by the general meeting on this matter has been published. The drawing of the numbers allocated to these shares must be certified by a notarial deed. The company is to pay for shares withdrawn in this way in accordance with section 186a(4).

Section 213c

Withdrawal of Shares from the Market on the Basis of a Public Offer

(1) If shares are withdrawn from the market on the basis of a public offer (to purchase shares), the general meeting's resolution may determine that the registered capital will be reduced:

- (a) to the extent of the nominal value of the shares withdrawn from the market; or**
- (b) by a fixed amount.**

(2) Shares may be withdrawn from the market on the basis of a public offer for the purchase of shares or for the withdrawal of shares from the market without a consideration.

(3) A public offer (for the purchase of shares) under subsection (2) shall be subject, as appropriate, to the provisions of sections 183a to 183c and 183e to 183g.

(4) The purchase price shall be payable no later than three months after entry of the amount of the reduced registered capital in the Commercial Register. The time-limit for paying the purchase price and for presenting certificated shares to the company may not precede the day when the reduced amount of the registered capital is entered in the Commercial Register. Should a shareholder fail to present his certificated shares to the company within the fixed time-limit, he shall not be entitled to exercise rights attached to such shares until they are presented, and the board of directors shall proceed in accordance with section 214.

(5) If the company issued uncertificated shares, it is authorized to instruct the entity keeping the registry of uncertificated securities to suspend the right to dispose of shares for which an offer under subsection (1) was accepted. Without undue delay after entry, of the reduced amount of the registered capital in the Commercial Register, the board of directors shall instruct such entity to cancel the shares which the company purchased on the basis of the public offer to conclude a contract for their purchase. The company shall enclose with its instruction (order) an extract from the Commercial Register confirming entry of the new amount of the registered capital and a document confirming acceptance under subsection (1).

(6) If registered capital is reduced under subsection (1)(a), the general meeting's resolution must include an authorization for the board of directors to file a petition for entry of the registered capital in the Commercial Register in the amount resulting from the shareholders' acceptance of the public offer to purchase shares.

(7) If the sum of the nominal values of shares being withdrawn from the market under subsection (1)(b) does not reach the fixed amount by which the registered capital is to be reduced, and the general meeting did not decide on any modification of the procedure under subsection (1)(a), the registered capital cannot be reduced in such manner. The general meeting may, however, decide that in such case the registered capital is to be reduced in another manner permitted by this Code.

(8) If the sum of the nominal values of shares being withdrawn from the market under subsection (1)(b) exceeds the fixed amount, the company shall proceed in accordance with section 183a(6)(b).

Commentary on section 213c:

A joint stock company may reduce its registered capital by decreasing the number of its shares. In this case, it may purchase shares on the basis of a public offer for the purchase of shares or for gratuitous withdrawal of

such shares.

Section 213d

Desistance from the Issue of Shares

(1) The general meeting may decide to reduce the company's registered capital by desisting from the issue of shares to the extent in which the subscribers are in default on their part payment of the nominal value of shares, unless the company proceeds under section 177(4) to (7).

(2) Desistance from the issue of not yet fully-paid up shares shall be effected as follows: the board of directors shall invite the shareholder who is in default on payment of the issue price of shares, or a part of such, to return his interim certificate within a time-limit fixed by the general meeting. The company shall not issue the shares represented by such interim certificate to the shareholder and, without undue delay

after the reduced registered capital is entered in the Commercial Register, it shall refund to the subscriber the paid part of the issue price, after deducting the company's claims against the subscriber. If the shareholder fails to present his interim certificate within the **fixed** time-limit, he is not entitled to exercise the rights attached to it until it is presented, and the board of directors shall proceed in accordance with section 214.

Commentary on section 213d:

The registered capital of a joint stock company may be reduced by withdrawing interim certificates from those of the company's subscribers who are in default with part payment of the issue price of shares. On the basis of a resolution of the general meeting, such interim certificates may be withdrawn (without shares being issued in exchange). After entry of the reduced amount of registered capital in the Commercial Register, the company will refund to each such subscriber the paid-up part of the issue price, reduced by the company's claims against the subscriber.

Section 214

(1) If shareholders default on presenting certificated shares or interim certificates withdrawn by the company from the market for the purpose of their exchange, inscription of the new nominal value or their destruction, the board of directors shall invite these shareholders, in the manner set by the law or the statutes for convening a general meeting, to present the shares or interim certificates within an appropriate additional time-limit fixed by it, and warn the shareholders that otherwise their unrepresented or unreturned shares or interim certificates shall be declared void or uncollected certificated shares sold, concurrently publishing this decision.

(2) The board of directors shall invalidate certificated shares or interim certificates which were not presented, despite the warning, within the additional time-limit.

(3) The board of directors shall notify shareholders whose shares and interim certificates are being invalidated (hereafter only "the persons concerned") of such invalidation. The persons concerned will be informed of the invalidation in the manner prescribed by the law and the statutes for convening a general meeting. A declaration on the invalidation of shares or interim certificates shall be published by the board of directors without undue delay.

(4) New shares or interim certificates to be issued in lieu of the invalidated shares, interim certificates **or certificated shares not taken over on a change from uncertificated to certificated form by the shareholder, even within an adequate additional time-limit** shall be sold through a brokerage house (authorized by the board of directors), without undue delay and at the expense of the person concerned, on a public market, if such shares **are listed**, or at a public auction. The place, time and subject of the auction shall be published by the board of directors at least two weeks in advance. Within the same time-limit, it shall despatch a message to the person concerned, if such person is known to the company, notifying him of the public auction or the intention to sell the shares on a public market. Proceeds from the sale of shares or interim certificates, after deduction of the company's claims against the person concerned arising from the invalidation and sale, shall be paid to the person concerned or placed in official custody.

(5) When no new shares or interim certificates are to be issued in lieu of those being invalidated and withdrawn from the market, the invalidation of such shares or interim certificates **will** not affect the right of (he person concerned to be paid the issue price or a part of such. The company may deduct its claims against the person concerned in respect of such invalidation and, without undue delay after declaring his shares and interim certificates void, pay to (he person concerned only the amount remaining from the proceeds of the sale after such deduction, or else place the amount in official custody.

(7) After the reduction of the registered capital is entered in the Commercial Register, the company is bound to destroy the certificated shares and interim certificates which were returned.

Commentary on section 214:

After entry of the new amount of registered capital into the Commercial Register, shareholders who are in delay

with the presenting of their certificated shares or interim certificates are required to present them in an additional specified time. Should they not do so, their shares and interim certificates are declared void, and they are notified of this. Subsequently they are reimbursed at the issue price of their invalidated shares or paid-up parts of interim certificates, but only after the company's expenses have first been deducted. When new shares or interim certificates are to be issued in lieu of invalidated shares or interim certificates, the company sells them through a brokerage house on a public market or at an auction. This does not apply to shares and interim certificates invalidated for the purpose of reducing registered capital according to section 213b.

Section 215

(1) Within 30 days of the effective date of the general meeting's resolution on reducing the registered capital towards third parties, the board of directors shall in writing notify all known creditors whose receivables from the company arose before such effective date of the extent of the reduction in registered capital, inviting them to file their claims (receivables) on accordance with subsection (3).

(2) After the general meeting's resolution on reduction of the registered capital is entered in the Commercial Register, the board of directors shall publish this resolution on no fewer than two occasions at least 30 days apart, inviting the creditors to file their claims (receivables) under subsection (3).

(3) The resolution of the general meeting on reduction of the registered capital must also be published after its entry in the Commercial Register on no fewer than two occasions at least 30 days apart.

(4) The company's creditors under subsection (1) may require that, within 90 days of the day on which they received the notice, and in other instances within 90 days of the second publication of the invitation under subsection (2); their unsettled claims (receivables), which had not matured at the time the said notice was delivered to them or at the time of second publication of such notice, be adequately secured.

(5) If the company and its creditors fail to come to an agreement on securing of the creditors' claims (receivables), a court will rule on this matter, taking into account the kind and amount of the claim (receivable).

Commentary on section 215:

The board of directors of a joint stock company reducing its registered capital must notify the company's known creditors accordingly in writing; unknown creditors (if any) are notified of the reduction in two notices in the press. The company's creditors are entitled to require from the company that their claims (against it) are sufficiently secured within 90 days of being notified or the second notice of the proposed registered capital reduction.

Section 216

(1) After 90 days have passed from delivery of the notice announcing the resolution to reduce the registered capital under section 215(1), or from last publication of the notice on the resolution under section 215(2), the board of directors may file a petition for entry of the reduced amount of the registered capital in the Commercial Register. The registration court shall make the entry if there is documentary evidence that such resolution was announced under the provisions of section 215(1) and (2) and that the claims of the creditors were either secured or satisfied.

(2) The time-limit under subsection (1) need not be complied with if the company makes an agreement with its creditors to secure or satisfy their claims prior to the expiry of such. The conclusion of such agreement must be proved by the company when filing the petition.

(3) The reduction of the registered capital is effective as of the day of its entry in the Commercial Register.

(4) Prior to entry of the reduction on the registered capital in Commercial Register and the satisfaction or securing of the creditors's claims (receivables) under section 215(2) or the decision under section 215(4), the company may not make payments to its shareholders on the ground of reduction of the registered capital or, on the same ground, waive or reduce their obligation to pay their as yet unpaid portions of the nominal value of shares.

Commentary on section 216:

90 days after notifying the company's known creditors or after publishing the second notice on the proposed registered capital reduction, or earlier if so agreed with creditors, the board of directors files an application for reduction of the company's registered capital. This must be supported by documents showing that the creditors's claims against the company have either been satisfied or sufficiently secured. Reduction of the registered capital becomes legally effective as of the date of its entry in the Commercial Register.

Section 216a

(1) The provisions of sections 215(1), (3) and (4) and 216(1) and (2) shall not apply if the company is reducing its registered capital:

- (a) in order to settle a loss;
- (b) in order to transfer an amount (not exceeding 10% of the registered capital) to the reserve fund for settlement of a future loss.

(2) Compliance with the requirements under subsection (1) must be proved by the company to the registration court when the petition for the relevant entry in the Commercial Register is filed.

(3) A reserve fund created to an extent under subsection (1)(b) may be used to settle a loss or increase registered capital, if such fund exceeds the amount in which it is mandatorily created under section 217. Calculation of any excess does not take into account a reserve fund created under sections 161d and 161f.

(4) No payment may be made to shareholders in connection with a reduction of the registered capital under subsection (1). If any payment was made to shareholders, they are bound to return (refund) it. The members of the board of directors shall be liable for discharge of this obligation jointly and severally.

Commentary on section 216a:

A reduction of registered capital under subsection (1) is known to as "a simplified reduction of registered capital".

Section 216b

(1) Resolution to increase and reduce registered capital may only both be adopted at the same general meeting the registered capital is to be reduced in accordance with the prerequisites specified in section 213d or section 216a(1).

(2) When proceeding under subsection (1), the company may only undertake acts in law directed at increasing the registered capital after reduction of the registered capital has first been entered in the Commercial Register.

Commentary on section 216b:

Section 216b allows the general meeting of shareholders to first pass a resolution to reduce the registered capital and subsequently to pass another resolution to increase it (e.g. from equity), or to conditionally increase the registered capital (by issuing convertible bonds or bonds with share warrants).

Subdivision 7

Reserve Fund and Share Warrants

Section 217

(1) The company shall create a reserve fund at a time and in an amount determined by its statutes and this Code.

(2) The company shall create the reserve fund from a net profit shown in the ordinary financial statements for the year in which it first makes a net profit. It shall transfer to such fund at least 20 % of the net profit, but no more than 10% of the amount of its registered capital. This fund shall be augmented annually by an amount specified on the statutes, but by no less than 5% of net profit, until the amount, of the reserve, fund, fixed in the statute is reached, this being equal to at least 20 % of the registered capital. This shall not apply if the reserve fund is created from amounts paid in excess of the issue price of shares. A fund created in this way can be used to settle a loss of up to 20% of the amount of the registered capital.

(3) Unless the statutes or this Code provide otherwise, it is the board of directors which shall decide on use of the reserve fund.

Commentary on section 217:

The general provisions on reserve funds are contained in section 67 whereas section 217 regulates the creation of the mandatory reserve fund of a joint stock company. In addition to this, a joint stock company may create a voluntary reserve fund in cases stipulated by the law and the statutes.

The rules for creating the mandatory and voluntary reserve funds are to be included in the statutes which must conform to the law.

Section 217a

Share Warrants

(1) A joint stock company may issue securities known as "share warrants" (in Czech "opční listy") for exercise of a pre-emptive right under sections 160(1) and (6) and 204a.

(2) Warrants under subsection (1) may only be issued as securities to bearer. A share warrant may be issued as a certificated or uncertificated security.

(3) A share warrant must state:

- (a) the company's commercial name and seat;
- (b) the number of shares, their class, type and form, or the number of the company's convertible bonds or

bonds **with** share warrants attached and the form, type and nominal value in which they may be acquired;

- (c) the place and time for exercising pre-emptive right;
- (d) the issue price of shares or bonds based on **which** pre-emptive rights may be exercised, or the manner of its determination;
- (e) the fact that it is made out to bearer.

(4) A share warrant issued in certificated form must also include "the date of issue the signature(s) of the board member(s) authorized to act in the name of the company, and the identification number of the share or bond in respect of which it was issued.

(5) If the company issued share warrants in uncertificated form, the decisive day (section 156b) for exercising the pre-emptive right is the day when such right can be exercised for the first time.

(6) If the company issued share warrants in uncertificated form, it shall instruct the entity keeping the registry of uncertificated securities to issue the securities, if the pre-emptive right was exercised in time and without undue delay, after compliance with the conditions for issue of these securities have been complied with; and at the same time it shall give instructions for cancellation of those share warrants on the basis of which such pre-emptive right was exercised. After expiry of the time-limit fixed for exercising pre-emptive rights, the company shall order cancellation of the share warrants on the basis of which no pre-emptive right was claimed.

Commentary on section 217a:

"Opcni listy" are translated in this publication as "share warrants". Share warrants are issued as securities to bearer in either certificated or uncertificated (paperless) form. The requisites of share warrants are stipulated in subsections (3) and (4).

Subdivision 8

Winding-Up and Liquidation of a Company

Section 218

Unless this Code provides otherwise, the provisions of section 68 to 75 b shall apply to the winding-up and dissolution of a company.

Commentary on section 218:

The winding-up and dissolution of a joint stock company are regulated in the detailed and specific provisions on joint stock companies. The general provisions of sections 68 to 75b shall apply, unless specific provisions stipulate otherwise.

Section-219

(1) A liquidator shall be appointed and recalled by the general meeting, unless the law stipulates otherwise.

(2) Unless the statutes provide otherwise, shareholders under section 181(1) may file a petition with the competent court to recall the liquidator appointed by the general meeting and appoint another liquidator to replace him of these shareholders state the grounds for such petition. This shall not affect the provisions of section 71(4),

(3) A liquidator who has not been appointed by the court may be recalled by the general meeting and replaced by another liquidator.

Commentary on section 219:

Subsection (1) is amended to conform to the provisions of section 187(1) and admits the appointment and recall of a liquidator under sections 70 to 75b.

Section 220

(1) A liquidation remainder shall be distributed among shareholders in proportion (pro rata) to the nominal values of their shares. The provisions of section 159(1) shall thereby be unaffected. A right to a liquidation share (i.e. portion of the liquidation remainder) is separately transferable as of the day as of which the proposed plan for distributing the liquidation remainder is approved.

(2) If the liquidation remainder is not sufficient to settle the nominal value of the shares, it shall be divided into a part allocated to holders of preference shares and to the holders of other shares in the extent determined by the statutes. Such part shall then be divided among the shareholders in proportion to the paid-up parts of the nominal value of their shares.

(3) An entitlement to payment of a portion of the liquidation remainder (i.e. a liquidation share) arises to the shareholder **when** he returns his certificated shares to the company after being invited by the liquidator to do so. The liquidator shall destroy the returned shares. Should the shareholder fail to return the certificated shares, even though he was invited to do so, the liquidator shall proceed according to section 214.

(4) If the company issued uncertificated shares, an entitlement to " payment of a liquidation share arises as of

the day when, by order of the liquidator, the company's shares were cancelled in the registry of uncertificated securities.

(5) The registration court shall delete the company from the Commercial Register only when it is documented that all shares of the company have been destroyed, invalidated or cancelled.

Commentary on section 220:

The amended wording of subsection (j) conforms to the amended provisions on liquidation (sections 70 to 75b).

Subdivision 9

Mergers of Joint Stock Companies Mergers by Acquisition

Section 220a

Mergers Contracts

(1) Conclusion of a merger contract (or a merger agreement; in Czech "smlouva o fiizi") by all the participating companies is required for a merger by acquisition. A merger contract must be in the form of a notarial deed. The draft terms of a merger contract, containing all the particulars under subsection (3), must be approved by all the participating companies's general meetings, except when the law does not require such approval.

(2) Where the draft terms of a merger contract are not approved under subsection (1), the merger contract shall be void. Should a state authority's approval be required for a merger by acquisition under other statutory provisions, such contract cannot take effect before the state authority's ruling approving such merger becomes legally operative. Should approval by two or more state authorities be required for a merger, the merger contract cannot take effect before approval the merger by the last state authority becomes legally operative. When a state authority's ruling rejecting a proposed merger takes legal effect, the merger contract is cancelled.

(3) A merger contract must contain the following:

- (a) the participating companies commercial names, seats, identification numbers and legal forms;
- (b) the share exchange ratios, stating their form, class, type, transferability, nominal value and any information on listed shares determined for exchange for shares of a merging company or companies, including detailed procedural rules and fixed time-limits for their exchange, and any settlement to shareholders of merging company or companies, with detailed terms for their payment, or the information that shares will not be exchanged and the reason for this [section 220g(1) to (3)];
- (c) information about how the shares of the successor company required for exchange will be obtained;
- (d) the day as of which the right to a dividend from exchanged shares will arise, along with all the relating prerequisites;
- (e) information about the impact of such merger on the shares of the successor company's existing shareholders, in particular the fact that their shares will not be subject to exchange or splitting or that their nominal value will be increased or reduced, or that their form, class or type will be changed, including the procedural rules and time-limits fixed for any such exchange and, if relevant, information on the supplementary settlement amount due to the successor company's existing shareholders, together with the terms of payment;
- (f) determination of the kind of structure under which the successor company will be taking over elements of equity and other capital of the merging company (companies);
- (g) the day as of which any transaction involving the merging company or companies shall be regarded for accounting purposes as a transaction effected on the successor company's account (hereafter "the decisive day of the merger"; in Czech "rozhodny den fuze");
- (h) the rights which the successor company will accord to the holders of individual classes of shares, share warrants, bonds or other securities, or any measures proposed in relation to them [section 220j(3) and (4)];
- (i) procedural rules if the right to sell the successor company's shares arises to a participating company's shareholders;
- (j) proposed modifications of the statutes after the merger, if these are to be amended.

(4) Where the successor company is the sole shareholder of the merging company, the merger contract shall not include the information under subsection (3)(b) to (d) and (i).

(5) The exchange ratio of shares must be adequate and substantiated. If when determining a share exchange ratio, it is impossible, due to serious reasons, to fix an exchange ratio without jeopardising the rights of the

shareholders of some of the participating companies, a supplementary settlement shall be accorded to such shareholders (hereafter "a supplemental settlement" or "settlement"; in Czech "doplatek"). Such supplemental settlement may not exceed 10% of the nominal value of the shares which are to be exchanged for (the legal successor's shares. A supplemental settlement can be accorded to both shareholders of the successor company and shareholders of the merging company or companies. A supplemental settlement may not be paid before entry of the merger in the Commercial Register and before all of the company's receivables (claims) have been secured under section 220j.

(6) If shares of the successor company's shareholders are to be split or their form, class or type changed under subsection (3)(e), the provisions of this Code or other statutory provisions on the splitting of shares and change of their form, class or type shall apply, unless otherwise stipulated below. Where the nominal value of shares of the successor company's existing shareholders is to be increased under subsection (3)(e), use shall be made of this Code's provisions on increasing registered capital from equity capital (own resources), whereby (the nominal value of the shares is increased, and its provisions on the amount of the registered capital being increased shall apply to the sum of all the amounts by which the nominal value of shares of the successor company's existing shareholders is being increased. Where the nominal value of shares of the successor company's existing* shareholders""is ~to be" reduced under subsection (3)(e), use shall similarly be made of this Code's provisions on reducing registered capital, whereby the nominal value of the shares is decreased (except in the case provided for in section 213), and the provisions on the amount by which the registered capital is being reduced shall apply to the sum of all the amounts by which the nominal value of shares of the successor company's existing shareholders is being decreased. The provisions on entry of such increase or reduction of the registered capital in (he Commercial Register shall not be applied.

(7) The decisive day of a merger cannot precede by more than nine months the day when a petition for entry of such merger into the Commercial Register is filed. The time-limit for exchange of shares may not be longer than one month from the day when the entry of such merger in the Commercial Register takes effect in relation to third parties, and it may not precede the day of entry of the merger in the Commercial Register.

(8) No special advantage may be accorded to a person who participated in the merger by acquisition.

(9) Should the participating companies not file a petition (an application) for entry of a merger within six months of the day when the merger contract meets all the requirements stipulated by law, any company which was ready to file such petition on time is entitled to withdraw from the contract. Should one of the participating companies withdraw from the contract, the rights and obligations of all the participating companies shall lapse. Should a petition for entry of a merger not be filed within one year, the participating companies shall be deemed to have withdrawn from the contract.

(10) A company responsible for a petition for entry of a merger in the Commercial Register not being filed on time shall be liable to every company which was ready to file such petition for any damage caused by withdrawal from the contract. Persons who until the effective day of withdrawal from the contract were members of the board of directors of (he company (which was responsible for a petition for entry of such merger not being filed) shall be jointly and severally liable for any damage caused. After.entry_of a merger in the Commercial Register is authorized, the participating companies may not amend or cancel their merger contract.

(11) Only a participating company or a person entitled (authorized) to file a complaint regarding the invalidity of a general meeting's resolution on a merger may invoke such invalidity. A merger **contract may only be declared null and void by a court. A petition for opening proceedings on nullification of a merger contract shall be filed within the time-limit stipulated for the filing of a complaint to have a general meeting's resolution declared null and void. This shall not affect the provisions of section 220h. A petition for the opening of proceedings to have a merger contract declared null and void must be filed in conjunction with a petition (complaint) to have the general meeting's resolution on such merger declared null and void. The provisions of section 54(3) shall apply as appropriate.**

Commentary on sections 220a to 2200:

The earlier, rather brief, regulation of mergers (consolidations) of joint stock companies included in sections 69, 69a and 220a of the Commercial Code has been superseded by more detailed regulation in the latest version of the Code, which complies with the EV legislation (in particular, the Third Council Directive 78/855/EEC of 9 October 1978 on mergers of public limited liability companies) and is similar to the current German and Austrian statutory provisions.

Section 220a stipulates that a merger contract must be in the form of a notarial deed and prescribes the content of such contracts. However, if a state authority's legall -required approva is not granted, the merger contract is cancelled and the contracting parties cease to be bound by it.

Section 220a now also introduces the concept of a "decisive day" and defines it as the day from which transactions involving the company or companies being acquired are treated as those undertaken by the acquiring (i.e. successor) company.

Under section 220b, subject to certain exceptions, a report on the draft terms of a merger is to be drawn up by the board of directors of each participating company and examined by their supervisory boards. Similar rules apply to the report of an expert or experts on the draft terms of such merger (section 220c).

Under section 220d, a copy of the draft terms of a merger contract must be made available for inspection by shareholders at the seat of each participating company and deposited in the registry of documents at the registration court.

Section 220e regulates the convening of the general meeting which is to decide on a proposed merger. Subsequent sections deal with the share exchange ratio, protection of creditors, mergers effected by the formation of a new joint stock company and other aspects of mergers (including mergers with limited liability companies and the transfer of business assets to a sole shareholder).

Section 220b

Board of Directors and Supervisory Board Reports

(1) Each participating company's board of directors shall draw up a detailed written report (hereafter "report on the proposed merger"; in Czech *zprava o fuzi*") in which it may clarify and substantiate the economic and legal aspects of such merger, in particular the proposed share exchange ratio, the amount of any supplemental settlement and measure benefiting holders of individual classes of shares, share warrants and bonds. The report on the proposed merger must also include a description of difficulties encountered in the evaluation of a share exchange ratio. The boards of directors of the participating companies can draw up a joint report on such merger on behalf of all participating companies or only some of them.**

(2) Each participating company's supervisory board shall examine the envisaged merger on the basis of its draft terms, if this is required, and reports of experts on their examination of the merger contract or its draft terms (section 220c), if this is required, and they shall draw up a written report thereof (hereafter "a report on the examination of the merger"; in Czech *zprava o prezkoumani fuze*"). The supervisory boards of all the participating companies can draw up a joint report on the examination of the merger on behalf of all the participating companies or only some of them.

(3) When information given in the reports under subsections (1) and (2) could harm a participating company, or its controlling person (entity) or a person (entity) controlled by it or when it constitutes a trade (business) secret of a participating company or its controlling person or a person controlled by it, or an official secret subject to other statutory provisions, it cannot be included in the report. However, the report must contain the grounds due to which such information is not stated. The board of directors shall decide whether such facts (constituting a trade or official secret) exist and its decision shall be subject to approval by the supervisory board.

(4) Reports on a (proposed) merger and on the examination of such merger shall not be required if a company is being merged with its sole shareholder [section 220a(4)] or if all the shareholders of a participating company so agree.

(5) Approval (consent) under subsection (4) must be given in writing and bear an authenticated signature, or it must be granted by the general meeting. The statement of such approval by a general meeting shall be included in the notarial deed on the resolution adopted by such general meeting. This approval shall also be binding on a shareholder's legal successor, regardless of how he (it) acquired his (its) shares.

Section 220c

Expert Examination of a Merger

(1) The draft terms of a merger shall be examined on behalf of each participating company by a court-appointed expert /hereafter "a merger expert"; in Czech *znalec pro fuzi*"), and this shall take place before the draft terms of the merger contract are submitted to the supervisory board or the general meeting, if this is required, or be carried out by some or all of the participating companies. The provisions of section 59(3) shall apply to the procedure for appointing an expert as appropriate.

(2) A petition for the appointment of a merger expert shall be filed by a participating company's board of directors with the approval of its supervisory board. Such petition shall be filed jointly by the boards of directors of the participating companies on whose behalf the experts are to be appointed, the boards of directors thereby acting with the approval of their supervisory boards,

(3) A person, who is concerned with the valuation of business assets under section 69a(6), may also be appointed as a merger expert.

(4) The merger expert or experts shall draw up a written report on his or their examination of the draft terms of a merger contract (hereafter "an expert's report on the merger" or "an experts* report on the merger"; in Czech *znalecka zprava o fuzi*"). Where two experts were appointed to examine a merger on behalf of two or more

participating companies, they can draw up a joint experts' report on such merger. An expert's (or experts') report on a merger is regarded as an expert's report under other statutory provisions.

(5) An expert's (experts') report on a merger must also contain, in addition to the particulars required by other statutory provisions, the following:

- (a) an opinion on whether the share exchange ratio is fair and reasonable;
- (b) an indication of the method or methods used to arrive at the share exchange ratio proposed;
- (c) a statement of whether such method or methods were adequate in the case in question;
- (d) the exchange ratios which would have been arrived at by the use of each of these methods, if more than one method had been employed, together with an opinion on the relative importance attributed to each such method in arriving at the (proposed) exchange ratio;
- (e) a description of any special valuation difficulties and, where appropriate, a valuation of business assets under section 69a(6).

(6) A merger expert shall be entitled to require from the participating companies, as well as from their controlled or controlling persons, all information and documents necessary for the drawing up of an expert report on the merger, and carry out all necessary investigations. The provisions of section 220b(3) shall apply, as appropriate, to the content of an expert's report on a merger.

(7) A merger expert or experts shall hand over his or their reports on the merger to the participating companies' boards of directors and supervisory boards. The experts' reports shall be available for inspection by participants in the general meeting which is to pass a resolution on such merger.

(8) The provisions of section 220b(4) and (5) shall apply as appropriate.

Section 220d

Information on Mergers

(1) At least one month before the scheduled day of the general meeting which is to pass a resolution on a proposed merger, each participating company's board of directors shall deposit the draft terms of the merger contract in the registry of documents [section 27a(2)], such terms having been examined by the supervisory board, where this was required, and publish a notice to the effect that such draft terms have been deposited in the registry of documents. At the same time, the board of directors shall publish a notice advising shareholders of their rights under subsections (2) to (4) and a notice advising creditors of their rights under section 220j. Should the general meeting of one or more of the participating companies' shareholders not be held under section 220e(12), (14) or (15), the shareholders of such company or companies must be advised in the notice of their rights under section 220e(13), and the duty under the first sentence must be fulfilled one month before the board of directors takes the decisions under section 220e(12), (14) and (15). These duties of a merging company's board of directors may be carried out by the successor company's board of directors.

(2) At least one month before the scheduled day of the general meeting which is to decide on the proposed merger, all shareholders of the participating companies must have access at the seat of their company to the following documents for the purposes of inspection:

- (a) the draft terms of the merger;
- (b) the financial statements of all the participating companies for the preceding three years, if each participating company has been in existence for this period, or where appropriate, its legal predecessor's statements, and the auditor's reports on such financial statements;
- (c) the closing financial statements of all the participating companies, the opening balance sheet of the successor company and the auditor's report on each company's financial statements;
- (d) any interim financial statements and the auditor's report on such statements if the books of account were closed at a day which preceded the day of preparing the draft terms of merger contract under section 220a(1) by more than six months;
- (e) the joint report on the proposed merger by the board of directors, or individual reports on the same by the board of directors of all participating companies, if such report is required, and a joint report on examination of the (proposed) merger by the supervisory boards, or individual reports on the same by the supervisory boards of all participating companies, if such report is required;
- (f) a joint experts' report on the merger, or the individual experts' reports, on the merger of all the participating companies, if such report is required;
- (g) an expert's report under section 69a(6), unless it was included in the expert's (experts') report on the merger,

(3) Closing financial statements shall be drawn up as ordinary or extraordinary financial statements as at the day which precedes the decisive day of the merger. The opening balance sheet shall be drawn up as at the

decisive day of such merger.

(4) The company shall, without undue delay, only provide each shareholder who so requests with copies or abstracts from the documents under subsection (2)(a) to (f), if such documents were required, against reimbursement of their actual cost.

(5) Should a general meeting of the successor company's shareholders not be held under section 220e(12), the day decisive for the successor company to meet its obligations (duties) under subsections (1) and (2) shall be the day on which the general meeting of the merging company's shareholders is convened. If the general meetings of the merging companies are to be held on different days, the decisive day shall be the day on which the first of such general meetings is convened. Should no general meeting of any participating company's shareholders is to be held, the decisive day for all the participating companies carrying out their duties under subsection (1) and (2) shall be the day when the merger contract is to be concluded.

Section 220e

General Meetings on Mergers

(1) The invitation to a general meeting which is to decide on a proposed merger, or the notice convening such general meeting, shall include an advisory note on the shareholders' rights under section 220d and selected data from the closing financial statements. The invitation to a general meeting of shareholders of the successor company, or the notice convening such general meeting, shall include information about the merger's effect (impact) on the shares of the successor company's existing shareholders, in particular the fact that shares of the successor company's existing shareholders will not be subject to an exchange, or the fact that the shares will be split or their nominal value will be increased or reduced, and the total sum by which the nominal value of all existing shareholders' shares will be increased or reduced, or the fact that there will be a change in the form, class or type of their shares.

(2) The documents under section 220d(2), if required, must be freely accessible for inspection by participants in the general meeting (which is to decide on the proposed merger). At the beginning of the general meeting's proceedings, the board of directors shall explain the draft terms of the merger contract to the shareholders. Then the supervisory board shall inform the shareholders of its opinion on such merger. Prior to voting on the merger, the board of directors shall inform the shareholders of the report by an expert or experts on the merger, if such report was required, and of fundamental changes concerning the company's property, obligations (liabilities) and trading result which occurred since the decisive day of such merger and, where appropriate, of the fact that the said changes substantiate a different share exchange ratio.

(3) Every shareholder who at the general meeting requests information about the other participating companies, when such information is important for the merger, is entitled to receive such information. The provisions of section 220b(3) shall similarly apply.

(4) The resolution on the merger adopted by the shareholders of the merging company shall incorporate the decision to wind up the company without liquidation and transfer all its business assets to the successor company, and also approval of the draft terms of the merger contract, the closing or interim financial statements, and the shareholders' accession to the successor company's statutes.

(5) The resolution on merger by acquisition, adopted by the general meeting of the successor company's shareholders, shall contain:

- (a) approval of the taking over of the merging companies' business assets;
- (b) approval of the draft terms of the merger contract;
- (c) approval of the closing or interim financial statements and the opening balance sheet;
- (d) the decision to issue new shares or the possibility of acquiring own shares, if this is necessary for exchange of the shares of this company for the shares of its legal successor;
- (e) the form, class, type, nominal value and number of the successor company's shares after such merger by acquisition;
- (f) the amount of the successor company's registered capital after the merger by acquisition; the amount of such capital shall be the sum of the successor company's registered capital prior to the merger by acquisition and the nominal value of the shares to be issued for the purpose of share exchange to the merging companies' shareholders, provided that the nominal value of the shares of the successor company's shareholders is not increased or reduced. Should the nominal value of the shares of the successor company's shareholders be increased, the amount of the successor company's registered capital after the merger by acquisition shall be the sum of the successor company's registered capital prior to such merger, the amount by which the nominal value of all shares of the successor company's shareholders will be increased and the total amount of the nominal value of the shares which will be issued for the purpose of exchange to the merging companies' shareholders. Should the nominal value of the successor company's shareholders be reduced, the amount of the successor company's registered capital shall be computed as the sum of

the successor company's registered capital prior to the merger by acquisition and the total amount of the nominal values of all shares to be issued for the purpose of exchange to the merging companies' shareholders, decreased by the total amount by which the nominal value of all shares of the successor company's shareholders will be reduced.

(6) Should the shares necessary for an exchange for the merging company's or companies* shares be acquired even partly by acquisition of the successor company's own shares, the provisions of sections 161 to 161f shall apply as appropriate.

(7) Should the shares of the successor company's shareholders be exchanged for shares of a higher nominal value, the general meeting's resolution must also include the information (particulars) under section 208(6), but, instead of the amount by which the registered capital is increased, it shall state the sum comprising all amounts by which the nominal values of shares of the successor company's shareholders will be increased and, instead of the funds (resources) from which the registered capital is increased, it shall state the funds (resources) from which the increase of the nominal values of these shares will be financed.

(8) Should the shares of the successor company's shareholders be exchanged for shares of a lower nominal value, the general meeting's resolution shall also contain:

- (a) the amount by which the nominal value of a share will be reduced;
- (b) the sum of all amounts by which the nominal values of shares of the successor company's shareholders will be reduced;
- (c) the time-limit for presenting shares for exchange or for inscribing a lower value on them;
- (d) information about whether the amount by which the nominal value of the shares will be lowered will be paid to shareholders, together with the time-limit fixed for any such payment, or about how this amount will be accounted for; the amount by which the nominal value of the shares is reduced may not be paid before the merger by acquisition is entered in the Commercial Register or before all the claims (receivables) of the company's creditors are secured under section 220j.

(9) If the shares of the successor company which are being exchanged are to be listed, this shall be approved by resolutions of all the participating companies' general meetings.

(10) A resolution on merger by acquisition requires approval by at least a three-quarters majority of the votes of all attending shareholders. The statutes may stipulate a higher majority or the fulfilment of other requirements. If the company issued more than one class of shares, approval shall be required by at least a three-quarters majority of the votes of attending shareholders for each class of shares.

(11) A notarial deed must be made of the general meeting's resolution on merger by acquisition, and such deed must be accompanied by the draft terms of the merger contract.

(12) Should the shares of the successor company's existing shareholders not be exchanged under section 220a(3)(e), the decision on merger by acquisition may be taken by the successor company's board of directors instead of its general meeting, provided that:

- (a) the duty (obligation) under section 220d(1) (penultimate sentence) is fulfilled;
- (b) all the shareholders of the successor company may exercise their right to familiarize themselves with the documents under section 220d(2) and their right under section 220d(4) at least one month before the board of directors' decision; and
- (c) **the successor company is the holder (owner) of shares or interim certificates of the merging company whose nominal value attains at least 90% of the merging company's registered capital, whereupon the merging company's own shares and interim certificates (i.e. in its property) shall be subtracted; or**
- (d) **the total nominal value of shares and interim certificates which are to be exchanged for shares of the merging company or companies does not exceed 10% of the registered capital. Should the successor company's registered capital be increased as a result of the merger by acquisition, such percentage shall be computed from the amount of the successor company's registered capital after the said merger by acquisition.**

(13) If a shareholder or shareholders of the successor company hold shares whose total nominal value attains at least 5% of the successor company's registered capital prior to merger by acquisition, they shall be entitled to request that the successor company's board of directors convene a general meeting of shareholders in order to approve the merger by acquisition within one month of the day when the facts under section 220d(1) were published. If the company has issued shares with no voting rights attached, the amount of the registered capital shall be reduced by the nominal values of such shares for the purpose of computation according to the preceding sentence. The statutes may grant the right to demand the convening of a general meeting even when the shares have a lower nominal value. The shareholders of the successor company shall be advised of their

right to demand the convening of a general meeting when the information under section 220d(1) is published.

(14) If the successor company is the holder (owner) of all the merging company's shares which carry voting rights, it shall be sufficient if the decision on merger by acquisition is taken by the successor company's and the merging company's boards of directors, and decisions by the general meetings of these companies shall not be required. The provisions of subsection (13) shall apply as appropriate.

(15) A decision on merger by acquisition taken by the merging company's board of directors shall also suffice if all the shares of such merging company are owned (held) by another merging company.

Section 220f

Mergers by Acquisition and the Issue of New Shares to a Merging Company's Shareholders

(1) If new shares of the successor company are to be issued for the purpose of their exchange for shares of a merging company, the resolution of the general meeting of the successor company's shareholders shall also include either authorization of the board of directors to decide on the issue of new shares to the extent necessary for such exchange or specification of the class, form, type, number and nominal value of the shares which are to be issued for the merging company's shareholders,

(2) The decision taken by the successor company's board of directors to issue new shares based on the general meeting's authorization under subsection (1) shall include specification of the class, form, type, number and nominal value of shares which will be issued for the shareholders of the merging company or companies and a notarial deed on such decision (resolution). The provisions of section 210 shall apply as appropriate.

(3) Only such number of shares can be issued for the merging company's shareholders whose total nominal values does not exceed the amount of the merging company's net worth (net business assets) according to the expert report under section 69(6). The provisions on increasing registered capital shall not apply.

Section 220g

Share Exchanges and Payment of Supplemental Settlement

(1) The successor company may not exchange the merging company's shares for its own shares if at the time such merger by acquisition is entered in the Commercial Register these shares are:

- (a) in its ownership (i.e. in its property);
- (b) in the ownership (property) of a merging company; or
- (c) held by a third party which holds them in its own name but on the account of a participating company.

(2) The successor company shall not exchange a merging company's shares for its own shares with a shareholder of the merging company who waived (gave up) his right to a share exchange. The provisions of section 220b(5) shall apply as appropriate.

(3) The successor company shall not exchange a merging company's shares for its shares if the same persons participate in the same ratio in both the successor company and the merging company, except when this would be contrary to the prohibition on waiving payment of the issue price of shares and when this is stipulated in the merger contract [section 220a(3)]. In this case, the successor company's registered capital and the nominal value of the shares can be increased. The provisions of section 220f(3) shall apply, as appropriate, to computation of the amount by which the registered capital will be increased.

(4) If the successor company has own shares in its property, or if a third party holds such shares in own name but on the successor company's account, or if such shares pass to the successor company as a result of a merger by acquisition, the successor company will exchange such own shares for the merging company's shares. The provisions of subsections (5) and (6) shall apply, as appropriate, to the procedure for exchanging these shares for the merging company's shares.

(5) If in connection with a merger by acquisition listed shares are to be exchanged by the successor company, the company's board of directors will authorize a brokerage house to arrange such exchange. The board of directors shall hand over certificated shares with all their requisites to the brokerage house before entry of the merger by acquisition in the Commercial Register.

(6) If in connection with a merger by acquisition uncertificated (i.e. paperless) shares are to be issued by the successor company, or facts concerning such uncertificated shares are to be changed, the successor company's board of directors shall either request the Securities Centre to issue such shares under other statutory provisions or inform it of the change (alteration) to the facts required before the merger by acquisition is entered in the Commercial Register. Within the time-limit fixed in the merger contract after the merger by acquisition is entered in the Commercial Register, the board of directors shall instruct the Securities Centre either to issue such uncertificated shares or to make changes to the facts concerning these shares in its registry.

(7) If settlement amounts are to be paid to shareholders as a result of the merger by acquisition, the board of directors shall authorize a brokerage house or bank to pay such settlement amounts. The board of directors shall transfer money in the necessary amount to the entity (brokerage house or bank) authorized to pay such

settlement amounts, and its shall do so before the merger by acquisition is entered in the Commercial Register.

(8) If in connection with a merger by acquisition certificated shares are exchanged, such exchange of shares shall be subject, as appropriate, to the provisions of section 214, unless otherwise stipulated below. The shareholders shall return their shares within the time-limit and in the manner stipulated in the merger contract. The provisions on declaring shares null and void shall not apply. Shares determined for exchange shall be sold by the successor company using the procedure under section 214(4). If such sale cannot be effected due to a lack of demand, the company shall place such shares in official custody.

Section 220h

Nullity of a Merger by Acquisition

(1) A complaint may be filed with the (competent) court seeking nullification of a general meeting's resolution on a merger by acquisition on the ground that there is a discrepancy between the general meeting's resolution on the merger by acquisition and the draft terms of the merger contract, or that the merger contract was pronounced null and void by the court [section 220a(1)J,

(2) A complaint cannot be filed seeking judicial nullification of a general meeting's resolution or a merger contract [section 22Qa(1)] due to the fact that the share exchange ratio and settlement amounts are not adequate, or that facts concerning the share exchange ratio in the report on the merger, the report on examination of the merger or the expert's report do not comply with statutory provisions. Incorrect determination of a share exchange ratio and settlement amounts can only be contested (challenged) by using a procedure under section 220k.

(3) After a court ruling approving entry of a specific merger by acquisition in the Commercial Register takes legal effect, a complaint cannot be filed with the court seeking nullification of the general meeting's resolution on such merger by acquisition or the merger contract. This shall not affect the right of shareholders under section 220k.

(4) Proceedings concerning nullification of a general meeting's resolution on a merger by acquisition or the merger contract which were initiated before entry of such merger by acquisition in the Commercial Register can only be continued after such entry if the subject-matter of such proceedings is changed to a claim for damages (i.e. compensation for damage) or a claim under section 220k, unless the proceedings are already underway.

Section 220i

Entry of a Merger by Acquisition in the Commercial Register

(1) A petition for entry of a merger by acquisition in the Commercial Register shall be accompanied by:

- (a) the merger contract;
- (b) copies of the notarial deeds on resolutions of the participating companies' general meetings on such merger, if the holding of such general meetings was required;
- (c) a joint report on the merger drawn up by all the participating companies' boards of directors, or individual reports on the same drawn up by the boards of directors of all participating companies, if required;
- (d) the joint report on examination of the merger drawn up by all the participating companies' boards of directors, or individual reports on the merger drawn up by the boards of directors of all the participating companies, if required;
- (e) the joint experts' report or the individual expert's reports on the merger, if required;
- (f) the final rulings of the competent state authorities, if such rulings (permissions) were a condition for the merger contract becoming effective;
- (g) the closing or interim financial statements of the participating companies and the opening balance sheet of the successor company;
- (h) the expert's report under section 69a(6), unless it was included in the expert's report on such merger;
- (i) documentary evidence of publication of the notice containing advice under section 220d(1);
- (j) the statement by members of the board of directors of each participating company that they are not aware of the filing of a complaint seeking judicial nullification of the merger contract or the general meeting's resolution on the merger by acquisition, or that the process (of merger) had been stopped under a final ruling, or that all the entitled persons had waived their right to file a complaint for nullification of the general meeting's resolution or the merger contract, if any of these conditions was fulfilled; waiving of the right to file a complaint shall be subject to section 220b(5);
- (k) documentary evidence that the money required for payment of settlement amounts was transferred to the entity authorized to pay them;

- (1) documentary evidence that the certificated shares required for exchange for merging companies' shareholders and the successor company's shareholders were transferred to the entity arranging their exchange, if the company has certificated shares;
 - (l) documentary evidence that the Securities Centre received the notice on the issue of shares necessary for exchange in respect of the merging companies' shareholders and on any change to the facts on the shares of the successor company's shareholders, if they are to be issued, or if the uncertificated shares are to be amended;
 - a. (n) documentary evidence that the company has sufficient funds (money) or liquid assets for securing purposes in relation to the entitled shareholders, if the successor company is to redeem own shares because of the merger by acquisition.
- (2) If no general meeting was held due to the grounds under section 220e(12), (14) and (15), the petition for entry of the merger by acquisition shall be accompanied by a statement by the board of directors of the company where no general meeting was held that the entitled shareholders did not request the convening of a general meeting or that they had waived this right. Waiving of the right according to the preceding sentence shall be subject, as appropriate, to the provisions of section 220b(5).

Section 220j

Protection of Creditors

- (1) If the participating companies' creditors file their claims (receivables) within six months of the day when entry of the merger by acquisition in the Commercial Register became effective against third parties and such creditors cannot demand satisfaction of their claims, they may request sufficient securing (safeguards) if the recoverability of such claims deteriorates. The provisions of section 215(4) shall apply as appropriate. If a creditor proves that, due to the merger by acquisition, the recoverability of his claim (receivables) has substantially deteriorated, he is entitled to ask for additional securing of his claim even before entry of the merger by acquisition in the Commercial Register.
- (2) The right to the securing of their claims does not pertain to creditors who are entitled to preferential or separate settlement in the event of bankruptcy proceedings, and the right to the securing of claims does not apply to claims (receivables) which arose only after the day when the entry of merger by acquisition in the Commercial Register became effective against third parties.
- (3) The provisions of subsections (1) and (2) shall not affect statutory provisions relating to the joint exercise of right by holders of bonds issued by companies participating in a merger by acquisition. Securing under subsection (1) shall not be required if a bondholders' meeting held under other statutory provisions approved such merger by acquisition, or if all the bondholders expressed their consent to such merger,
- (4) Holders of convertible bonds and bonds with (share) warrants attached and of securities other than shares if special rights are attached to them shall acquire in the successor company at least the same legal status which they had in the merging company. This shall not apply if a meeting of such securities holders held under other statutory provisions, or all of the holders of such securities, expressed agreement with their rights being changed or if they are entitled to have their securities redeemed by the right to redeem from the successor company.
- (5) The duty to pay up the issue price of shares is not affected by a merger by acquisition.

Section 220k

Right to a Settlement

- (1) If the share exchange ratio, together with any settlement amounts, stated in the merger contract is not adequate, each of the shareholders of the participating company has the right to be paid a (supplemental) settlement amount by the successor company (hereafter "the right to a settlement"; "pravo na dorovnani"). The provisions of section 220a(5) on the maximum level of the settlement amount shall not apply. The merger contract may stipulate that the share exchange ratio be examined and the settlement amount fixed in arbitration proceedings.
- (2) A court ruling on the right to a settlement may only be sought by a shareholder who:
 - (a) was a shareholder of one of the participating companies at the time when the general meeting approved the merger by acquisition; in cases of doubt, this condition shall be regarded as complied with;
 - (b) until the filing of his complaint (with the competent court), did not dispose of any shares of the merging or successor company; (c) did not waive his right to a settlement; waiver of such right shall be subject to the provisions of section 220b(5) as appropriate.
- (3) A complaint under subsection (2) can also be filed by a shareholder who does not meet the condition under subsection (2)(a) and (b), if he has shares in his ownership which represent at least 1% of the registered capital of shares with a (total) nominal value of at least CZK 100,000.

(4) A complaint under subsection (2) can be filed no later than one year after the day when entry of the merger by acquisition in the Commercial Register took effect against third parties, otherwise this right shall lapse.

(5) A judicial ruling granting a shareholder the right to a settlement shall be binding on the successor company as the basis for the according of such right to other shareholders.

(6) If a share exchange ratio is inadequate, shareholders who acted in good faith shall not be obliged to return (refund) settlement amounts which were paid to them or shares of the successor company which were given to them in exchange ratio. In cases of doubt, good faith shall be presumed.

(7) If a shareholder has the right to a settlement, the owed amount shall be subject to double the Czech National Bank's discount rate valid at the day when the merger by acquisition was entered in the Commercial Register.

Section 220l

Liability for Damage

(1) Members of the boards of directors and supervisory boards of the participating companies and the merger expert or experts who drew up the expert report on the merger for these companies shall be jointly and severally liable for any damage which arose due to breach of their duties during such merger to the participating company's shareholders or creditors under sections 373 to 386. A member of the board of directors or supervisory board or a merger expert shall relieve himself of such liability (responsibility) if he proves that he acted with all due managerial care (diligence). The provisions of section 194(5) (last sentence) shall not apply.

(2) A judicial ruling awarding the right to damages under subsection (1) shall be binding on the responsible persons as the basis for the according of such right also to other entitled persons under subsection (1).

(3) The right to damages under subsection (1) shall become statute-barred five days after the day when entry of the merger by acquisition took effect in relation to third parties.

Section 220m

Redemption of Shares by the Successor Company

(1) A merger contract may include an undertaking by the successor company, in the case of the procedure under section 220e(12)(a), to redeem shares of the merging company's minority shareholders by exchanging them for the successor company's shares. In this case, the provisions of sections 220b, 220c and 220d shall not apply.

(2) Should the legal status of shareholders of some of the participating companies change due to the merger by acquisition because such shareholders exchanged their shares for shares of another class, or because the rights attached to a particular class of shares were changed, or because listed shares were exchanged for unlisted shares, or because shares whose transferability was not restricted were exchanged for shares whose transferability is limited, the merger contract must include an undertaking by the successor company to redeem such exchanged shares to a person who:

- (a) was a shareholder of the participating company at the day when the general meeting agreed to the merger by acquisition;
- (b) participated in such general meeting either personally or through a proxy; and
- (c) did not vote in favour of the merger.

(3) In cases under subsection (2), the notarial deed on the general meeting's resolution on the merger by acquisition shall also include the names of shareholders whose legal status will change and who did not vote in favour of approval of the merger contract, stating the number, class, type and nominal value of the shares of any such shareholder.

(4) Should the merger contract include an undertaking by the successor company under subsection (1) or (2), the successor company shall be bound to make a public offer for purchase of their shares to the entitled shareholders no later than two weeks after the day as of which entry of the merger by acquisition took effect against third parties, and such offer shall be at least for a price determined similarly as under section 186a(4). The purchase price shall become payable on the transfer of such securities, but no later than one month after conclusion of the contract. The public offer for purchase of such shares shall be subject to the provisions on tender offers as appropriate (sections 183a to 183c, 183e to 183g).

(5) Should the purchase price not comply with the provisions of subsection (4), the contract shall still be valid, and shareholders who accepted the public offer shall be entitled to claim a settlement amount. The provisions of section 220k(1) (last sentence) and (5) shall similarly apply.

(6) If the successor company fails to meet the duty of making a public offer under subsection (1) or (2), the provisions of section 186a(5) and (6) shall similarly apply.

Section 22On

Mergers of Joint Stock Companies by the Formation of a New Company

(1) Unless otherwise stipulated below, a merger of joint stock companies by the formation of a new company shall be subject, as appropriate, to the provisions of sections 220a(1), (2), (4), (5), (7) to (II), 220b to 220d, 220e(1) to (4), (9) to (11) and (15), 220g(1)(b) and (c), (2) to (8), 220i to 220l and 220m(2) to (6). The provisions of section 220h shall similarly apply; this shall not affect the provisions of section 68a.

(2) The merger contract in the case of a merger by formation of a new company shall include all the particulars under section 220a(3)(a), (b), (d), (f) to (i). Such contract shall also include a manifestation of the will to form a new successor company, the draft terms of the statutes of such successor company and also, where general meetings of all the merging companies are not held, the full names and residential addresses of the first members of the successor company's board of directors and supervisory board. A formation contract (a deed of formation) shall not be required. If general meetings of the merging companies are held, they must elect the successor company's or companies' first board or boards of directors and supervisory board (boards), if under the draft terms of the successor company's statutes members of the board of directors and the supervisory board are to be elected by the general meeting. The provisions on election of the members of the supervisory board by employees shall not apply. The first members of the supervisory board shall be elected only for a tenure (term of office) of one year, while subsequent members shall be elected for a tenure stipulated in the statutes. The merging companies shall have the legal status of founders.

(3) The amount of the successor company's registered capital cannot be higher than the sum of the nominal value of the merging companies' shares which are to be exchanged for the successor company's shares. The provisions of section 220f(3) shall similarly apply.

(4) When entering the merger by formation of a new (successor) company in the Commercial Register, the provisions of section 175 shall not apply.

Section 220o

Merger of a Joint Stock Company with a Limited Liability Company

(1) A limited liability company may be merged with a joint stock company by acquisition or by the formation of a new successor company if the business shares of the members of such limited liability company are exchanged for the successor company's shares.

(2) Unless otherwise stipulated below, the provisions of section 153a(1) and (3) to (8) shall similarly apply to the merging limited liability company and the provisions of sections 220a to 220n to the successor or merging joint stock company. In the case of the merging limited liability company, approval by all its members is required for the merger. The closing financial statements of the limited liability company must be audited. (3) The merger contract and its draft terms shall include, in relation to the merging limited liability company's members, information about how many shares of a specified form, class, type and nominal value will be provided to a particular member in exchange for his business share.

Subdivision 10

Winding-up of a Joint Stock Company and Transfer of its Business Assets to a Sole Shareholder

Section 220p

(1) A joint stock company's general meeting shall decide that it will be wound up without liquidation and its business assets taken over by one shareholder, if such shareholder owns shares whose nominal value exceeds 90% of the registered capital (hereafter "the 90% plus shareholder"; in Czech "hlavni akcionar"). For the purposes of such computation, own shares in the property of the company shall be distributed among shareholders in proportion to the nominal value of their shares.

(2) The 90% plus shareholder is obliged to provide the other shareholders with adequate cash settlements. The amount of the cash settlement shall be supported by an expert's report. The provisions of section 59(3) shall apply, as appropriate, to the expert's appointment and remuneration.

(3) Unless otherwise stipulated below, the winding-up of a joint stock company which is associated with transfer of its business assets to one (sole) shareholder shall be subject, as appropriate, to sections 220a(1) to (4), (7) to (11), 220b to 220d and 220e(1) (first sentence), (2) to (4) (except for the provisions on accession of shareholders to the successor company's statutes) and, if the 90% plus shareholder is a joint stock company or a limited liability company, also to subsections (5)(a), (b), (11) to (15), sections 220g(7), 220h, 220j and 220l. The expert's report shall include instead of an opinion on the share exchange ratio, an opinion on the adequacy of the cash settlement.

(4) A contract on take-over (assumption) of the joint stock company's business assets by the 90% plus shareholder ("the take-over contract" or "assumption contract"; in Czech "smlouva o pfovzeti") shall be concluded by the company and its 90% plus shareholder instead of a merger contract. The contract shall

state the amount of the cash settlement and the time-limits for its payment instead of the share exchange ratio and the time-limit for such exchange. The said time-limit may not be longer than two months after the day when the transfer of business assets was entered in the Commercial Register. The provisions of section 220k(1), (4), (5) and (7) shall apply as appropriate. The minority shareholders shall be advised in the take-over (assumption) contract that they are entitled to a cash settlement and to require that the amount of such cash settlement be examined, even if at the general meeting they voted in favour of the take-over contract, and also that they can exercise such rights within two months of the day when entry of the transfer of such business assets in the Commercial Register takes effect against third parties.

(5) If the 90% plus shareholder is a limited liability company, the provisions of section 153c shall apply as appropriate. If the 90% plus shareholder is a joint stock company, its general meeting's approval for the transfer of such business assets shall also be required. The provisions of section 220e(10) shall similarly apply. If the 90% plus shareholder is a co-operative, the transfer of such assets must be approved by the members' meeting of such co-operative. A notarial deed of these resolutions (decisions) shall be drawn up. If the 90% plus shareholder is a general commercial partnership or a limited partnership, the transfer of business assets shall require the consent of all the partners with unlimited liability. This consent shall be given in writing and the signatures of the partners authenticated.

(6) The petition for entry of the transfer of business assets in the Commercial Register shall be accompanied by:

- (a) the take-over (assumption) contract;
- (b) an extract from the Commercial Register documenting entry of the 90% plus shareholder in the Commercial Register.

(7) The petition for entry of the transfer of business assets shall also be accompanied, if required, by:

- (a) a copy of the notarial deed on the general meeting which approved such transfer to the 90% plus shareholder and, where appropriate, other documents proving such approval;
- (b) a document confirming approval by the competent state authorities;
- (c) the reports of the statutory organ and supervisory board;
- (d) the experts' reports;
- (e) the closing financial statements of the dissolving company, or the opening balance sheet of the 90% plus shareholder, and the auditor's report on the checking of the same.

(8) If the 90% plus shareholder is not an individual (a natural person), it is entitled to assume the commercial name of the dissolved company with an addendum specifying the legal successorship and without an addendum specifying the legal form of a joint stock company. If the name of an individual is included in the commercial name of the dissolving company, the provisions of section 11(5) shall apply as appropriate.

(9) The closing financial statements of the dissolving company shall be compiled as ordinary or extraordinary financial statements as at the day preceding the decisive day of transfer of the business assets. The opening balance shall be drawn up only when the 90% plus shareholder is a person who uses a double-entry bookkeeping system.

Commentary on section 220p:

The provisions of section 220p are similar to those governing the transfer of business assets to 90% plus shareholders in Austria and Germany.

Subdivision 11

Division of a Joint Stock Company

Division by the Formation of New Legal Entities

Section 220r

Draft Terms of Division

(1) Should a company plan its division, the draft terms of such division ("the division plan") must be approved by the general meeting of the company being divided (i.e. dissolved). Its successor company may only be a joint stock company or a limited liability company. Should such division require approval by a state authority, the provisions of section 220a(2) shall apply as appropriate.

(2) The draft terms of division shall specify at least the following:

- (a) the commercial name, seat and identification number of the company being divided (i.e. dissolved)

and its legal form;

- (b) the commercial name and seat of each successor company and the draft terms of its statutes, if such company will be a joint stock company, or the draft terms of the deed of formation (founding deed), if such company will be a limited liability company;
- (c) the shares exchange ratio between the shares of the company being divided and the shares of the successor company ("the recipient company") with specification of their form, class, type, transferability and nominal value, including detailed rules of procedure and time-limits for their exchange, or the amount of investment contribution to the registered capital of the successor company in respect of each member and each member's business share in the successor company, if such company is a limited liability company (hereafter "the exchange ratio"; in Czech "vyměnný poměr"), and the amount of any settlement in cash, together with the rules for its payment;
- (d) the day from which the right to a profit portion (dividend) based on the shares (allotted in the successor joint stock company) or business share (allotted in the successor limited liability company) arises, as well as all prerequisites for such right to arise;
- (e) the date from which transactions of the company being divided shall be treated for accounting purposes as being those of one of the successor companies (hereafter the "decisive day of the division"; in Czech "rozhodný den rozdělení");
- (f) a description and allocation of the assets and liabilities being transferred to individual successor (recipient) companies; this may be done by referring to the closing balance sheet of the company being divided and the inventorized lists of business assets, if such determination (specification) is feasible;
- (g) determination of the employees who are to be transferred from the company being divided to individual successor companies;
- (h) specification of whether, and in what kind of structure, elements of equity and funds other than own (not representing a liability) of the company being divided are to be transferred to individual successor companies;
- (i) the rights which individual successor companies will grant to holders of individual classes of shares, share warrants, bonds or other securities, or other measures proposed [section 220x(2)];
- (j) the procedure to be followed in the event of a right to redemption of successor joint stock company's shares arising to shareholders;
- (k) in the case of an unequal (irregular) exchange ratio under subsection (3) or a division associated with the formation of a successor company having a legal form other than that of a joint stock company, the conditions under which the cash for settlement will be provided by some of the successor companies or a third party, except when all the members waive their right to such settlement; the waiver of the right to a settlement is subject to the provisions of section 220b(5) as appropriate.

(3) The provisions of section 220a(5) shall apply as appropriate, whereby the share exchange ratio may be fixed either equally for all the shareholders in all the successor companies according to their participation (holding) in the registered capital of the company being divided (an equal exchange ratio) or fixed differently in the different successor companies (an unequal or irregular exchange ratio). The cash settlement (if granted in addition to shares) may not exceed 10% of the nominal values of shares determined for exchange or the amount of investment contributions to the registered capital of the successor companies. Such settlement amount may be provided even by a third party; in this case, the restriction ensuing from the provisions of section 220a(5)(last sentence) shall not apply.

(4) The provisions of section 220a(6)(first sentence), (7) and (8) shall apply as appropriate. Should the successor company be a limited liability company, the provisions of section 220u(1), (3) and (4) shall apply to a shareholder who did not agree to participate in such limited liability company. Should a third party provide the settlement amount under subsection (2)(c) or the cash settlement amount under subsection (2)(k), the declaration thereof shall be made in the form of a notarial deed.

(5) The sum of the amounts of the successor companies' registered capitals may not be higher than the net business assets (net worth) of the company being dissolved according to the expert's report under section 69c(5).

(6) The company being dissolved (divided) shall have the legal status of founder of the successor companies.

Commentary on section 220r to 220za:

Previously regulation of the division of a joint stock company was subject to sections 69, 69a and 220a. It has not been superseded by the regulation in sections 220r to 220za, which is based on the EU legislation (Sixth Council Directive 82/89/EEC of 17 December 1982 concerning the division of public limited liability companies), and which is similar to the Austrian and German statutory provisions.

Section 220s

Reports by the Board of Directors, Supervisory Board and Division Experts

(1) The board of directors of the company being dissolved shall draw up a detailed written report (hereafter "the report on the division"; in Czech "zprava o rozdeleni") in which it shall explain and substantiate from the economic and legal viewpoints the consequences of such division, in particular the exchange ratio, possible settlement amount and measures benefiting the holders of individual classes of shares, share warrants and bonds. A report on the division shall also include information on valuation of the business assets by the expert(s) under section 69c(5) and designation of the registration court where a copy of such expert's report will be deposited, and further more it must specify any difficulties which arose in connection with the valuation for the purpose of fixing the exchange ratio. In the case of an equal exchange ratio, substantiation shall not be required.

(2) The supervisory board of the company being dissolved shall examine the envisaged division on the basis of the draft terms approved by the board of directors, the report on the (proposed) division, if this is required, and the expert's report on the division, if this is required, and it shall draw up a written report thereof (hereafter "the report on examination of the division"; in Czech "zprava o prezkoumani rozdeleni").

(3) In the case of an unequal exchange ratio, the draft terms of the division shall be examined by two court-appointed experts (hereafter 'the division experts'; in Czech "znalci pro rozdeleni"). In the case of equal exchange ratio, the draft terms of the division need not be examined by experts. A petition for the appointment of the division experts shall be filed by the board of directors of the company being dissolved, with approval of the supervisory board. The provisions of section 220c(3) shall apply as appropriate. A petition for the appointment of the division expert may be connected with a petition for the appointment of an expert for the purposes of valuation under section 69c(5).

(4) The division experts shall draw up a written report on the result of their examination (hereafter "experts* report on the division"). The provision of section 220c(6) shall apply as appropriate. The experts' report on the division is a joint expert report under other statutory provisions. Such experts' report shall be presented by the division experts to the board of directors and the supervisory board of the company being divided, and it must be made available for inspection to participants in the general meeting which is to decide on the division.

(5) The experts' report on the division shall be subject to the provisions of section 220c(5) as appropriate.

(6) The provisions of section 220b(3) to (5) shall apply to the reports under subsections (1) to (3) as appropriate.

Section 2201

General Meeting on the Division

(1) Unless otherwise stipulated below, the provisions of section 220d(1) to (4) and 220e(1)(first sentence), (2), (9) to (1) shall apply as appropriate, thereby the advisory notice (note) to creditors and debtors about their rights shall also include the information under section 220x and the advisory notice to shareholders shall also give the information under section 220u.

(2) The general meeting's resolution on division of the company being dissolved shall include the decision to wind up the company without liquidation with transfer (passage) of its business assets to the successor companies, approval of the formation of the successor companies, the draft terms of such division, the closing financial statements and the opening balance sheets of the successor companies. If such successor company is to have the form of a joint stock company, the general meeting's resolution must state the full names and residential addresses of the first members of the supervisory board and the board of directors of such company. A deed of formation (founding deed), constituent general meeting or founders' (promoters') resolution replacing the former shall not be required. The first members of the supervisory board shall be elected only for a term of one year, while subsequent members shall be elected for a tenure specified on the statutes. The provisions on election of the supervisory board members by employees shall not apply.

(3) Should an equal exchange share ratio be proposed, the general meeting's resolution shall require a majority of at least three-quarters of the votes of the attending shareholders' to be adopted. If the company issued more than one class of shares, the same majority shall be required in separate voting conducted according to the class of shares. The statutes may require a higher majority or the fulfilment or other conditions. Should an unequal exchange share ratio be proposed, the general meeting's resolution shall require a majority of at least 90% of votes of all the shareholders of the company being divided (dissolved). Should this condition not be fulfilled, shareholders who did not attend the general meeting may express their consent to the proposed division outside the general meeting. A shareholder's consent shall be in the form of a notarial deed and include the general meeting's draft resolution, and it shall be delivered to the company being dissolved within one month of the day when the general meeting deciding on the division was held. The notarial deed must be accompanied by the draft terms of the division and the draft resolution of the general meeting.

(4) Should the statutes of the company being dissolved require a majority of more than three-quarters of the votes of the attending shareholders for the adopting of a resolution, the same majority shall also be required for adopting of the resolution on division, except when the statutes or deed of association of the successor company require the same majority as the statutes of the dissolving company for such decision.

(5) The closing financial statements shall be drawn up as ordinary or extraordinary financial statements as at the day preceding the decisive day of the division. The opening balance sheet shall be drawn up as at the decisive day of the division.

Section 220u Settlement

(1) In the case of an unequal exchange ratio, a shareholder who:

- (a) was a shareholder of the company being dissolved as the day of the general meeting which passed the resolution on division;
- (b) attended the said general meeting, and
- (c) did not vote in favour of approval of the draft terms of such decision; shall be entitled to the settlement in cash. The notarial deed of the general meeting's resolution shall include the names of those shareholders who did not vote in favour of the divisions. This right shall not pertain to a shareholder who participates in all of the successor entities in the same proportion (ratio) as in the company being dissolved.

(2) The provisions of subsection (1), except for the last sentence, shall similarly apply to a division in which the successor entity has another legal form.

(3) Should the successor company be a joint stock company, settlement shall be effected by such company's redemption of the shares which the person under subsection (1) or (2) acquired in exchange for the shares of the dissolved company. The provisions of section 220m(3) to (6) shall apply as appropriate. Should the successor company be a limited liability company, the person under subsection (1) or (2) shall be entitled to terminate his participation in the successor company with effect from the day of such company's incorporation, provided that such person has not exercised the rights of a member of such company since its incorporation. The notice of termination shall be in writing and accompanied by an authenticated signature, and it shall be delivered to the successor company within two months of the day when entry of the company's division took effect against third parties, otherwise the right shall lapse. The provisions of section 113(5) and (6) shall similarly apply, except that the time-limit under section 113(6) shall run as of the day when notice of termination is delivered to the company. A settlement share shall be payable within one month of the day when the notice of termination was delivered to the company.

(4) The other successor companies shall be jointly and severally liable for discharge of the obligation to make a settlement in cash under subsections (1) to (3). The successor companies shall sufficiently secure discharge of the obligation in cash. The overall cash settlement paid to the shareholder must be adequate to his participation (i.e. his holding) in the dissolved company. The provisions of section 220v(2) shall apply as appropriate.

Section 220v Nullification of a Division and Review of the Settlement Amounts

(1) The provisions of section 220h shall apply as appropriate to the nullification of a division. This shall not affect the provisions of section 68a.

(2) A shareholder who did not agree to the amount of a settlement may file a petition (complaint) with the competent court for a ruling fixing a higher amount for the settlement. The provisions of section 220k shall apply as appropriate.

Section 220w Liability for Damage

(1) The members of the board of directors and the supervisory board of the dissolved company and the division experts who drew up the experts' report on the division shall be liable jointly and severally for damage caused by breach of their duties in connection with the division to the successor companies or members of such companies under sections 373 to 386. A member of the board of directors or of the supervisory board or an expert shall relieve himself of his liability if he proves that he proceeded with all due managerial care (due diligence). The provisions of section 194(5)(last sentence) shall not apply. Only those members of the successor entity who meet the requirements under section 220k(2) and (3) may claim the right to damages.

(2) The right to damages (i.e. compensation for damage) under subsection (1) shall become statute-barred five years after the day when entry of the division in the Commercial Register took effect against third parties.

Section 220x

Protection of Creditors and Debtors

- (1) Each of the successor companies shall be jointly and severally liable for obligations which were transferred due to the division from the dissolved company to the other successor companies up to the amount of the net business assets (net worth), as stated in the expert's report under section 69c(5), but up to a minimum amount equal to the registered capital shown in the opening balance sheet. Liability is discharged when the successor company satisfies the amount(s) owed to a creditor or creditors of the other successor companies. Liability according to the first sentence shall not apply to the claims of creditors who were granted safeguards (securing) under the provisions below.
- (2) Creditors of the dissolved company are entitled to require that the successor companies secure their claims (receivables) if, due to the division, the recoverability of their claims deteriorates. Unless otherwise stipulated below, the provisions of section 220j shall apply as appropriate.
- (3) Unless an agreement on sufficient securing is reached within nine months of the day when entry of the division in the Commercial Register took effect against third parties or mutually agreed security (securing) is provided within the same time-limit all the successor companies shall be liable for discharge of the obligations (liabilities) in an amount equal to the creditors' unsecured receivables under subsection (1).
- (4) The provisions of subsection (3) shall not apply if a judicial ruling determines that the recoverability of a receivable (claim) did not deteriorate or that the offered security (securing) was sufficient. A final judicial ruling determining that the recoverability of a receivable deteriorated due to the division of the company or that the offered security (securing) was insufficient shall be binding on all organs, petitioners and successor companies.
- (5) Where it is not clear from the draft terms of division which of the assets and liabilities of the dissolved company were transferred to individual successor companies, the successor companies shall become co-owners of the property and be jointly and severally liable to discharge the obligations (liabilities) of the dissolved company.
- (6) If it is not known to the debtor, even though he made use of his right under section 220z, to which successor company a receivable of the dissolved company was transferred, he shall be entitled to pay the debt to any of the successor companies.
- (7) If a creditor does not know, even though he made use of his right under section 220z, to which successor company a debt of the dissolved company was transferred, he may require discharge of such debt (liability) by any of the successor companies.
- (8) The successor companies shall settle between (among) themselves in proportion to their net assets (net worths), as shown in the expert's report under section 69c(5).
- (9) The provisions of section 220g(5) to (8) shall apply as appropriate.
- (10) The registered capital of a successor company in the opening balance sheet may not be higher than the net business assets (net worth) allocated to this company according to the expert's report (opinion) under section 69c(5).

Section 220y

Entry of a Division on the Commercial Register

The following documents shall accompany a petition for entry of a division in the Commercial Register:

- (a) the draft terms of the division;
- (b) a copy of the notarial deed on the general meeting's resolution on the division;
- (c) reports on the division, reports on examination of the division and expert's reports on the division, if required;
- (d) final decision of the competent state authorities, if the effectiveness of the division depends on such decisions (rulings);
- (e) the expert opinion under section 69c(5), unless it is included in the expert's report on the division;
- (f) documentary evidence of fulfilment of the duty to publish a notice to creditors, debtors and shareholders under section 220t(1);
- (g) the closing financial statements of the company being dissolved and the opening balance sheets of the successor companies;
- (h) statements by third parties under section 220r(4), if any;
- (i) documentary evidence of the depositing money for settlement amounts and certificated shares, if they are to be paid out or issued;
- (j) the declaration by members of the board of directors confirming that they are not aware of any complaint seeking judicial nullification of the general meeting's resolution on the division, or

stating that any such proceedings were stopped by a final ruling or that all the entitled persons waived their right to demand a judicial ruling nullifying the general meeting's resolution, if relevant. Waiver of the right according to the penultimate sentence shall be subject to the provisions of section 220b(5) as appropriate.

Section 220z

The Right to Information

(1) Everybody whose legal interests are affected by the division of a joint stock company shall be entitled to request and be given information by each successor company and the company being dissolved about which assets and liabilities are to be transferred to the individual successor companies.

(2) Should a person (party) entitled under subsection (1) not receive the requested information without undue delay, such person (party) may assert this right at the competent court.

Section 220za

Division by Acquisition

(J) Unless otherwise stipulated below, the provisions of sections 220r to 220z shall apply as appropriate to a division by acquisition.

(2) A contract on the division and take-over (assumption) of business assets (hereafter "the contract on the division"; in Czech "smlouva o rozdělení") shall be drawn up and concluded instead of the draft terms of (plan for) such division. The contract on the division shall also include any possible proposal for amendments of the statutes or deed of association of the successor companies. The written draft terms of the contract of the division shall be drawn up by the statutory organs of the company being dissolved and the successor companies.

(3) Should the successor companies be joint stock companies, they shall be subject, as appropriate, to the provisions of sections 220a to 220m, and should the successor companies be limited liability companies, they shall be subject to section 153a. If a joint stock company is involved in a division by acquisition, an expert's report shall be required on the equal share exchange ratio. The reports on the division shall not be required in the event that all members of all the participating companies waive this right.

(4) Every creditor of the company being dissolved whose claim (receivable) was transferred to a successor company shall be entitled to its securing under both section 220x and section 220j.

(5) The closing financial statements under section 220t(5) shall be drawn up by all the participating companies. The opening balance sheet under section 220t(5) shall be drawn up by all the successor companies.

Subdivision 12

Conversion of Legal Form

Section 220zb

(1) Unless otherwise stipulated below, the provisions of section 69d to 69g, and 220e(10) and (11) shall apply, as appropriate, to decision-making on conversion (change) of legal form. Should the conversion of legal form require the approval of a state authority, the provisions of section 220a(2) shall apply as appropriate.

(2) A shareholder who disagrees with the conversion of legal form shall be entitled to a settlement if, after entry of such conversion (change) of legal form in the Commercial Register, he did not exercise the rights of a member or a member of a co-operative. The provisions of section 220u(1) and (3)(third sentence) shall apply, as appropriate, to companies whose legal form is changed to that of a general commercial partnership, limited partnership or co-operative.

(3) A shareholder entitled to a settlement shall not be liable for the company's liabilities as at the day of entry of the conversion of legal form in the Commercial Register and those which arise afterwards.

Commentary on section 220zb:

The provisions of section 220zb, which apply if a joint stock company converts its legal form to that of a general commercial partnership, limited partnership or co-operative, supplement the provisions under sections 220d to 220ft.

CHAPTER II CO-OPERATIVES

Division I Fundamental Provisions

Section 221

(1) A "co-operative" (in Czech "družstvo") associates an unrestricted number of persons (i.e. members) and is formed

for the purpose either of carrying on business activity or of meeting the economic, social or other needs of its members.

(2) A co-operative which meets the housing needs of its members is a housing co-operative.

(3) **The commercial name** of a co-operative must include the designation "družstvo" ("co-operative").

(4) A co-operative must have no fewer than five members; this does not apply **if** at least two members are legal entities. The accession of additional members, or termination of membership of existing members, does not affect the continued existence of such a co-operative, provided that it meets the conditions stipulated in the preceding sentence,

Commentary on section 221:

The Commercial Code defines a co-operative generally; it may be a housing co-operative, manufacturing co-operative, agricultural co-operative, etc. The commercial name of any co-operative must include {as an addendum} the designation "družstvo" ("co-operative"). The co-operative may not have less than five members, if these are individuals, or less than two, if these are legal entities. Some special Acts may regulate the minimum number of co-operative members differently.

Section 222

(1) A co-operative is a legal entity. It is liable for any breach of its obligations with its entire property.

(2) Members are not liable for the obligations (debts) of the co-operative. Its statutes may, however, stipulate that all or some members are under an obligation to indemnify the co-operative in respect of its loss up to a certain limit in excess of their membership contribution, provided that the members' meeting so decides. **Such limit may not exceed three times the amount of a member's contribution.**

Commentary on section 222:

A co-operative is a legal entity. Its property, with which it is liable for breaching its obligations, is defined as business property in section 6. Members of a co-operative are not liable for the co-operative's debts, but all or some members may be bound to provide a determined amount to the co-operative for the purpose of reimbursing a loss, if the members' meeting so decides.

Section 223

(1) The registered capital (or "basic capital"; in Czech "zakladnf jmenf") of a co-operative is made up of all the membership contributions which the members have undertaken to pay.

(2) **The statutes (in Czech "stanovy") shall specify the amount of the registered capital to be entered in the Commercial Register ("recorded registered capital", sometimes referred to as "recorded basic capital"; in Czech "zapsovaný zakladní kapital"). The recorded registered (basic) capital must amount to no less than CZK 50,000.**

(3) Membership is conditional on payment of a membership contribution as determined by the statutes (referred to as a "basic membership contribution"; in Czech "zakladní členský vklad"), or payment of a certain part of the basic membership contribution stipulated by the statutes (referred to as an "initial membership contribution"; in Czech "vstupní vklad").

(4) If the statutes so permit, members of the co-operative may undertake to pay additional contributions in order to increase their capital interest in the co-operative under the conditions set in the statutes.

(5) Nonmonetary contributions are appraised in the manner laid down **in the** statutes, or as agreed by all the members (applicants) on the formation (founding) of the co-operative.

(6) A member must pay up his membership contribution, over and above his initial membership contribution, within three years, unless the statutes provide otherwise. The statutes may **also** specify that the co-operative's members must pay the unpaid amounts of their contributions prior to their maturity, if the members' meeting decides that it is necessary because of a loss suffered by the co-operative.

Commentary on section 223:

Registered (basic) capital is generally defined in section 58. The recorded registered capital of a co-operative cannot be lower than CZK 50,000.

Section 224

Formation of a Co-operative

(1) A constituent meeting is required for the formation (founding) of a co-operative.

(2) The constituent (general) meeting of a co-operative:

- (a) determines the amount of the recorded registered capital;

- (b) approves the statutes; and
 - (c) elects the co-operative's managing board and auditing commission.
- (3) Those persons who have submitted an application to join a co-operative are entitled to vote at its constituent meeting. Before resolutions are passed on matters laid down in subsection (2), the constituent meeting **shall** elect a person (an individual) to chair the meeting. Until his **election**, the meeting shall be chaired by the person who convened the meeting.
- (4) The constituent meeting of the co-operative elects its organs and passes resolutions (i.e. takes decisions) by a majority of the attending applicants. An applicant for membership in the co-operative may withdraw his application immediately after voting on the statutes if he voted against their adoption.
- (5) The co-operative's constituent meeting results in the formation of the co-operative, if the applicants for membership in the co-operative undertook to make membership contributions whose total is equal to the amount of the recorded registered capital. The basic membership contribution, or the initial membership contribution, must be paid to a designated member of the managing board in a manner specified by the constituent meeting within 15 days of the day the constituent meeting was held.
- (6) Proceedings of the co-operative's constituent meeting shall be certified in a notarial deed, accompanied by a list of the members (applicants) and the amounts of their individual membership contributions which the members undertook to pay up at the meeting. A notarial deed shall be made of the resolution approving the statutes, as adopted at the constituent meeting, and it shall also include the approved wording of the statutes.**

Commentary on section 224:

A co-operative cannot be fanned without the holding of a constituent meeting. This determines the amount of the recorded registered capital, approves the statutes and elects the managing board (also referred to as the "board of directors"; in Czech "predstavenstvo") and the auditing commission (similar, but not identical, to a supervisory board in a joint stock company).

Only those persons who have filed an application to join the co-operative may vote at its constituent meeting. A notarial deed is to be made of the holding of the constituent (members') meeting. The adoption of the statutes is also to be certified by a notarial deed.

Section 225

- (1) A co-operative comes into being (acquires legal status) on the day of its registration in the Commercial Register (i.e. incorporation). Prior to filing an application for such registration in the Commercial **Register**, at least one half of the proposed registered capital must be paid up.
- (2) An application (a petition) for registration in the Commercial Register must be submitted by the managing board and signed by all its members.
- (3) The following documents are to be attached to the application for registration:
- (a) **a copy of the notarial deed on the co-operative's constituent meeting and a copy of the notarial deed on the constituent meeting's resolution approving the statutes;**
 - (b) the co-operative's statutes;
 - (c) a document certifying that the required part of the recorded registered capital has been paid up.

Commentary on section 225:

A co-operative, like a company or partnership, comes legally into being (acquires legal status) on its entry in the Commercial Register (incorporation). The registration court will make such an entry if all the statutory requirements have been met.

Section 226

A co-operative's statutes must state the following:

- (a) **the commercial name** and registered office of the co-operative;
- (b) the objects of the co-operative;
- (c) the conditions for establishing and terminating membership in the co-operative, and the rights and duties of the members towards the co-operative, as well as the rights and duties of the co-operative towards its members;
- (d) the amount of the basic membership contribution and, if appropriate, the amount of the initial contribution, the method of paying up membership contributions and the method of settling membership interest when membership is terminated;
- (e) the co-operative's organs and the number of their members, their term of office, the procedure for their appointment and their range of powers, as well as the manner of convening their meetings and their procedural rules;

- (f) rules governing the use of profit and the settlement of any loss;
- (g) the creation and use of the indivisible fund; and
- (h) other provisions, if they ensue from this Code.

(2) If the statutes stipulate that one of the conditions for membership is an employment relationship between the member and the co-operative, the statutes must also regulate this employment relationship. Regulation of the employment relationship may not contradict the provisions of labour law, unless regulation by the co-operative is more advantageous for the member. If the statutes do not include regulation of the employment relationship, the provisions of labour law apply.

(3) The members' meeting (i.e. the general meeting) shall decide on any amendment to the statutes. The managing board shall notify the registration court of approved amendments to the statutes within 30 days of their approval. The provisions of section 173(4) **shall similarly apply**.

Commentary on section 226:

The statutes (in Czech "stanovy") are the fundamental document of any co-operative and must include all the particulars according to subsection (1). The statutes may also regulate an employment relationship between its members and the co-operative if an employment relationship is one of the conditions for membership in the co-operative. The statutes can only be amended by the members' meeting or, where appropriate, by an assembly of delegates according to section 239(7).

Division II

Commencement and Termination of Membership

Section 227

(1) Both individuals and entities may become members of a co-operative. The statutes may specify that membership in the co-operative must be connected with employment in the co-operative, in which case only an individual who has finished compulsory school attendance and has reached 15 years of age may become a co-operative member.

(2) Membership in a co-operative commences (i.e. is established) on fulfilment of the conditions ensuing from law and the statutes:

- (a) in the case of the formation of the co-operative, on the day when the co-operative is incorporated (i.e. registered);
- (b) during the existence of the co-operative, by being admitted as a member on the basis of a written application;
- (c) on a transfer of membership; or
- (d) in a different manner, stipulated by law,

(3) If the statutes require that an employment relationship is a condition of membership in the co-operative, and unless anything else ensues from statutes, membership commences on the day which is agreed as the first day of employment, and terminates on the day when the employment relationship comes to an end.

(4) Membership cannot be established prior to payment of the initial membership contribution.

(5) Detailed regulation of membership, its commencement and termination is laid down in the statutes.

Commentary on section 227:

Members of a co-operative may be individuals and legal entities, but the statutes may determine that its members be only individuals, or only legal entities, or both. Membership in a co-operative does not arise prior to payment of the initial membership contribution, but if it depends on employment relationship, it arises on the day which is agreed as the first day of employment and terminates on the day when the employment relationship comes to an end.

Section 228

The co-operative must keep a list of all its members. The list must contain the following details of its members: **the commercial name** and seat of each legal entity, or the name and residential address of each individual, and the amount of each membership contribution, as well as the amount which each member has paid up. All factual changes to the information contained in the list must be entered therein without undue delay. The managing board shall enable everyone who proves a legal interest to inspect the list. A co-operative member is entitled to inspect the list and to ask for confirmation of his membership and the contents of an entry pertaining to his person.

Commentary on section 228:

Each co-operative keeps a list of its members in accordance with the requirements of section 228. Members of co-operatives are not entered in the Commercial Register.

Section 229

(1) Unless the statutes preclude it, a member may transfer his rights and duties to another member of the co-operative. An agreement on the transfer of membership rights and duties to another person is subject to approval by the managing board. The statutes may lay down the grounds for precluding such a transfer; a member may appeal to the members' meeting in the event of a negative decision by the managing board. On approval by the managing board or members' meeting, an applicant becomes a member of the co-operative with the same rights and duties as the member from whom these rights and duties were transferred.

(2) The statutes may provide for circumstances in which the managing board may not withhold its approval of the transfer of membership rights and duties, or in which approval by the managing board is not required.

Commentary on section 229:

A member may transfer his rights and duties to another member of the same co-operative, unless the statutes provide otherwise. Transfer of such rights and duties to another person requires approval by the managing board, but the statutes may stipulate cases when such approval of the managing board is not required or cannot be denied. A particular Act may regulate such transfer of rights and duties differently.

Section 230

The transfer of rights and duties connected with membership in a housing co-operative, if such transfer is based on an agreement, is not subject to approval by the **co-operative's organs**. The rights and duties arising from membership are transferred to the transferee (i.e. the person acquiring membership) when a contract on transfer of membership is presented to the co-operative concerned, or at a later date specified in the contract. Consequences identical to those following from presentation of a contract on transfer of membership take effect when a co-operative is notified in writing of a transfer of membership by the transferor and when it receives the written consent of the transferee.

Commentary on section 230:

Section 230 provides for an exemption from the provisions of section 229 and applies to transfer of the rights and duties of a member of a housing co-operative to another person; approval of such transfer by the co-operative organs is not required. Nevertheless, the co-operative must be notified of the transfer.

Section 231

(1) **Membership is terminated by a written agreement, withdrawal, expulsion, adjudication of bankruptcy order against such member's property, dismissal of a bankruptcy order due to such member's lack of assets (property), a final ruling imposing a distraint order on such**

member's rights and duties in the co-operative, a writ of execution against a member's rights and duties in the co-operative (issued under a final ruling) or on dissolution of the co-operative.

(2) **If a bankruptcy order on a certain member's property is withdrawn due to reasons other than discharge of the distribution schedule or his lack of assets (Note 1), his membership shall be renewed; if the co-operative has paid a settlement share to such member, he must refund it to the co-operative within two months of the day when the bankruptcy order was withdrawn. The same shall apply if a distraint order or a writ of execution against a member's rights and duties in the co-operative is stopped by a final judgment under other statutory provisions.**

(3) In the case of withdrawal, membership terminates within a period laid down in the statutes, but no later than six months after the day when the member notified the managing board in writing of his withdrawal.

(4) A member can be expelled if, despite a warning, he repeatedly breaches his membership duties, or for other serious reasons laid down in the statutes. An individual may also be expelled if under a final judgment he is sentenced for a deliberate criminal act against the co-operative or one of its members. **Unless** the statutes specify otherwise, it is the managing board which decides on the expulsion of such a member and communicates its decision in writing to him. The expelled member may appeal to the members' meeting against the decision **to expel him. Should the right of appeal not be asserted within three months of the day when the member learned or could have learned of the decision to expel him, such right shall lapse.**

(5) The court, acting upon a petition from the member to whom the decision relates, shall rule on the matter; if the resolution of the members' meeting contradicts statutory provisions or the statutes, the court will nullify the resolution. **The right to file a petition with the competent court shall lapse if such petition is not filed within three months of the members' meeting which confirmed the member's expulsion, or if the members' meeting was not duly convened as of the day when the member could have learned of the holding of the members' meeting which confirmed his expulsion, but no later than one year after the day when the members' meeting was held.**

(6) **If a petition under subsection (5) is filed because the alleged resolution was not adopted by the members' meeting since it did not vote on it, or because the content of the alleged resolution does not conform to the resolution which the members' meeting adopted, the petition may be filed within three months of the**

member concerned learning of such alleged resolution, but no later than one year after the day when the members' meeting was held or is said to have been held.

Commentary on section 231:

Section 231 regulates the termination of membership, but does not provide for all the possible circumstances of termination.

Section 232

(1) The membership of an individual expires upon his death. The heir, to the member's rights and duties may apply for membership in the co-operative. The law or the statutes may specify the conditions under which the managing board cannot reject the membership application of an heir, and the circumstances when approval by the board is not required for the heir's acquisition of membership rights and duties.

(2) Approval of the managing board is not required **if the heir acquired** rights and duties connected with membership in a housing co-operative.

(3) An heir who did not become a member of the co-operative has the right to the settlement share of the member whose membership terminated.

(4) The membership of an entity in a co-operative terminates when **such** entity goes into liquidation, or if it is under a bankruptcy order or on its dissolution. If an entity has a legal successor, the latter assumes all the rights and duties of the former member.

Commentary on section 232:

A member's death terminates his membership. A member's heir may apply for membership. In the case of a housing co-operative, the approval of the managing board is not required for the transfer of rights and duties to the heir.

Section 233

(1) If membership terminates during the existence of the co-operative, the member has the right to receive a settlement share.

(2) A member's settlement share is determined on the basis of the ratio of his paid-up membership contribution, multiplied by the number of his completed years of membership in the co-operative, to the sum of all members' paid-up membership contributions, multiplied by the number of their completed years of membership.

(3) The equity capital of the co-operative according to the financial statements for the year in which the membership of a particular person terminated shall be decisive for computing the settlement share. When computing such, resources in the indivisible fund shall not be taken into account and, if the statutes so specify, resources in other securing (reserve) funds shall also not be included in such computation. Contributions made by members whose membership was of less than one year's duration prior to the day at which the ordinary financial statements are drawn up shall not be taken into account.

(4) The settlement share is payable within three months after approval of the financial statements for the year in which membership was terminated. An entitlement to a share in profit exists only in respect of that part of the year during which the person concerned was a member of the co-operative.

(5) The provisions of subsections (2) to (4) apply, unless the statutes provide otherwise.

Commentary on section 233:

A member is entitled to receive a settlement share if he terminates his membership during the existence of the co-operative. The settlement share is determined and paid out in accordance with subsections (2) to (4), unless the statutes provide otherwise.

Section 234

(1) The settlement share is paid in cash. The statutes may specify that, if the membership contribution to the co-operative consisted partly or wholly of a transfer of title to real estate from the member to

the co-operative, the member may ask for the **return** of the real estate in the value recorded in the books of the co-operative at the time of termination of his membership. If his settlement share is less **than the** value of the returned real estate, the acquiring member must pay the difference to the co-operative in cash. The statutes may stipulate that a similar procedure shall apply when the membership contribution was provided in kind (other than real estate). The co-operative is accountable to the member if it manages the co-operative property in a manner which would render such return impossible.

(2) The entitlement [under subsection (1) above] to the return of agricultural land contributed to the co-operative pertains to the member even if the statutes do not specify an entitlement of this kind.

Commentary on section 234:

The statutes of some new co-operatives exclude the possibility of returning an in-kind investment contribution (for example real estate) to a member on termination of his membership. A different regulation of settlement is applicable in housing co-operatives.

Section 235

Indivisible Fund

(1) Upon its incorporation, the co-operative must create an indivisible fund in an amount of no less than 10% of its (recorded) registered capital. This fund shall be augmented by adding no less than 10% of the co-operative's annual net profit, until it reaches an amount equal to one half of the (recorded) registered capital of the co-operative. The statutes may determine that a co-operative's indivisible fund shall attain a higher proportion of the registered capital or that other securing (reserve) funds shall be established.

(2) The indivisible fund may not be distributed among members during the existence of the co-operative.

Commentary on section 235:

Each co-operative must establish an indivisible fund, to which the general provisions on the reserve fund (section 67) are not applicable.

Section 236

Profit Distribution

(1) When discussing **ordinary** financial statements, the members' meeting shall decide on the amount of profit to be distributed to the members of the co-operative.

(2) Unless the statutes provide otherwise, a certain member's share in the total profit allocated for distribution to the members is computed on the basis of the ratio between the amount of his paid-up contribution and the amount of the paid-up contributions of all members. The share of members whose membership in the decisive year was **less** than one year shall be reduced on a pro rata basis.

(3) The statutes or, if (he statutes so permit, the members' meeting may determine another method of computing a member's share in the total profit to be distributed among the members.

Commentary on section 236:

When approving the ordinary financial statements, the members' meeting will also decide on the distribution of profit to members. The duty to transfer financial means to the indivisible fund is to be complied with before profit can be distributed among the members.

Division III

Co-operative Organs

Section 237

A co-operative has the following organs:

- (a) the members' meeting (i.e. the general meeting);
- (b) a managing board;
- (c) an auditing commission;
- (d) other organs established under the statutes.

Commentary on section 237:

The Commercial Code specifies which organs must be established in every co-operative, along with the exemptions applying to small co-operatives under section 245.

Section 238

(1) Only members of a co-operative who are over the age of 18 and representatives of legal entities **that** are members of the co-operative may be elected to co-operative organs.

(2) If a legal entity is a member of a co-operative, it must authorize an individual to act for it in the co-operative's organs.

(3) Unless this Code provides otherwise, resolutions of the members' meeting, the managing board, and the auditing commission are valid if the members' meeting, the managing board and the auditing commission were duly convened and attended by more than half of the members, and approved by a majority of the votes cast by members present. This Code or the statutes shall specify which resolutions require the consent of a qualified majority.

Commentary on section 238:

Only individuals who are members of a co-operative and are over the age of 18 and individuals who represent legal entities which are members of a co-operative can be elected to its organs.

Members' Meeting

Section 239

(1) The supreme organ of a co-operative is the meeting of the members of the co-operative (also referred as the "general meeting" and hereafter referred to as the "members' meeting"; in Czech "česká schůze").

(2) The members' meeting is convened within a time-limit stipulated in the statutes, but at least once a year. The convening of the members' meeting must be communicated to the members in the manner specified in the statutes. **A specific matter shall be included by the managing board in the agenda of the members' meeting if so requested by one-third of the co-operative's members, the auditing commission or three delegates. The provisions of section 182(1)(a) shall apply as appropriate.**

(3) A members' meeting must be convened if at least one-third of all members of the co-operative or the auditing commission demand it in writing, as well as in other cases provided for in the statutes.

(4) The powers of the members' meeting include the following:

- (a) amending the statutes;
- (b) election and **recall** of members of the managing board and the auditing commission;
- (c) approval of the **ordinary** financial statements;
- (d) decisions on the distribution and use of a profit, or on the manner of payment of a loss;
- (e) decisions to increase or reduce the co-operative's (recorded) registered capital;
- (f) decisions on fundamental questions of the future development of the co-operative;
- (g) **decisions on a merger by the formation of a new entity, a merger by acquisition, a division or winding-up of the co-operative or conversion of its legal form;**
- (h) **decisions to sell or lease an enterprise or on other important property transactions;**
- (i) **decisions to sell or other property instructions involving real estate, including flats, or with flats; such decisions can be adopted by the members' meeting only after prior written consent is given by a majority of the housing co-operative members who are lessees of the real estate affected by the decision; this shall not apply if the duty arose to the co-operative to transfer a flat or non-residential space (premises) to a particular member's ownership when this member is the lessee of the said flat or non-residential space (premises).**

(5) The members' meeting may also take decisions on other matters concerning the co-operative and its activities, if so provided for in this Code or in the statutes, or if the members' meeting has reserved for itself the right to decide on such matters.

(6) The statutes of the co-operative may stipulate that the members' meetings be held in the form of a partial members' meeting. In voting on a resolution the votes from such partial members' meetings shall be aggregated. Partial members' meetings may not decide on the winding-up of the co-operative and other matters, if this is specified in the statutes.

(7) If it is not feasible to convene the members' meeting owing to the **size** of the co-operative, the statutes may specify that an assembly of delegates shall replace the members' meeting within the scope prescribed for **this**. Each delegate must represent the same number of voters. The statutes may stipulate exceptions if these are necessary in view of the organizational structure of the co-operative.

(8) **If there is not a quorum at the members' meeting, the managing board shall convene a substitute members' meeting to take place within three weeks of the day on which the originally convened meeting was to have taken place. The substitute members' meeting must be convened by a new invitation which includes the same agenda. Invitations must be despatched no later than 15 days after the day on which the originally convened meeting should have been held, and at the latest 10 days before the holding of the substitute members' meeting. The substitute members' meeting shall constitute a quorum, regardless of the provision of section 238(3). A similar procedure shall apply to members' meetings which are held in parts and to delegates' meetings.**

Commentary on section 239:

The highest organ of any co-operative is its members' meeting. All members (including those who are not yet 18) are entitled to vote at the members' meeting, which takes place at least once a year. In the case of a very large co-operative, the powers of the members' meeting may be exercised by an assembly of delegates, if this is in accordance with the statutes. The members' meeting may also be held in the form of members' meeting held in parts when the votes at such members' meetings are aggregated, provided that this is permitted by the statutes.

If the members' meeting is held and there is not a quorum (over one half of members), a substitute members' meeting is convened to take place within three weeks and constitutes a quorum, irrespective of the number of

members present.

Section 240

(1) Each member has one vote, unless the statutes stipulate otherwise. **When voting on matters under section 239(4)(a), (g) and (h), each member shall have only one vote.**

(2) **A member of the co-operative may authorize another co-operative member or person in writing to represent him at the members' meeting.**

Commentary on section 241:

It is usual that each member has one vote in a co-operative whose members are individuals, if such co-operative does not carry on business activity. However, it is possible to regulate the number of votes per member differently in the statutes particularly in the case of a co-operative which undertakes business activities. When voting on matters under section 239(4)(a), (g) and (h), each member has mandatorily one vote.

Section 241

(1) Minutes are made of each members' meeting. **They must** include:

- (a) the date and place of the meeting;
 - (b) the resolutions adopted;
 - (c) the results of voting;
 - (d) rejected objections lodged by members, who requested that their objections be recorded in the minutes.
- (2) Enclosed with the minutes of the members' meeting shall be: a copy of the attendance list and of the invitation to the members' meeting, and any background documentation concerning the matters discussed at the meeting.
- (3) Each member has the right to inspect the minutes and its enclosures.

Commentary on section 241:

Section 241 contains the requisites of the minutes of each members' meeting. Further requirements are often specified in the co-operative's "code of conduct" or "internal regulations" ("jednací řád"), although the Commercial Code does not provide for this.

Section 242

(1) Acting on a petition (complaint) filed by a co-operative member, the court shall nullify a resolution passed by the members' meeting, **if such** a resolution contradicts statutory provisions or the statutes. A member may **file** such a petition (complaint) **with** the court if he asked at the meeting which adopted the resolution that his objection be recorded, or if he notified the managing board of his objection **within one** month of the day the members' meeting was held **or, if the members' meeting was not duly convened, within one month of the day he learned of its holding, and at the latest one year after the day when it was held.** A petition may be filed with the court only within one **month** of the day when the member asked **that** his objection be recorded, or when he notified the managing board of his objection.

(2) **Where a petition (complaint) under subsection (1) is based on the ground that the alleged decision (resolution) of the members' meeting was not adopted because the members' meeting did not vote on it, or that the content of the alleged decision does not conform to the decision which the members' meeting adopted, a complaint may be filed with the court within one month of the day when the member learned of such decision, but no later than one year after the day when the members' meeting was held or allegedly held. In other cases, the provisions of section 131 shall apply as appropriate.**

Commentary on section 242:

A member may petition a court to nullify a resolution passed by the members' meeting due to reasons under section 242.

Section 243

Managing Board

(1) The "managing board" (in Czech "představenstvo") shall manage the activities of the co-operative and decide on all matters concerning the co-operative which are not reserved for another organ, according to the provisions of this Code or the statutes.

(2) The managing board is the statutory organ of the co-operative.

(3) The managing board implements the resolutions of the members' meeting and is accountable to it for its activities. The managing board is represented by its chairman or vice-chairman, unless the statutes provide otherwise. If, however, a legal act undertaken by the managing board requires a written **form**, then the signatures of at least two members of the managing board are needed.

(4) The managing board meets as necessary. It must meet within 10 days of receipt of a **reminder** from the

auditing commission, if particular shortcomings have not been rectified, despite an earlier notice from the auditing commission requiring this.

(5) The managing board elects a chairman of the co-operative (managing board) from among its members, and possibly a vice-chairman, **unless** the statutes provide for their election by the members' meeting. The vice-chairman represents the chairman in the latter's absence. Other members of the managing board may also be authorized to represent the chairman; the managing board determines the sequence in which its members shall represent the chairman.

(6) The chairman of the co-operative organizes and chairs the proceedings of the managing board. If the statutes so provide, the chairman also organizes and manages the everyday operations of the co-operative.

(7) The statutes may specify that the co-operative's everyday operations are to be organized and directed by a managing director, who is appointed and recalled by the managing board.

(8) The responsibility of members of the managing board, or possibly of other organs participating in management, shall be subject, as appropriate, to the provisions of sections 193(2), 194(2)(first to fifth sentences), (4) to (7).

Commentary on section 243:

The managing board is the executive organ of the co-operative. It organizes and manages the co-operative's activities, with the exception of matters which are within the competence of the members' meeting or the auditing commission. The statutes usually regulate the scope of the managing board's rights and duties in a greater detail. The chairman of the co-operative (managing board) is either elected by members of the managing board or the members' meeting. The managing board may appoint the managing director to manage the co-operative's everyday activities; if so, the chairman organizes and chairs only the managing board. This solution is rather unusual.

Section 243a

(1) Each member is entitled to file a complaint in the name of the co-operative against a member of the managing board or another organ participating in management of the co-operative seeking compensation for damage caused to the co-operative. A person other than a member of the co-operative who files a complaint may not perform acts in law in such proceedings in the name or on behalf of the co-operative.

(2) The provisions of subsection (1) shall not apply if compensation for damage (damages) is claimed by the managing board.

Commentary on section 243a:

A member of a co-operative can file with the court a complaint (petition) in the name of such co-operative against its organs when seeking compensation for damage caused to the co-operative. It is a similar regulation as in a limited liability company and a joint stock company.

Section 244

Auditing Commission

(1) The "auditing commission" ("kontrolni komise") is authorized **to audit** all the activities of the co-operative and to consider complaints lodged by its members. The auditing commission is accountable only to the members' meeting and is independent of other co-operative organs. The auditing commission has a minimum of **three** members.

(2) The auditing commission comments on the **ordinary** financial statements and on the proposed distribution of profit or coverage of a loss.

(3) The auditing commission notifies the managing board of any ascertained shortcomings and requires that they be rectified.

(4) The auditing commission meets as necessary, but at least once every three months

(5) The auditing commission elects its chairman, and possibly also a vice-chairman, from among its members, unless the statutes provide that **they** shall be elected by the members' meeting.

(6) The auditing commission is authorized to demand from the managing board any information related to the management of the co-operative. The managing board must report to the auditing commission, without undue delay, all facts which may seriously affect the management or position of the co-operative and its members. The same obligation also applies to the managing director.

(7) The auditing commission may authorize one or more members of the co-operative to undertake individual acts in a certain matter; these members **shall be** authorized in this matter to demand information appropriate to the powers available to the auditing commission.

(8) **Members of the auditing commission shall be subject to the provisions of section 243(8).**

Commentary on section 244;

The auditing commission (also referred to as the "inspection commission"; in Czech "kontrolni komise") supervises all the activities of the co-operative and discusses any complaints by its members. It must have at least three members. The role of a co-operative's auditing commission is similar but not identical to that of the supervisory board of a limited liability company or joint stock company.

The auditing commission is an independent organ which is accountable only to the members' meeting. The auditing commission must meet at least once in three months, but the statutes may provide that it is to meet more frequently.

Section 245

Organs of a Small Co-operative

(1) If the statutes so specify, the powers of the managing board and the auditing commission can be exercised by the members' meeting, if the co-operative has less than 50 members.

(2) The statutory organ of such a co-operative shall be the chairman and possibly another member so authorized by the members' meeting.

(3) The statutes shall determine the method of decision-making and the statutory organ of a co-operative which has fewer than **five** members consisting solely of legal entities.

Commentary on section 245:

A small co-operative which has less than 50 members has organs in accordance with section 237 or, if the statutes so provide, the members' meeting exercises the powers of the managing board and/or the auditing commission. If this is the case, the statutory organ of the co-operative is the chairman.

A co-operative which has fewer than five members, composed solely of legal entities, provides for the manner of decision-making and its statutory organ in the statutes.

Joint Provisions on Membership in Co-operative Organs

Section 246

(1) The statutes stipulate the term of office of the co-operative organs, which may not exceed five years.

(2) Members of the initial organs, established after the co-operative's formation, may be elected for a maximum term of three years.

(3) Unless the statutes stipulate otherwise, members of a co-operative's organs may be re-elected.

(4) Representatives of legal entities which are members of co-operative's organs shall have the same responsibilities as if they were personally members of such organs. The entity which has authorized them to serve on the organ in question is liable for any obligations arising from their office.

Commentary on section 246:

Members of the first organs of a co-operative can be elected to office for a maximum period of three years, subsequently for a maximum term of five years. Re-election is permitted, unless it is excluded by the statutes.

An individual representing a legal entity which is a member of a co-operative's organ is personally responsible for performance of his office, and the entity which he represents is liable for obligations arising from his office.

Section 247

(1) Membership in **the** managing board and in the auditing commission is mutually incompatible.

(2) The statutes may specify additional cases of incompatibility of offices or circumstances as a result of which a member of the co-operative may not be a member of one or another elected co-operative organ.

Commentary on section 247:

One person may not be concurrently a member of the managing board and the auditing commission. The statutes may provide for additional cases of incompatibility of office or circumstances restricting eligibility to membership of co-operative organs -for example close persons, one of whom is a member of the managing board and another a member of the auditing commission.

Section 248

(1) A co-operative member who has been elected to office may **resign** from that office, but must notify the organ of which he is a member accordingly. His performance of that offices terminates on the day when his resignation is discussed by the organ authorized to do so under the statutes. Unless the statutes stipulate otherwise, the resignation shall be dealt with by the **organ** which elected him. The competent organ must discuss the resignation at

the very next meeting after it learned of the proposed resignation, but no later than three months after having learned of it. After expiry of this time-limit, the resignation is deemed to have been discussed.

(2) If the statutes provide for the election of substitute members of co-operative organs, the substitute member takes the place of the resigning member on the day his resignation becomes effective, in a sequence stipulated by the statutes.

(3) If no substitute has been elected, the co-operative organ concerned may ask a co-operative member to perform provisionally the office of the resigning member until a new member is properly elected. A co-operative member performing the office provisionally shall have the same rights and duties as a duly elected member.

(4) The provisions of subsections (2) and (3) also apply when termination of membership in a co-operative organ occurs due to the death of the member.

Commentary on section 248:

Section 248 regulates resignation from office, the election of a substitute member and the provisional performance of the office by a member of the co-operative.

Section 249

Prohibition of Competitive Conduct

Members of the managing board and the auditing commission, the procurators and the managing director may be neither entrepreneurs, nor members of statutory or supervisory organs of other legal entities pursuing similar objects in their business activity. The statutes may alter the scope of the prohibition on competitive conduct.

Commentary on section 249:

Section 249 regulates the prohibition of competitive conduct of certain office-holders, but the statutes may alter the scope of such prohibited competitive conduct.

Section 250

Voting of the Managing Board and the Auditing Commission

(1) Each member of the co-operative's managing board and the auditing commission has one vote. Voting is public, unless the statutes provide that voting on certain matters must be by secret ballot. Secret balloting can be agreed upon by the organ in question in particular cases.

(2) If the statutes so permit, a resolution may be adopted by voting in writing or by means of communication technology, **if all** the members of the co-operative organ concerned agree to such a method of voting. In this case, all the individuals voting shall be considered as present at the meeting of the co-operative organ in question [section 238(3)].

Commentary on section 250:

When voting in either the managing board or the auditing commission, each of its members has one vote. This principle cannot be altered by the statutes.

Section 251

Claims of the co-operative, arising from the responsibility of the members of its organs for damage, are asserted by the managing board. Claims against members of the managing board are asserted by the auditing commission through a member appointed for this purpose.

Commentary on section 251:

Section 251 regulates the assertion of claims against members of co-operative organs arising out of their liability for damage.

Division IV

Ordinary Financial Statements and Annual Report

Section 252

(1) **A co-operative shall draw up ordinary financial statements for each year.**

(2) **When presenting the ordinary financial statements, the managing board shall also propose how a profit is to be distributed or a loss settled.**

(3) **Members of the co-operative may ask to see a copy of the ordinary financial statements and the proposal for profit distribution or settlement of a loss.**

Commentary on section 252:

Profit is distributed on the basis of ordinary financial statements; financial statements and a proposal for the distribution of profit are first presented by the managing board to the auditing commission for its opinion and then to the members' meeting.

Section 253

If the statutes so specify, the managing board shall arrange for an annual report on the management of the co-operative to be prepared. This report shall contain information about the co-operative's business activities in the preceding year and the prerequisites for future business activities, and other facts required by the statutes. The managing board shall present such annual report together with the **ordinary** financial statements for discussion at the members' meeting.

Commentary on section 253:

An annual report on the trading result of a particular co-operative and the outlook for its business activities is prepared and presented to the members' meeting by the managing board even if the statutes do not so provide.

Division V

Winding-up and Liquidation of a Co-operative

Section 254

- (1) The dissolution of a co-operative takes effect upon its deletion from the Commercial Register.
- (2) A co-operative shall be wound up:
 - (a) as a result of a resolution of the members' meeting;
 - (b) **on cancellation (conclusion) of a bankruptcy order following discharge of the distribution schedule, or on cancellation of a bankruptcy order due to the fact that bankrupt's estate is not sufficient for settlement of the bankruptcy proceedings, or on dismissal of a petition for a bankruptcy order due to a lack of assets (property);**
 - (c) as a result of a judicial decision;
 - (d) upon expiry of the period of time for which the co-operative was established; or
 - (e) upon attainment of the purpose for which the co-operative was established.
- (3) **A notarial deed must be made of a resolution of the members' meeting to wind up the co-operative.**
- (4) **A co-operative may convert its legal form to that of a business company (partnership). On such conversion, the legal entity shall not be dissolved. Conversion (change) of a co-operative to another legal form shall be subject, as appropriate, to the provisions on conversion of the legal form of a business company (partnership). A member of the co-operative who disagreed with such conversion of legal form shall be entitled to a settlement if he attended the members' meeting and did not vote in favour of such conversion and, after conversion of the legal form, he did not exercise the rights of a member (partner). The provisions of section 220u(3) shall apply as appropriate, even in the case of conversion to a general commercial partnership or limited partnership.**

Commentary on section 254:

A co-operative is wound up in accordance with subsection (2) before it is dissolved on its deletion from the Commercial Register. The new provisions enable to convert a co-operative into another legal form of a business company or partnership without dissolving the legal entity.

Section 255

- (1) A resolution of the members' meeting concerning merger by acquisition, merger by the formation of a new legal entity or division of a co-operative must determine its legal successor and specify which of its business assets are to be transferred to the successor. In the case of division of a co-operative, the members' meeting shall determine how to distribute the business assets and the members of the co-operative. If the co-operative is to be divided, the members' meeting shall take into account the legitimate interests of individual members.
- (2) A member who disagrees with the transfer of his membership rights and duties to the co-operative's legal successor may withdraw from the co-operative on the day when such a transfer is to be effected, if he notifies the managing board accordingly within one week of adoption of the resolution by the members' meeting. The co-operative's legal successor must satisfy the claim of the resigning member to a settlement share under section 233 within- one month of the day when the co-operative's business assets pass to the legal successor.

Commentary on section 255:

The Commercial Code stipulates the requisites of a resolution of the members' meeting on the winding-up of a co-operative with a legal successor and provides for the rights of a member who disagrees with the resolution of the members' meeting.

Section 256

- (1) In the case of a merger by the formation of a new co-operative, its business assets and membership are passed to the newly established co-operative on the day when the latter is entered into the Commercial Register (i.e. incorporated).
- (2) When one co-operative merges with another co-operative, the business assets and membership of the merging co-operative shall be passed to the recipient co-operative on the day that the merging co-operative is struck off the Commercial Register.
- (3) When a co-operative is divided, the business assets and membership of the co-operative are passed to the co-operatives which have been established by that division on the day when these co-operatives are entered (i.e. incorporated) into the Commercial Register. The provisions of section 220x apply, as appropriate.
- (4) A dissolving co-operative shall be struck off the Commercial Register and the co-operative being formed by a merger, or the co-operatives being formed by a division shall be entered in the Commercial Register at the same day. A co-operative dissolved as a result of a merger by acquisition shall be struck off the Commercial Register and an entry of the co-operative with which it merged shall be amended at the same day.
- (5) Unless it follows otherwise from the resolution of the members' meeting, a co-operative member participates in the business activities of the successor co-operative through his membership contribution, which is equal to the liquidation share due to him in the case of liquidation of the co-operative.

Commentary on section 256:

The regulation of the dissolution of a co-operative connected with a legal successorship is similar to that of business companies.

Section 257

- (1) Upon application (petition) by a state administrative authority, a co-operative organ, a member of a co-operative or a person who proves his legal interest, the court may order the winding-up of a co-operative and its liquidation, if:
 - (a) the number of members in the co-operative has fallen below the number stipulated in section 221(3);
 - (b) the total sum of membership contributions has dropped below the amount stipulated in section 223(2);
 - (c) two years have lapsed since the day when the term of office of the co-operative organ or organs have expired and a new organ has not been elected, or the duty to convene a members' meeting has been breached, or the co-operative has not undertaken any activity for more than two years;
 - (d) the co-operative has breached the duty to create an indivisible fund;
 - (e) the co-operative is in violation of the provisions of section 56(3);
 - (f) the law has been violated by the formation of such co-operative, a merger by the formation of a new co-operative or a merger by acquisition.
- (2) **Before it rules that a co-operative is to be wound up, the court shall set the co-operative a reasonable time-limit in which to eliminate the ground due to which its winding-up was sought provided that such elimination is feasible.**

Commentary on section 257;

Section 257 stipulates the grounds on which a co-operative may be wound up and liquidated by a court order.

Section 258

- (1) The members' meeting may pass a resolution **under** which a co-operative which was established for a definite period of time shall continue its activities, even after expiry of **this** period.
- (2) However, this resolution must be passed prior to commencement of distribution of the liquidation balance.

Commentary on section 258:

A co-operative which was formed for a specified period of time (term) may continue its activities if the members' meeting passes a resolution to that effect prior to distribution of the liquidation remainder.

Section 259

- (1) Unless the law provides otherwise, the wound-up co-operative goes into liquidation. Liquidators are appointed in the manner laid down in the co-operative's statutes; otherwise they are appointed by the members' meeting.
- (2) **Prior** to distributing the liquidation remainder, the liquidators are obliged to draw up the draft terms of distribution of the liquidation remainder, which is then discussed by the members' meeting. A copy of the draft terms of distribution must be presented to any member of the co-operative who requests it.
- (3) The liquidation remainder is distributed among the members in the manner stipulated in the statutes.

Unless these provide otherwise, the paid-up parts of membership contributions are refunded to the members. The leftover liquidation **remainder is** then distributed among those members whose membership had lasted at **least one year** at the day of the winding-up of the co-operative. Unless the statutes specify otherwise, the leftover liquidation remainder is distributed among **the** members in the ratio of their share in the co-operative's registered (basic) capital. The provisions of section 234(1) apply to the return of nonmonetary contributions, as appropriate.

(4) Within three months of the holding of the members' meeting, any co-operative member or other authorized person may file a petition with the court seeking nullification of the resolution of the members' meeting on the distribution of the liquidation remainder, on the ground **that** it contradicts the statutory provisions or the statutes. If the court grants such a petition (complaint), it shall simultaneously **order** distribution of the liquidation remainder. The liquidation remainder may not be distributed until expiry of three months, or until the court order becomes final.

Commentary on section 259:

A wound-up co-operative goes into liquidation, which is effected by liquidators who are appointed in accordance with the statutes. Section 259 also regulates distribution of the liquidation remainder, should this not be regulated by the statutes.

Section 260

Applicability of Provisions on Business Companies

Unless this Chapter provides otherwise, the provisions of sections 56 to 75b shall also apply, as appropriate, to co-operatives.

Commentary on section 260:

The general provisions on business companies in sections 56 to 75b are applicable to co-operatives, as appropriate.

PART THREE BUSINESS OBLIGATIONS

CHAPTER I GENERAL PROVISIONS

Division I

The Object of Legal Regulation and its Nature

Section 261

(1) This Part of the Code regulates (contractual) obligations between entrepreneurs, provided that the origin of the obligations clearly indicates that they are related to their business activities, taking all the relevant circumstances into account.

(2) This Part of the Code also governs contractual obligations between the state, or a self-governing territorial entity (e.g. a municipality), and entrepreneurs in the course of their business activities, if these activities involve the provision of public supplies. For this purpose, state-owned organizations which are not entrepreneurs are deemed to be identical with the state when contracts are concluded whose contents relate to the provision of public services.

(3) Irrespective of the nature of the parties, this Part of the Code regulates relationships of obligations (contractual obligations):

- (a) between the founders (promoters) of business companies⁶, and between a member (partner) and a business company (partnership), as well as between the members (partners) themselves, if these obligations concern participation in the company (partnership) or if they arise from contracts under which a member's (partner's) ownership interest (business share) is transferred;
- (b) between the founders (promoters) of a co-operative and between a member and a co-operative as well as among members of one co-operative, if the obligations ensue from membership in the co-operative or from contracts on the transfer of membership rights and duties;

⁶ In reading the subsequent provisions, it should be borne in mind that the term "companies" also refers to "partnerships", as defined in Part Two (i.e. general commercial partnerships and limited partnerships, which are legal entities under Czech law). The term "members" also refers to "partners" and "shareholders".

- (c) arising from stock exchange transactions and brokerage contracts (contracts with an intermediary; section 642), and also from contracts concerning securities acquired against a consideration (payment);
- (d) arising from a contract of sale of an enterprise or its part (section 476), a contract on lease of an enterprise or its part (section 488b), a lien on a business share (section 117a), a credit contract (section 497), an inspection contract (section 591), a forwarding contract (section 601), a contract on operating a means of transportation (section 638), a silent partnership contract (section 673), a contract on opening a letter of credit (section 682), a collection contract (section 692), a contract on the deposit of a thing with a bank (section 700), a current account contract (section 708), and a deposit account contract (section 716);
- (e) arising from a bank guarantee (section 313), a traveller's cheque (section 720) and a promise of indemnity (section 725);
- (f) **between the company or co-operative and the person being its statutory or other organ or its member;**
- (g) **between the founders (promoters) and the administrator of investment contributions.**

(4) This Part of the Code also regulates relationships which arise from securing the performance of obligations being subject to this Part of the Code under the preceding subsections.

(5) The nature of the members at the time of creation of the relationship of obligation is decisive when applying the provisions of this Part of the Code under subsections (1) and (2).

(6) Contracts between the persons referred to in subsections (1) and (2), which are not regulated by the provisions of Chapter II of this Part of the Commercial Code and which are regulated as a contractual type by the Civil Code, shall be subject to the Civil Code's provisions on such contractual type and (otherwise) to the provisions of the Commercial Code. However, a barter contract relating to the business activities of the parties is governed by the provisions of this Code, where the provisions on a contract of sale apply mutatis mutandis to the performance of an obligation to deliver certain goods, when each of the parties has the status of a seller, and to the performance of an obligation to take delivery of the goods, when each of the parties has the status of a buyer.

Commentary on section 261:

Obligations arise from acts in law (legal acts), mostly contracts (agreements), from damage caused, from unjust enrichment or from other facts stipulated by law.

Business relationships of obligation arise as relationships between (among) entrepreneurs in connection with the carrying on of their business activities. This Part of the Commercial Code applies further to those relationships which are stipulated in subsections (2) to (4), unless the contract is only regulated by the Civil Code, except for a barter contract which, if related to business activity, is subject to the Commercial Code's provisions on contract of sale/purchase.

Section 262

(1) The parties may agree that their mutual obligations which are not listed in section 261 will be governed by this Code. However, where such agreement is aimed at the deterioration of the legal status of a contracting party, which (who) is not an entrepreneur, it is void. It is not allowed to exclude by agreement the application of the Civil Code's provisions on consumer contracts and thereto related clauses (i.e. to agree any clauses detrimental to the consumer which are contrary to the Civil Code's provisions) and other statutory provisions which are aimed to protect consumers.

(2) Unless this Code or other statutory provisions provide otherwise and if only one of the contracting parties to a legal relationship under section 261(1) or (3) is an entrepreneur, the provisions of this Part of the Commercial Code shall apply to both parties; however the provisions on responsibility (liability), consumer contracts, detrimental clauses and joint obligations under the Civil Code and other statutory provisions (i.e. of other Acts) aimed at the consumers' protection must always be applied if it is in favour of the contracting party which is not an entrepreneur.

Commentary on section 262:

Contracting parties to whose relationships the Commercial Code is not applicable under section 261 may nevertheless agree that their relationships will be subject to the Commercial Code's provisions provided that this does not impair the legal status of the contracting party which is not an entrepreneur. The application of other laws aimed at the protection of consumers cannot be excluded.

Section 263

(1) The parties may depart from the provisions of this Part of the Code, or exclude application of its individual provisions, with the exception of the provisions of sections 261 and 262(2), 263 to 272, 273(1), 276 to 289,301,303,304,306(2) and (3), 308,311(1), 312,313, 321(4), 322, 324, 341, 344, 355, 365, 370, 371, 376, 382, 384, 386 to 408, 444, 458, 459, 477, 478, 479(2), 480, 483(3), 488, 488b to 488e, 493,499,509(1), 528,535,592,597,608,612 to 614,620,622(4), 628,65S, 655a, 658,659a, 659b, 659c, 660(4), 662(3), 668(3), 669(6), 672a, 673(2), 678,679(1), 680,707,711,720,725,729,743 and 745(2).

(2) The parties may not depart from the fundamental provisions in this **Part** and from those provisions prescribing a written form for some act in law (legal transaction).

Commentary on section 263:

Section 263 stipulates which provisions of the Commercial Code are mandatory (those which the contracting parties cannot exclude by agreement). Other Acts which regulate certain specific relationships may include their own mandatory provisions (for example, the Securities Act).

Section 264

(1) In determining the rights and duties arising from a relationship of obligations, account is also taken of the business practice (trade usage) prevalent in a particular field of business, unless these are contrary to the contents of the contract or to the law.

(2) The business practice (trade usage) which is to be considered in accordance with the contract takes precedence in its application over those provisions of this Code which are not of a mandatory nature.

Commentary on section 264:

When determining rights and duties arising from a relationship of obligation (mostly from a contract), commercial practice (i.e. trade usage) is taken into consideration, unless such trade usage contradicts statutory provisions.

Section 265

Exercise of a right which contradicts the principles of fair business conduct is not granted legal protection.

Commentary on section 265:

The provision of section 265 is mandatory.

Division II

Some Provisions on Acts in Law

Section 266

(1) A manifestation of will is interpreted according to the intention of the acting party, if this intention was known or must have been known to the party to which the manifestation of will was directed.

(2) In cases where a manifestation of will cannot be interpreted under subsection (1), it is interpreted according to the meaning usually attributed to it, by a person who is in the same position as the person to whom the manifestation of will is directed. Expressions (i.e. terminology) used in business contacts (i.e. negotiations, contracts) are interpreted according to the meaning usual in such contacts.

(3) When interpreting a manifestation of will under subsections (1) and (2), due account shall be taken of all the circumstances related to the manifestation of will, including the negotiations about conclusion of the contract in question and the practice which the parties have introduced between themselves, as well as the subsequent conduct of the parties, if the nature of the case so permits.

(4) A manifestation of will which contains an expression which permits different interpretations shall be interpreted, if in doubt, to the disadvantage of the party which used the expression in the negotiations first.

(5) If under the provisions of this Part of the Code, the decisive factor is to be the seat, the place of business, the location of works or an establishment, or the residential address of a contracting party, it shall be the location (address) as stated in the contract, until a change is communicated to the other party.

Commentary on section 266:

The general regulation of acts in law is included in the Civil Code (section 34 et seq). The Commercial Code regulates only those interpretations of acts in law which are within its scope of applicability (section 266) and the voidness of acts in law (sections 267 and 268).

Section 267

- (1) If the voidness of an act in law is stipulated in order to protect only one of the parties, such voidness (invalidity) can be invoked only by the party in question. This does not apply to contracts concluded under Part Two of this Code.
- (2) The provisions of section 49 of the Civil Code do not apply to the relationships governed by this Code.
- (3) If an otherwise void contract includes an agreement on the choice of law or this Code (section 262), or an agreement on resolving a dispute between contracting parties, then such agreements are void only if the grounds of voidness apply to them as well. On the other hand, voidness of these agreements does not mean that the contract of which they are a part is void.

Commentary on section 267:

Only a party to an act in law may invoke voidness of the act if its voidness is to protect this party.

Section 268

Anyone who has caused an act in law to become void is to compensate the damage caused to the party to which the act in law was directed, unless that party was aware of the voidness of the act in law. Compensation for such damage is governed mutatis mutandis by the provisions on damages caused by a breach of a contractual obligation (section 373 et seq).

Commentary on section 268:

The provisions of this section are mandatory.

Division III

Some Provisions on the Conclusion of Contracts

Subdivision 1

Negotiations on the Conclusion of a Contract

Section 269

- (1) The provisions of Chapter II of this Part of the Code, which regulates individual types of contracts, apply only to contracts whose contents, as agreed by the contracting parties, include the essential parts of the contract stipulated in the fundamental provisions for each of these contracts.
- (2) Parties may also conclude a contract which is not specified as a particular type of contract. However, if the parties fail to identify adequately the object of their obligations, such a contract is not considered as concluded.
- (3) An agreement on a particular part of the contract may be replaced by an agreement between the parties on the method for facilitating subsequent identification (definition) of the content of the obligation, provided that this method does not depend on the will of one party alone. If a missing part of the contract is to be determined by the court or by a particular person, the agreement must be in writing and the provisions of section 291 apply mutatis mutandis.

Commentary on section 269:

The Commercial Code does not regulate conclusion of contracts between (among) entrepreneurs comprehensively, but only some specific issues (sections 269, 270, 272, 273, 276 et seq, 281 et seq). The general regulation of conclusion of contracts is included in the Civil Code (section 40 et seq).

An offer to conclude a contract (agreement) may be made by either party; such offer must be sufficiently definite and it must be clear that the offeror is ready to be bound by his offer on its acceptance by the other party- However, the parties may agree in writing that a missing part of their contract is to be determined only subsequently. The provisions of section 269 are mandatory.

Section 270

- (1) An agreement made at the time a contract is being concluded, that a certain non-essential part of the contract will be additionally agreed after conclusion of the contract, is considered to be a condition of the validity of the agreed part of the contract, unless the parties make it indisputably clear prior to conclusion of the contract that any subsequent failure to come to an additional agreement on supplementing the contents of the contract will have no influence on the validity of the concluded contract. In case of doubt, the condition shall have (suspensory) effects.
- (2) If in the cases specified in subsection (1), the parties agree in writing that the missing content of the contract is to be determined by the court, or by a person specified in the agreement, the provisions of section 291 apply. The agreed part of the contract does not take effect until the missing part is either agreed or determined; the validity of the agreed part of the contract becomes extinguished at the time the obligation to reach agreement on the missing content of the contract lapses [section 292(4) and (5)], unless the parties have agreed that the agreed part of the contract will remain valid.

Commentary on section 270:

The mandatory provisions of section 269 are supplemented by the mandatory provisions of section 270.

Section 271

If the parties mutually exchange confidential information when negotiating a contract, then no party to which such information is made available may disclose it to a third party_t or use it contrary to its purpose for such party's own needs, regardless of whether the contract is concluded or not. Anyone breaching this duty shall be liable to render compensation for damage in accordance with the provisions of section 373 et seq.

Commentary on section 271:

Confidential information disclosed during negotiations of a contract may not be divulged to a third party. A party which breaches the duty of observing confidentiality is liable for damage caused under section 373 et seq. A negative prescription is subject to the provisions of sections 397 and 398.

Section 272

(1) The contract must be in writing in order to be valid only in cases defined by this Code, or if at least one party negotiating the contract requests that it be in writing.

(2) If a written contract contains provisions that the contract may be altered or cancelled only by agreement between the parties in writing, then the contract can be altered or cancelled only in writing.

Commentary on section 272:

The Commercial Code expressly stipulates when a contract must be in writing in order to be valid. A contract must also be in writing if this is requested by one of the contracting parties.

Section 273

(1) A part of the contents of a contract may also be specified by reference to general commercial terms drawn up by professional or special-interest organizations, or to other business terms which are known to the contracting parties, or which are appended to the draft contract.

(2) Special divergent stipulations in a contract take priority over standard business terms under subsection (1).

(3) Printed contract documents (forms), as used in business contracts, may be used for the conclusion of a contract.

Commentary on section 273:

General commercial terms (conditions) may be made part of a contract by reference to them, if they are known to the contracting parties or they are enclosed with the offer. However, specific stipulations in the contract which differ from the general (standard) commercial terms take priority over such general commercial terms (conditions).

Section 274

If in their contract the contracting parties use some of the clauses (terms) defined in the generally accepted rules of interpretation, it is presumed that by using such clauses the parties intend to attain the legal effects stipulated in the **rules** of interpretation, to which the parties referred in their contract, or else in the rules which are usually applied in a contract of such nature.

Commentary on section 274:

If the contracting parties include in their contract clauses whose precise meaning is explained in generally known documents (for example, Incoterms 1990), it is assumed that such clauses have the meaning as stipulated in such documents.

Section 275

(1) **If** several contracts are concluded during the same negotiations, or included in a single document, each of these contracts **shall** be considered separately.

(2) However, if the nature of the contracts specified in subsection (1), or their purpose as known to the parties at the conclusion of the contracts, obviously implies that these contracts are interdependent, the establishment of every such contract shall be a condition for the establishment of the other contracts. The extinguishment of one of the contracts, other than by performance, **shall** result in the extinguishment of the other dependent contracts with similar legal effects.

(3) The provisions of subsection (2) apply *mutatis mutandis* if the nature or purpose of the contracts implies that only one or several such contracts depend on one or several other contracts.

(4) With regard to the contents of the offer to conclude a contract, or to the practice which the parties have introduced in their mutual conduct, or to the common practice (or usage) which is decisive under this Code, the person to whom the offer is addressed (offeree) may express acceptance of the offer by performing an act (e.g. despatch of goods or payment of the purchase price) without advising the other party (the offerer). In this event the acceptance of the

offer is considered to be effective from the moment of performance of the act, as long as it occurred prior to expiry of the time-limit for acceptance of the offer.

Commentary on section 275:

When proving whether two or more contracts resulting from the same negotiations are each independent or mutually dependent, it is irrelevant whether they are contained in one deed (instrument) or not. If such contracts are mutually interrelated (mutually dependent), the commencement of one of them is a condition for the coming into being of the other contracts and the termination of one of the contracts, other than by performance (fulfilment), results in termination (cancellation) of the other dependent contracts.

Subdivision 2

Public Offer for a Contract and its Consequences

Section 276

(1) A manifestation of will whereby the offeror addresses **unspecified** persons for the purpose of concluding a contract is considered as a public offer for a contract (hereafter referred to as "a public offer"; in Czech "veřejný návrh"), provided that the contents of such offer correspond to the provisions of section 269.

(2) If an initiative to conclude a contract lacks the particulars specified in subsection (1), it shall be considered as only an invitation to submit offers for (the conclusion of) a contract.

Commentary on sections 276 to 280:

The provisions of section 276 et seq are mandatory. A public offer must be sufficiently advertised (published). The offeror must conclude the contract with the party which first accepted the offeror's public offer, unless such offer was concurrently accepted by two or more parties, in which case the offeror may choose with whom to conclude the contract. This does not apply if it was promised in the public offer that the contract would be concluded with all parties accepting the offer within the specified time-limit.

Section 277

A public offer may be withdrawn if the offeror announces withdrawal of its offer prior to its acceptance, using the same manner by which the public offer was published.

Section 278

On the basis of a public offer, a contract is concluded with the person which, in accordance with the contents of the public offer and within the specified time-limit, or an appropriate time-limit, is the first to notify the offeror of its acceptance, and the offeror confirms conclusion of the contract to this person. If several persons accept a public offer at the same time, the offeror may select the one to which the conclusion of the contract will be confirmed.

Section 279

(1) The offeror is obligated to confirm conclusion of contract to the offeree, without undue delay, after receipt of acceptance under section 278.

(2) If the offeror confirms conclusion of the contract to the person who accepted that offer (offeree), but does so later than required under subsection (1), the contract will not come into being if the offeree rejects the conclusion of the contract and notifies the offeror accordingly, without undue delay, after receiving the late confirmation of the conclusion of the contract.

Section 280

If it is expressly stipulated in the public offer, the contract will be concluded with all persons who accepted it within the specified time-limit.

Subdivision 3

Public Tender

Section 281

A party which announces to unspecified persons a competition for the most advantageous proposal to conclude a specific contract ("a public tender"; "veřejná obchodní soutěž") invites thereby offers (bids) to conclude such contract.

Commentary on sections 281 to 288:

The provisions on public tender regulate the procedure for selecting the most advantageous bid and the conclusion of a contract with the party which submitted such bid. Public tenders for public works and supplies are subject to the provisions of the Public Procurement Act.

Section 282

- (1) Announcement of a public tender (hereafter "tender") shall include a written, commonly-used specification of the object of the obligation required and the principles governing the remaining contents of the intended contract which are determined as binding, the stipulated manner of submitting bids, the time-limit for submitting bids, and the time-limit for announcing the selected bid ("the terms of the tender"; in Czech "podmínky soutěže").
- (2) The contents of the terms for each tender must be published in an appropriate manner.

Section 283

The party which announced the tender may not alter the published terms of the tender or cancel the tender, unless it reserved such right in the published terms of the tender, and unless the alteration or cancellation is published in the same manner as the terms of the tender were previously published.

Section 284

- (1) A bid (an offer) can only be included in a certain tender if the contents of the bid correspond to the published terms of such tender. The bid may depart from the published terms only to the extent permitted by these terms.
- (2) No bid which is submitted after the time-limit set in the terms of the tender can be included in the tender.
- (3) Bidders may claim reimbursement of expenses incurred as a result of their participation in the tender only if the terms of the tender provide for the right to claim such expenses.

Section 285

- (1) A submitted bid may not be withdrawn after lapse of the time-limit set in the terms of the tender for submitting bids, unless the terms of the tender expressly permit bidders to revoke their bids after this time-limit. The terms of the tender may stipulate that no bid may be revoked once it has been submitted.
- (2) A bid may be altered or supplemented only within the time-limit within which it may be revoked under subsection (1), unless it concerns a simple correction of errors made in drawing up the tender and the terms of the tender do not rule out making such a correction. A bid may be altered or supplemented in cases specified in the terms of the tender.

Section 286

- (1) The party which announced the tender shall select the most suitable bid from those submitted and announce its acceptance in the manner and within the time-limit set in the terms of the tender.
- (2) If the terms of the tender do not specify the manner of selecting the most suitable bid, the party which advertised the tender may select the bid which suits this party most.

Section 287

- (1) The party which advertised the tender is bound to accept the bid selected in the manner specified in section 286. If this party announces acceptance of a bid after lapse of the time-limit set in the terms of the tender, the contract shall not be established if the selected bidder notifies the person, without undue delay, following receipt of the notification of acceptance of his bid that he refuses to conclude the contract.
- (2) The party which announced the tender has the right to reject all the submitted bids if this party reserved this right in the terms of the tender.

Section 288

Without undue delay after the termination (evaluation) of the tender, the party which announced the tender shall notify all the unsuccessful bidders that their bids were rejected.

Division IV

Agreement on a Future Contract

Section 289

Fundamental Provisions

- (1) "An agreement on a future contract" (in Czech "smlouva o uzavření budoucí smlouvy") binds one or both parties to conclude, within a specified period of time, a future contract whose object of performance is at least stated in a general manner.
- (2) The agreement must be in writing.

Commentary on sections 289 to 292:

An agreement on a future contract (pactum de contrahendo) may bind one or both contracting parties. If in doubt, it is assumed that the agreement binds both parties.

The requisites of an agreement on a future contract are: the determination of the contracting parties, the time-limit within which a certain contract is to be concluded and some specification (at least general) of the object (subject) of the contract. Any missing part of the contract may be determined by the court.

Section 290

(1) "The obligated party" (or "obligor"; in Czech "zavazana strana") shall conclude the contract, without undue delay, after being invited to do so by the party so entitled under the agreement on a future contract.

(2) If the obligated party fails to meet its obligation to conclude the contract under subsection (1), the other party may demand that the contents of the contract be determined by the court or a person specified in the agreement, or it may claim compensation for damages caused by a breach of the obligation to conclude the contract. The other party may claim damages and demand that the contents of the contract be determined only if the obligated party has unjustifiably refused to negotiate the conclusion of the contract.

Section 291

The provisions of sections 290 and 292(1) and (2) also apply *mutatis mutandis* to a written agreement between the parties which stipulates that an already concluded contract must still be supplemented by the regulation of specified matters, and that the missing part of the concluded contract is to be determined by the court or another person named by the parties, should the parties themselves fail to agree on such matters. The obligation to supplement the missing contents of the contract may be assumed by one or both parties; if in doubt, it shall be presumed that this obligation is shared by both parties.

Section 292

(1) The contents of a future contract must be specified according to the purpose obviously intended by its conclusion, taking into account both the circumstances under which the agreement on the future contract is concluded, and the principles of fair business practice.

(2) The right to have the contents of the future contract determined by the court, or by a person named for this purpose in the agreement, and a claim for damages under section 290(2), becomes statute-barred on the lapse of one year from the day on which the entitled party invites the obligated party to conclude the contract under section 290(1), unless the agreement on the future contract provides for a different time-limit. However, the agreed time-limit may not exceed the statute of limitations under section 391 et seq of this Code.

(3) The obligation to conclude a future contract terminates if the entitled party fails to invite the obligated party to fulfil this obligation within the time-limit specified in the agreement on conclusion of the future contract.

(4) The obligation to provide the missing contents of a contract terminates if the entitled party fails to invite the obligated party to fulfil this obligation within the time-limit specified in the agreement for providing the contents of a contract (section 291); otherwise, within one year of the conclusion of the agreement.

(5) The obligation to conclude a future contract or to provide the missing contents of a contract also expires if the circumstances which the parties took into account when establishing the obligation change to such an extent that the obligated party cannot reasonably be required to conclude the contract. However, the obligation terminates only if the obligated party has notified the entitled party of the change in circumstances without undue delay.

Division V

Some Provisions on Joint Obligations and Joint Rights

Section 293

If several persons are jointly bound to render the same performance, it is presumed, in case of doubt, that they are bound to perform it jointly and severally. The creditor may require the performance from any one of these persons, but he must accept a performance offered by any other co-debtor.

Commentary on sections 293 to 296:

The general regulation of joint obligations is provided in sections 511 to 515 of the Civil Code, It also applies to relationships which are subject to the Commercial Code. According to section 293, any of the persons (parties) jointly bound to render the entire performance (fulfilment) must provide it if asked to do so by the creditor. According to section 294, each co-debtor is to render only his part of the divisible obligation, but according to section 295, in the case of indivisible obligation, co-debtors are obligated to co-operate and fulfil their obligation jointly. Section 296 applies to a debtor who has concurrent obligations towards several creditors for an indivisible performance, in which case the debtor renders performance to the creditor who first requires it; prior to that the debtor can choose to which creditor he will render his performance.

Section 294

If the contract, or the nature of the obligation, implies that the debtors are not liable jointly and severally for the same performance, each co-debtor is liable only to the extent of his share of the obligation. If in doubt, it is presumed that the co-debtors are equally liable.

Section 295

If several persons assume an obligation and its nature implies that the obligation can only be fulfilled by collaboration of all the co-debtors, the co-debtors are obliged to fulfil the obligation jointly.

Section 296

If a debtor has concurrent obligations towards several creditors for an indivisible performance, any of these creditors may require this performance, unless the law or the contract provides otherwise.

Division VI

Securing an Obligation

Subdivision 1

Some Provisions on Lien

Sections 297 to 299

Repealed

Subdivision 2

Some Provisions on the Contractual Penalty

Section 300

Circumstances excluding liability (section 374) do not affect the obligation to pay a contractual penalty (or "a conventional fine"; in Czech "smluvni pokuta").

Commentary on sections 300 to 302:

The fundamental provisions on the contractual penalty (also referred to as "a contractual fine" or "a conventional fine") are to be found in sections 544 to 545 of the Civil Code, supplemented by the provisions of the Commercial Code (sections 300 to 302) in respect of business obligations.

Section 301

The court can reduce a disproportionately high contractual penalty, taking into account the value and significance of the secured obligation, and can do so in an amount corresponding to the damage which arose prior to the judicial decision and which was caused by a breach of the contractual obligation to which the contractual penalty applies. The aggrieved party is entitled to compensation for damage which occurs subsequently up to the amount of the contractual penalty fixed under the provisions of section 373 et seq.

Section 302

Withdrawal from a contract does not affect the right to claim payment of a contractual penalty.

Subdivision 3

Suretyship

Section 303

A person who declares to the creditor in writing that he will satisfy him if the debtor fails to fulfil a specific obligation becomes the debtor's surety (or "guarantor"; in Czech "rucitel").

Commentary on sections 303 to 312:

Apart from lien (mortgage, pledge), suretyship is the most common method of securing business obligations.

The Civil Code's provisions do not apply to suretyship related to business obligations; suretyship (related to business obligations) is subject only to the provisions of the Commercial Code (sections 303 to 312).

A suretyship may secure a valid obligation of the debtor or its part, or a future obligation or conditional obligation. The surety is bound to fulfil the obligation only after the debtor has failed to do so. He may raise against the creditor all objections which the debtor may raise. Once the surety has discharged the debtor's obligation to the creditor, he may assert his claim against the debtor.

Section 304

(1) A "suretyship" (on Czech "ručení") may secure only a valid obligation of the debtor, or part of such an obligation. However, the creation of a suretyship is not prevented if the debtor's obligation is void (invalid) solely because of his lack of capacity to assume obligations, and the surety ("rucitel") was aware of this at the time he undertook his suretyship.

(2) A suretyship may also secure an obligation which will arise in the future or the inception of which is dependent on fulfilment of a certain condition.

Section 305

The creditor is bound to notify the surety, upon request, of the amount of the secured debt, without undue delay.

Section 306

(1) The creditor has the right to seek performance (fulfilment) of an obligation from the surety only when the debtor has failed to fulfil his obligation within an appropriate time after the creditor invited him in writing to do so. No such invitation is required if the creditor is unable to effect it, or if there is no doubt that the debtor will not perform (fulfil) his obligation, particularly as a result of a bankruptcy order.

(2) The surety may raise against the creditor all the objections which the debtor may raise, and set off the debtor's claims against those of the creditor, provided that the debtor could also set off such claims against the creditor if the latter asserted his claims against the former. The surety may also set off his own claims against those of the creditor.

(3) If the surety asserts unsuccessful objections against the creditor as communicated to him by the debtor, the debtor must reimburse the expenses incurred thereby to the surety.

Section 307

(1) If several persons assume suretyship for the same obligation, each of them is liable to the creditor for the entire obligation. Each surety shall have the same rights against the other as a co-debtor.

(2) If only part of an obligation is covered by a suretyship, the scope of the suretyship shall not be reduced by a partial performance (fulfilment) of the obligation, which remains unfulfilled in the amount secured by the surety.

(3) When a secured receivable is assigned, the rights arising from the suretyship shall pass from the assignor to the assignee at the time when the assignment is notified to the surety by the assignor, or when it is proven to him by the assignee.

Section 308

A surety who has fulfilled an obligation (a debt) for which he is liable acquires against the debtor the rights of the creditor and may demand all the documents and aids held by the creditor which are necessary for asserting the claim against the debtor.

Section 309

If the surety satisfies the creditor without the debtor's knowledge, the debtor may raise against the surety all the objections which he had the right to raise against the creditor, if the latter had demanded from him fulfilment of the obligation. However, the debtor may not assert against the surety objections of which the debtor did not advise the surety without undue delay after receipt of the notification that the creditor has asserted the claims based on the suretyship.

Section 310

The creditor's right against the surety shall not become statute-barred before his right against the debtor.

Section 311

(1) The suretyship expires upon termination (discharge) of the obligation it secures.

(2) However, the suretyship does not expire if the obligation terminates due to the debtor's inability to perform the obligation and the obligation can be fulfilled by the surety, or due to the dissolution of the legal entity which is the debtor.

Section 312

The provisions of sections 305 to 311 apply mutatis mutandis to any suretyship which is brought about by operation of the law.

Subdivision 4

Bank Guarantee

Section 313

Fundamental Provisions

"A bank guarantee" (or "bank guaranty"; in Czech "bankovní záruka") originates with a written declaration issued by a bank in a "letter of guarantee" (in Czech "zaruční listina"), stating that the bank will satisfy a creditor up to the amount stated in the letter of guarantee, if a particular third party (the debtor) fails to discharge a certain obligation or if other conditions specified in the letter of guarantee are met.

Commentary on sections 313 to 322;

A bank guarantee (or bank guaranty) is similar to suretyship. A bank guarantee arises from a letter of guarantee, by which a certain bank undertakes to satisfy a creditor up to a particular amount stipulated in the letter of guarantee if a third party (the debtor) fails to discharge his obligation, or if other conditions are met. The bank fulfils its obligation from a bank guarantee only if it has been asked to do so, in writing, by the creditor. The debtor must pay the bank what the bank fulfilled under the letter of guarantee.

Section 314

If a nonmonetary claim is secured by a bank guarantee, it is presumed that, in the event of the debtor breaching the obligation whose performance is secured by the bank guarantee, a monetary claim of the creditor against the debtor is secured, up to the amount specified in the letter of guarantee.

Section 315

(1) If a bank guarantee is confirmed by another bank, the creditor may submit a claim under the bank guarantee to either of these banks.

(2) If a bank which has confirmed a bank guarantee (issued by another bank) provided fulfilment of the claim based on such guarantee, it has the right to claim fulfilment (performance) from the bank which requested it to confirm such bank guarantee.

(3) If a bank only reports that another bank has provided a bank guarantee, no liability (obligation) from the guarantee ensues to the reporting bank. However, the reporting bank is responsible for any damage resulting from the incorrectness of such a report.

Section 316

(1) The bank guarantees fulfilment (performance) of the secured obligation up to the amount and under the conditions entered in the letter of guarantee. The bank may raise against the creditor only such objections which the letter of guarantee admits.

(2) Part fulfilment (part performance) of the obligation by the debtor has no effect on the bank guarantee if the unfulfilled balance of the obligation is in the same, or a higher, amount than that stated in the bank guarantee.

Section 317

Unless the letter of guarantee provides otherwise, the bank may not raise objections which the debtor might be entitled to assert against the creditor. The bank is bound to fulfil its duties if the creditor requests the bank, in writing, to do so. A preceding invitation to the debtor asking him to perform his obligation is required only if the letter of guarantee so specifies.

Section 318

If, according to the letter of guarantee, the creditor can assert rights arising from the bank guarantee only when the debtor fails to perform his obligation, the creditor may assign the rights ensuing from such a bank guarantee only if he also assigns the claim secured by the bank guarantee.

Section 319

The bank shall fulfil its obligation from a bank guarantee only if it has been requested, in writing, by the creditor to do so. If fulfilment by the bank based on the bank guarantee is conditional upon presentation of certain documents specified in the bank guarantee, these must be presented when the bank is requested to perform, or without undue delay afterwards.

Section 320

If, according to the bank guarantee, the bank is obligated to render fulfilment to another bank for the benefit of the entitled (authorized) person, it shall do so by crediting the account of the entitled person at the other bank.

Section 321

- (1) Should the validity of a bank guarantee be limited in time, the bank guarantee expires if the creditor fails to notify the bank in writing of his claims arising from the bank guarantee during its validity.
- (2) The debtor must pay the bank for what the bank fulfilled under the obligation ensuing to it from the letter of guarantee issued in accordance with the contract concluded with the debtor.
- (3) The debtor may not assert against the bank objections which he might assert against the creditor if the contract between the bank and the debtor did not mention the duty of the bank to include the assertion of such objections against the creditor in the letter of guarantee.
- (4) A creditor who, on the basis of a bank guarantee, obtains such fulfilment to which he was not entitled from the debtor shall return such fulfilment to the debtor and compensate him for any damage caused thereby.

Section 322

- (1) In other respects the provisions on suretyship apply to a bank guarantee *mutatis mutandis*.
- (2) The relationship between the bank and the debtor is governed by the provisions on mandate.

Subdivision 5

Acknowledgement of an Obligation

Section 323

- (1) Should somebody acknowledge (i.e. recognize) a certain obligation of his in writing, it is presumed that this obligation is effective to the extent recognized at the time of acknowledgement. The consequences ensue even if a creditor's claim was statute-barred at the time of its acknowledgement.
- (2) The acts in law stated in section 407(2) and (3) are also regarded as acknowledgements of an obligation which has not become statute-barred.
- (3) Acknowledgement (recognition) of an obligation is also effective with respect to the surety (guarantor).

Commentary on section 323:

Under the Commercial Code, acknowledgement (recognition) of an obligation (debt) by the debtor means that the obligation is regarded as valid to the extent to which it was recognized in writing.

Division VII

Discharge of an Obligation by Performance

Subdivision 1

Manner of Performance

Section 324

- (1) An obligation is discharged when performed to the creditor duly and in time.
- (2) An obligation is also discharged by a debtor's late performance, unless prior to it the obligation had already become extinguished by the creditor's withdrawal from the contract.
- (3) If the debtor provides faulty performance and the creditor does not have the right to withdraw from the contract, or does not avail himself of this right, the contents of the obligation shall be modified in a manner which corresponds to the creditor's claims arising from the faulty performance, and the obligation is discharged upon its satisfaction.
- (4) The provisions of subsections (2) and (3) shall not affect claims for damages and a contractual penalty.

Commentary on sections 324 to 334:

The Commercial Code distinguishes two main ways of discharging an obligation: either by performance (fulfilment) or by extinguishment without having been fulfilled.

The Commercial Code provides that an obligation is discharged when performed to the creditor duly and in time (section 324). However, the creditor must accept even part performance of an obligation if part performance is not contrary to the nature of the obligation (section 329).

In the case of performance of a monetary (pecuniary) obligation, payment is first credited to the interest and only afterwards against the principal (section 330).

The Commercial Code includes only some provisions on discharge of a non-performed obligation in sections 344 to 357, whereas the other provisions are contained in the Civil Code.

Section 325

If the parties have reciprocal obligations, performance may only be demanded by the party which has already discharged its obligation, or is prepared and able to discharge it concurrently with the other party, unless another arrangement is determined by the contract, the law or the nature of the obligation.

Section 326

(1) When one party is bound to perform its obligation prior to the other party's performance of its obligation, it may refuse it until the other party renders or sufficiently secures its performance, if after conclusion of their contract it becomes obvious that the other party will not perform its obligation due to its lack of capacity to do so, or because of its conduct in preparing to perform its obligation.

(2) In the cases stated in subsection (1), the entitled (authorized) party may stipulate an appropriate time-limit to the other party for subsequent

performance and, after expiration of this time limit, the entitled party may withdraw from the contract. The entitled party may withdraw from the contract without providing this additional time-limit if a bankruptcy order has been adjudged in respect of the other party's property.

(3) Unless the provisions of subsections (1) and (2) provide otherwise, neither party may refuse performance or withdraw from the contract on the grounds that the other party's obligation arising from another contract has not been performed duly or in time.

Section 327

(1) If an obligation can be performed in several ways, the debtor shall have the right to determine the manner of performance, unless it ensues from the contract that this right pertains to the creditor. If the creditor fails to specify the manner of performance within the time-limit stipulated in the contract, or within the time-limit set for performance of the obligation, the debtor may himself determine the manner of such performance.

(2) If the debtor or the creditor exercises his right to select the manner of performance and notifies the other party accordingly, he may not subsequently change it without the other party's consent.

Section 328

If the object of the performance is specified according to kind, the debtor is bound to deliver a thing to the creditor which is appropriate for the purposes for which a thing of the same kind is generally used under similar contracts.

Section 329

The creditor shall also accept part performance of an obligation, unless such part performance is contrary to the nature of the obligation, or the economic purpose pursued by the creditor at the time of conclusion of the contract, and if this purpose is stated in the contract or was known to the debtor at the time the contract was concluded.

Section 330

(1) If the same debtor is to perform several obligations to one creditor, and the rendered performance is insufficient to meet all the obligations, the debtor shall determine at the time of performance which obligation is discharged by the rendered performance. Unless the debtor determines which obligation is being fulfilled, it shall be the obligation falling due first, starting with appurtenances.

(2) In the case of performance of a monetary (i.e. pecuniary) obligation, the payment made shall be first credited against the interest and only afterwards against the principal, unless the debtor specifies otherwise.

(3) If the debtor has several monetary obligations towards one creditor and the debtor fails to specify which obligation is to be satisfied when rendering the performance, payment shall be first credited against the obligation whose performance is not secured, or is the least secured, or otherwise against the obligation due first.

(4) Payment shall be credited against damages only after fulfilment of a monetary obligation from whose breach arose the liability to pay damages, unless the debtor specifies the purpose of the payment.

Section 331

If the debtor performs his obligation through another person, he is liable for this person's performance as if the performance was rendered by the debtor, unless this Code provides otherwise.

Section 332

(1) If performance of an obligation is not tied to the personal characteristics of the debtor, the creditor shall have to accept the performance of the obligation offered by a third party, provided that the debtor so agrees. The consent of the debtor is not required if the third party guarantees the obligation or secures its performance and the debtor has breached his obligation.

(2) Unless the legal relationship between the debtor and a third party implies otherwise, the third party shall, having performed the debtor's obligation, assume the rights of the creditor, and all evidence (i.e. documentation) concerning the said obligation must be given and transferred to the third party.

Section 333

- (1) If a creditor takes up directly performance of a debtor's obligation, the debtor has the right to demand a receipt from the creditor confirming the object of such performance and the scope of the rendered performance, and to refuse to render the performance without being given such a receipt.
- (2) If the debtor provides the performance to a person who presents the debtor with the creditor's receipt, confirming that the obligation has been performed (accepted), performance of the obligation to such person has the same effects as if rendered directly to the creditor.

Section 334

The opening of a letter of credit and the issue (issuance) of a bill of exchange, or a cheque, by means of which a monetary obligation under the contract concerned is to be performed, does not affect the duration of such a monetary obligation. However, the creditor has the right to demand performance of the monetary obligation by the debtor in accordance with the contract if he is unable to obtain performance through the letter of credit, bill of exchange or cheque.

Subdivision 2

Place of Performance

Section 335

An obligation is duly performed if its performance is rendered at a specified place.

Commentary on sections 335 to 339:

A contract is valid even when the place of performance is not mentioned in the contract.

However, proper performance of an obligation requires it to be performed at a specified place (section 335). The Commercial Code provides in section 336 that, if the place of performance is not specified in the contract, the debtor is to perform his obligation at the place where the debtor has his seat, or place of business, or his residential address at the time when the contract was concluded. This does not apply to a pecuniary (monetary) obligation, which the debtor is to fulfil at the creditor's seat, or place of business or his residential address (section 337), unless the parties proceed under section 338 or 339.

Section 336

If the place where the performance is to be rendered is not specified in the contract, and nothing else ensues from the nature of the obligation, the debtor is obligated to render performance at the place where he has his seat, place of business, or residential address, at the time when the contract is concluded. However, if the obligation arose in connection with the operation of the debtor's plant or establishment, the debtor shall render the performance at the place where such plant or establishment is located.

Section 337

- (1) The debtor performs his monetary (pecuniary) obligation, at his own risk and cost, at the creditor's seat or place of business, or residential address, unless the contract or this Code provides otherwise.
- (2) If after conclusion of the contract the creditor changes his seat, place of business or residential address, the creditor shall bear the increased expenses and risk connected with payment of the monetary obligation incurred by the debtor.

Section 338

If (the creation of a monetary obligation relates to operation of the creditor's works (plant) or establishment, the debtor has to perform the obligation at such plant or establishment, provided that performance of the monetary obligation is to be rendered concurrently with the performance of the other party at such works or establishment.

Section 339

- (1) The monetary obligation may also be settled through a bank by entering the payment to the credit of the account of the creditor at his bank, provided that this is not contrary to the payment terms upon which the contracting parties agreed.
- (2) A monetary obligation paid through a bank is settled when the paid amount is credited to the creditor's bank account. If money is sent by post, a monetary obligation is considered settled when the amount involved is paid to the creditor.

Subdivision 3

Time of Performance

Section 340

- (1) The debtor is bound to perform his obligation at the time specified in the contract.
- (2) If the contract fails to specify the time of performance of the obligation, the creditor has the right to require performance of the obligation immediately after conclusion of the contract, and the debtor has to perform the obligation without undue delay after being asked by the creditor to do so.

Commentary on sections 340 to 343:

A contract is valid even when the time of performance of an obligation (as in the case of the place of performance) is not specified in the contract. When the time is not determined, the creditor may require performance of the obligation immediately after conclusion of the contract and the debtor must fulfil such obligation without undue delay (section 340). In the case of a contract of sale (purchase) which does not specify the place of performance, the seller is bound to deliver such goods within an appropriate time-limit, without waiting for the buyer's invitation to do so (section 416).

Section 341

If under the contract, the debtor is entitled to determine the time of performance of his obligation, and fails to do so within a reasonable time, the time of performance of such obligation shall be determined on the creditor's application (motion) to the court, taking into consideration the nature of the obligation, the place of its performance, and the reason why the fixing of the time for performance was left to the debtor.

Section 342

- (1) Unless the contract or the provisions of this Code provide otherwise, the decisive factor in determining whether the time of performance of the obligation is to the advantage of both parties, or only to one of them, is the intention of the parties expressed at the time the contract was concluded, or the nature of the obligation to be performed,
- (2) If the time of performance is fixed to the advantage of the debtor, the creditor is not entitled to demand performance of the obligation prior to this time; the debtor, however, may perform his obligation earlier than at the fixed time.
- (3) If the time of performance is fixed to the advantage of the creditor, the creditor may demand performance of the obligation prior to this time, but otherwise the debtor may not perform his obligation prior to the fixed time.
- (4) If the time of performance is fixed to the advantage of both parties, the creditor may not demand performance of the obligation, and the debtor may not perform the obligation earlier than at the fixed time.

Section 343

If the debtor settles his monetary obligation prior to the fixed time of performance, he may not, without the creditor's consent, deduct an amount corresponding to the interest on the sum in respect of the length of time by which he performed the obligation earlier.

Division VIII

Some Provisions on Discharge of a Non-performed Obligation

Subdivision 1

Withdrawal from a Contract

Section 344

It is possible to withdraw from a contract only in cases stipulated in the contract or in this Code.

Commentary on sections 344 to 351:

A contract may be withdrawn from in cases agreed in the contract or stipulated in the Commercial Code. The general regulation of withdrawal from a contract (sections 344 to 351) applies, unless a different regulation is set out in the provisions on an individual type of contract.

If a debtor's or creditor's default constitutes an essential breach of the contractual obligation, the other party may withdraw from the contract after notifying the party in default (section 345). If default on the part of the debtor or the creditor means a non-essential breach of the contract, the other party may the contract only after providing the party in default with additional time for performance (section 346). The contract becomes void when notification of the withdrawal is delivered to the party in default (section 349). All rights and duties arising from the contract terminate upon withdrawal from the contract, but this does not apply to claims for damages arising from a breach of contract and some other stipulations (section 351).

Section 345

- (1) If default by the debtor (section 365) or the creditor (section 370) constitutes an essential breach of their

contractual obligation, the other party has the right to withdraw from the contract, provided that it notifies the party in default of the withdrawal without undue delay, once it has learned of the breach.

(2) For the purposes of this Code, a breach is considered as essential (fundamental) if the party breaching the contract knew, or could have reasonably predicted, at the time of its conclusion, taking into account the purpose of the contract as evident from its contents, or the circumstances under which it was concluded, that the other party would not be interested in performance of the obligation in the event of such a breach of contract. Where there is doubt, it is presumed that a breach of contract is not essential (fundamental).

(3) If the party which is entitled to demand performance of a contractual obligation from the other party notifies the latter that it insists on performance of the contractual obligation, or if the entitled party (i.e. the obligee) fails to assert in time its right to withdraw from the contract under subsection (1), it may withdraw from it only in the manner determined for a non-essential (non-fundamental) breach of a contractual obligation. If the entitled party sets a time-limit for subsequent performance, it thereby acquires the right to withdraw from the contract (in the case of non-performance by the other party) after expiry of this time-limit.

Section 346

(1) If default on the part of the debtor or the creditor constitutes a non-essential (non-fundamental) breach of a contractual obligation, the other party may withdraw from the contract if the party in default fails to perform its obligation, even if an additional appropriate time is granted to it for such performance.

(2) However, if the party in default declares that it will not perform the obligation, the other party may withdraw from the contract without granting an additional appropriate time for performance of this obligation, or prior to the lapse of this period of time.

Section 347

(1) If a debtor's or creditor's default applies only to a portion of the due obligation, the other party has the right to withdraw from the contract only in respect of the non-performed portion of the obligation.

(2) In the case of a contract to be fulfilled successively in part performances, it is possible to withdraw from such contract only in respect of such part performance on which the debtor is in default.

(3) With regard to a portion of performance which is not in default, or a part performance which has already been accepted, or which is only to be rendered in the future, it is possible to withdraw from the contract only if such portion of performance or such part performance is clearly, owing to its nature, of no economic significance to the entitled party without the rest of the performance which is in default, or if non-performance of the obligation in its entirety constitutes an essential (a fundamental) breach of the contract.

Section 348

(1) With regard to an obligation which is to be performed in the future, it is possible to withdraw from the contract when it indisputably ensues from the conduct of the obligated party, or from other circumstances occurring prior to the time-limit set for performance of the obligation, that the obligated party will breach its contractual obligation in a substantial manner and, when requested by the entitled party, will fail to provide sufficient security for its performance without undue delay.

(2) With regard to an obligation which is to be performed in the future, it is also possible to withdraw from the contract if the obligated party declares that it will not render the performance.

Section 349

(1) On withdrawal from the contract, the contract is discharged when, in accordance with this Code, the entitled party's manifestation of will to withdraw from the contract is notified to the other party; following such notification the consequences of withdrawal may not be revoked or changed without the consent of the other party.

(2) The entitled party (the obligee) may not withdraw from the contract after being notified that the obligation whose breach was the ground for withdrawal from the contract has already been performed.

(3) If it follows from the contents of the contract that the creditor is not interested in performance of the obligation after the time-limit set for its performance, the consequences of withdrawal from the contract occur at the beginning of the debtor's default, unless prior to the lapse of this time-limit the creditor notifies the debtor that he insists on performance of the obligation.

Section 350

(1) If an additional time-limit granted for performance is inadequate, and the entitled party withdraws from the contract upon its expiry, or if the entitled party withdraws from the contract without granting an additional time-limit for performance, the consequences of withdrawal from the contract shall take effect only after an adequate additional time-limit, which should have been granted for performance of the obligation, expires without such performance being rendered

(2) When granting an additional time-limit for performance, the entitled party may notify the other party that it will withdraw from the contract upon the failure of the other party to perform its obligation within the additional time-limit. In this case, the consequences of withdrawal from the contract take effect when the time-limit expires in vain, if the time-limit was adequate, or upon expiry of a reasonable time-limit, if the set time-limit was inadequate.

Section 351

(1) All rights and duties arising from the contract are discharged upon withdrawal from the contract. However, withdrawal from the contract does not affect claims for damages arising from a breach of the contract, the contractual provisions on the choice of law or this Code according to section 262, settlement of disputes between the contracting parties or other provisions, which, according to the manifestation of will expressed by the parties, or in view of their nature, are expected to remain in effect even after the contract is terminated.

(2) The party to which performance was rendered prior to withdrawal from the contract shall return this performance, together with, in the case of a monetary obligation, the interest agreed in the contract for such a case; in the absence of the appropriate clause in the contract, the provisions of section 502 shall be followed. If performance is returned by the party which withdrew from the contract, it may claim reimbursement of the expenses incurred.

Subdivision 2

Some Provisions on Subsequent Impossibility of Performance

Section 352

(1) An obligation is also considered to be performable if it can be performed with the assistance of another person (or party).

(2) An obligation becomes non-performable if statutory provisions which were issued after conclusion of the contract, and which have an unlimited duration, prohibit such conduct as the debtor is bound to perform under the contract, or which stipulate that an official licence

(permission) is required, but such licence was not granted to the debtor, although he duly made efforts to obtain it.

(3) The creditor may also withdraw from the contract in respect of such portion of the performance which has not been frustrated, if this portion, given the nature or purpose of the contract as determined by its content, or as known to the other party at the time of conclusion of the contract, loses its economic importance without the rendering of the remaining portion of the performance which has become impossible. The same applies to part performance.

(4) Impossibility of performance must be proven by the debtor,

Commentary on sections 352 to 354:

The provisions of the Commercial Code on the subsequent impossibility of performance supplement the general regulation contained in the Civil Code.

Section 353

A debtor whose obligation is discharged due to the impossibility of performance must provide compensation for any damage caused thereby to the creditor, unless the impossibility of performance is caused by circumstances excluding liability (section 374). The provisions of section 373 and subsequent sections apply mutatis mutandis to compensation for damage (i.e. damages).

Section 354

When an obligation is discharged due to the impossibility of its performance or a portion (part) thereof, the consequences stipulated in section 351 shall become operative, as appropriate.

Subdivision 3

Compensation for Withdrawal from a Contract

Section 355

(1) If the parties have agreed in the contract that only one or any of them has the right to withdraw from the contract upon payment of a certain amount as compensation, the contract is cancelled as of the time of its conclusion, if the entitled party notifies the other party that it will exercise its right and pay the agreed compensation for withdrawal from the contract. The provisions of section 351(1) apply as appropriate to the effects of withdrawal from the contract.

(2) The right under subsection (1) does not apply to the party which has already accepted performance of an obligation, or its part, as rendered by the other party, or which has performed its obligation or its part.

Commentary on section 355:

The contracting parties may agree in their contract that only one party, or any of them, will have the right to

withdraw from the contract upon payment of a certain amount as compensation for such withdrawal, if the entitled party notifies the other party accordingly and pays the agreed compensation. In this case there is no right to claim damages or a contractual penalty if damage arises due to the withdrawal from the contract.

Subdivision 4

Frustration of the Purpose of a Contract

Section 356

(1) If, following conclusion of a contract, its basic purpose, as specifically stipulated in it, is frustrated due to a substantial change in the circumstances under which the contract was concluded, the party affected by such frustration may withdraw from the contract.

(2) A change in the financial position of either contracting party, or a change in the economic or market conditions, is not deemed to be a change in circumstances, as defined in subsection (1).

Commentary on sections 356 and 357:

The provisions on frustration of the purpose of a contract can be used in practice only to a limited extent, because there is a general principle that contractual obligations are to be performed.

Section 357

A party which has withdrawn from a contract under the provisions of section 356 shall pay compensation to the other party for any damage caused to the latter by such withdrawal. The effects of withdrawal from the contract are governed mutatis mutandis by the provisions of section 351.

Division IX

Some Provisions on the Set-off of Claims

Section 358

Only claims which can be asserted in court may be set off. However, set-off is not prevented by the fact that a claim is statute-barred, if it became statute-barred only after the period of time when reciprocal claims could be discharged by set-off.

Commentary on sections 358 to 364:

The regulation of set-off in the Commercial Code is incomplete; the set-off of claims (receivables) is more fully regulated by the provisions of the Civil Code. Section 358 of the Commercial Code stipulates that only claims which can be asserted in court can be set off, but there are some exemptions from this rule. According to section 364, any reciprocal claims may be set off if the parties concerned agree to this.

Section 359

A due claim (receivable) may not be set off against a claim (receivable) which is not yet due, unless the claim is against a debtor who is unable to meet his monetary obligations.

Section 360

A claim (receivable) may be used for set-off if it is not due only because, at the debtor's request, the creditor deferred the maturity of the debtor's obligation without any alteration of its contents.

Section 361

A party which, on the basis of a contract with another party, keeps the other party's current or deposit account may utilize monetary resources in these accounts only for setting off any reciprocal claims it has against the holder of the account according to a contract on the keeping of either of these accounts

Section 362

Monetary claims denominated in different currencies may be set off only if such currencies are freely convertible. The set-off must be effected according to the valid median exchange rate on the day when the claims became suitable for set-off. The decisive rate of exchange is the rate applying in the place of the seat, or the place of business or residential address of the party which manifested its will to set off the claims (receivables).

Section 363

If a claim (receivable) has been successively transferred to several persons, for the purposes of a set-off, the debtor may only use the claim he had at the time of the transfer (assignment) against the first creditor, and the claim he has against the last creditor.

Section 364

Any reciprocal claims (receivables) may be set off on the basis of an agreement by the parties involved.

Division X

Breach of Contractual Obligations and its Consequences

Subdivision 1

Default by the Debtor

Section 365

A debtor is in default if he fails to perform his obligation duly and in time until the obligation is duly performed, or until the obligation is discharged in another manner. However, the debtor is not in default if he is unable to perform his obligation due to default by the creditor.

Commentary on sections 365 to 369:

Default by a debtor, and similarly default by a creditor, are fully regulated by the provisions of the Commercial Code. The provisions of section 365, which defines default by the debtor, are mandatory.

Section 366

Unless the law provides otherwise with regard to individual types of contracts, the creditor may insist on proper performance of an obligation by the debtor while the latter is in default on his performance.

Section 367

If the debtor is in default, the creditor has the right to claim damages from him under the provisions of section 373 et seq. The creditor may repudiate the contract in the cases specified by the law or the contract.

Section 368

(1) If the debtor is in default on delivery or return of a thing to the creditor, or if the debtor handles a thing which he is to deliver or return to the creditor in a manner contrary to the duties arising from his contractual relationship, he assumes the risk of any damage to the thing involved during the time when he is in default or when he breaches his duties, unless he has already borne such risk prior to that time.

(2) Under this Code, damage (in Czech "skoda") to a thing means the loss, destruction, impairment or devaluation of the thing, regardless of the cause.

(3) The debtor shall compensate the creditor for any damage to the thing if the damage occurs during the time when he bears the risk of such damage, unless the damage is caused by the creditor or the owner of the thing, or unless the damage would have occurred even if the debtor had performed his duty. The decisive factor in determining the compensation shall be the loss in the value of the thing, taking into account prices at the time when the damage to the thing occurred. This shall not affect a claim to other damages under the provisions of section 373 et seq.

Section 369

(1) **If** the debtor is in default on performance of his monetary obligation, or its part (portion), and if no rate for paying interest on the amount in arrears has been agreed, the debtor shall pay interest on the amount in arrears as specified in the contract, **otherwise under the civil law provisions.**

(2) The creditor is entitled to compensation for damage caused by default in the rendering of performance of a monetary obligation only if such damage is not covered by the interest paid on the amount in arrears.

Subdivision 2

Default by the Creditor

Section 370

A creditor is in default when, contrary to his duties under a contractual relationship, he fails to take delivery of a duly offered performance of such obligation, or when he fails to provide the collaboration required for the debtor's performance of the latter's obligation.

Commentary on sections 370 to 372:

Default by a creditor is stipulated in the mandatory provisions of sections 370 and 371.

Section 371

(1) A debtor may demand from a creditor who is in default that he perform his duties, unless the law provides

otherwise.

(2) A debtor is entitled to demand damages from a creditor who is in default under section 373 et seq. The debtor may withdraw from the contract only in the cases specified by the law or in the contract.

Section 372

(1) If the object of the performance is a thing which the creditor fails to take up, contrary to his duties, he assumes the risk of damage to the thing [section 368(2)] during the time when he is in default, provided that this risk was previously borne by the debtor.

(2) If the thing was damaged during the time when the risk was borne by the creditor, the debtor is not obliged to provide compensation for the damage (i.e. damages) or to eliminate the effects of the damage, unless it was caused by a breach of the debtor's duties.

Subdivision 3

Damages

Section 373

Whoever breaches a duty arising from a contractual relationship is obliged to provide compensation for the damage (i.e. damages) caused to the other party, unless he proves that such a **breach** was caused by circumstances excluding his liability.

Commentary on sections 373 to 386:

Section 373 provides for the general regulation of damages (compensation for damage) in contractual relationships. The provisions of sections 376, 382, 384 and 386 are mandatory.

Section 374

(1) Circumstances excluding liability are an obstacle which arose independently of the obligated (liable) party's will and **which prevent** this party from performing its obligation, provided that it cannot be reasonably expected that the obligated party could avert or overcome such an obstacle or its consequences, and further that the occurrence of such an obstacle was unpredictable at the time **when** the obligated party undertook to perform such obligation,

(2) An obstacle which only arose during the time when the obligated party was in default with performance of its obligation, or which **ensued** from its financial situation, shall not exclude its liability.

(3) The consequences excluding liability are limited only to the duration of the obstacle to which they relate.

Section 375

If a breach of duty arising from a contractual relationship was caused by a third party, to whom the obligated (liable) party entrusted performance of its obligation, the liability of the obligated party is excluded only if it is excluded under section 374 and when, under the same section, the third party's liability would also be excluded if the third party was bound to perform directly to the aggrieved party instead of the obligated party.

Section 376

The aggrieved (injured) party is not entitled to damages if non-performance of obligations by the obligated party is caused by the conduct of the aggrieved party itself, or by insufficient collaboration between the aggrieved party and the obligated party while the former was bound to co-operate.

Section 377

(1) The party which breaches its duty, or which, taking into account all the circumstances, should know that it will breach the duty ensuing from its obligation under the contractual relationship, must notify the other party of the nature of the obstacle which prevents, or will prevent, it from performing its obligation, and of the consequences. This notification must be provided to the other party, without undue delay, after the obligated (liable) party learns of such an obstacle or, with due diligence, could have learned of it.

(2) If the obligated party fails to meet this duty, or if its notification is not delivered to the aggrieved party in time, the aggrieved party has the right to compensation for damage thus incurred.

Section 378

Damages are paid in money, but if the aggrieved party so requests, and if it is possible and customary, damage is compensated by restoration to the previous condition.

Section 379

Unless this Code provides otherwise, compensation is provided for actual damage and for lost profit. Compensation is not provided for damage exceeding the amount which the obligated party envisaged as a possible result of a breach of its obligation at the inception of the contractual relationship, or which could have been envisaged taking into account the facts of which the obligated party was, or should have been, aware, if this party had taken all due care (due diligence).

Section 380

Damage is also considered to mean a loss which the aggrieved party suffered by having to expend resources as a result of a breach of duty by the other party.

Section 381

Instead of profit actually lost, the aggrieved (injured) party may demand compensation based on the profit attained as a rule in fair business conduct in the aggrieved party's line of business, under conditions similar to those in the breached contract.

Section 382

The aggrieved party has no right to compensation for that part of the damage which was caused by non-fulfilment (non-performance) of its own duty as defined by the statutory provisions which were issued for the purpose of preventing the occurrence of such damage or limiting its extent.

Section 383

If several persons (parties) are bound to provide compensation for damage, such persons are liable for payment of the damages jointly and severally, settling the individual amounts among themselves according to the extent of their liability.

Section 384

(1) A person (party) threatened by damage must take the necessary measures to avert or mitigate it, taking into account the circumstances of the particular case. The obligated (liable) party is not bound to provide compensation for damage which is caused by the aggrieved party's non-fulfilment of this duty.

(2) The obligated party must compensate the expenses incurred by the other party when fulfilling its duty under subsection (1).

Section 385

If, as a consequence of the breach of a contractual obligation by the other party, the aggrieved party has withdrawn from the contract, it has no right to compensation for damage caused by its failure to conclude in time a substitute contract for the purpose which was to be served by the contract from which the aggrieved party has withdrawn.

Section 386

(1) The right to damages may not be waived prior to the breach of an obligation (duty) from which damage may arise.

(2) The court may not reduce the amount of damages.

Division XI

Statute of Limitations

Subdivision 1

Object of the Negative Prescription

Section 387

(1) A right becomes statute-barred upon expiry of the period (of negative prescription) **under** the statute of limitations.

(2) All rights arising from contractual relationships are subject to the statute of limitations ("negative prescription"; in Czech "promlčení"), with the exception of the right to cancel a contract concluded for an indefinite period of time.

Commentary on sections 387 to 408:

The Commercial Code regulates fully the negative prescription of rights arising from business (commercial) contractual obligations. However, the general regulation of the negative prescription in the Civil Code applies to rights which arise from easements (section 151n et seq of the Civil Code), unjust enrichment (section 451 at seq of the Civil Code) and from the contracts stipulated in section 261(6) of the Commercial Code.

According to section 397 of the Commercial Code, the general period of the negative prescription is four years, compared with three years in the Civil Code. The maximum length of the negative prescription (a period under the statute of limitations) is ten years from the day when it started to run for the first time. Ownership title does not become statute-barred.

Subdivision 2

Consequences of Negative Prescription

Section 388

(1) A right to performance of the other party's obligation shall not be extinguished by the negative prescription, but the right cannot be granted and adjudged by a court if the obligated party raises an objection **concerning** the negative prescription, once the right has become statute-barred (i.e. after the period of limitation has expired).

(2) However, even after the period the negative prescription has expired, the aggrieved party may assert its right as part of its defence or for the purposes of a set-off:

- (a) if both rights pertain to the same contract, or to several contracts concluded on the basis of a single negotiation, or to several mutually connected negotiations; or
- (b) if the right could have been exercised prior to expiry of the negative prescription for setting off a claim asserted by the other party.

Section 389

If a debtor has fulfilled his obligation after expiry of the negative prescription, he may not (later) claim the return of the object of his performance, even if he was unaware at the time of performance that the period of the negative prescription (statute of limitations) had already expired.

Section 390

If the right to perform an act in law has become statute-barred, the consequences of that act in law shall not become operative in respect of a person who raises an objection regarding the statute of limitations.

Subdivision 3

Beginning and Duration of Negative Prescription

Section 391

(1) With regard to rights enforceable before a court, period of negative prescription begins to run on the day it was possible to assert the right before a court, unless this Code provides otherwise.

(2) With regard to rights concerning performance of an act in law (transaction), the period of negative prescription begins to run on the day it was possible to perform the act in law, unless this Code provides otherwise.

Section 392

(1) With regard to the right to demand performance of an obligation, the period of negative prescription begins to run as of the day on which the obligation was to be performed, or as of the day when performance should have commenced (the due date). If the relationship of obligation involves the duty to perform a certain activity on a continuous basis, to desist from a certain activity, or to allow something, the period of negative prescription begins to run as of the day the duty was breached.

(2) With regard to the right to render part performance (i.e. fulfilment in instalments), the period of negative prescription runs separately for each part performance. If as a result of non-performance (non-fulfilment) of a part obligation, the entire obligation becomes due, the period of negative prescription begins to run as of the day on which the non-performed obligation is due.

Section 393

(1) With regard to rights arising from a breach of duty, the period of negative prescription begins to run as of the day on which the duty is breached, unless a special regulation of the statute of limitations governs such rights differently.

(2) With regard to rights arising from defects in things, the period of negative prescription begins to run as of the day of delivery of such things to the entitled party, or to a party appointed by the former, or on the day on which the duty to take delivery of such thing(s) is breached. In the case of claims arising from a quality warranty (guarantee), the period of negative prescription always begins to run as of the day on which timely notice of the defect is given within the period of the quality warranty. In the case of claims arising from legal defects, the period of negative prescription begins to run as of the day on which the right is asserted by a third party.

Section 394

- (1) With regard to rights which arise from withdrawal from a contract, the period of negative prescription commences to run as of the day when the entitled party withdraws from the contract.
- (2) With regard to the right to return an already accomplished performance rendered under a void contract, the period of negative prescription begins to run as of the day when such performance is rendered.
- (3) With regard to the right to damages under section 268, the period of negative prescription begins to run as of the day when such act in law became void.

Section 395

With regard to the right to demand the handing over of a deposited or stored thing and the right to demand the handing over of articles (objects) in accordance with a contract on the depositing of securities and other valuables, the period of negative prescription begins to run as of the day of termination of the relevant contract on the deposit of a thing, on storing things or on the deposit of securities or other valuables. This does not affect the right to demand that the thing be handed over on the basis of ownership title.

Section 396

In the case of the right to monetary (pecuniary) means deposited in a current or deposit account, the negative prescription begins to run as of the day on which the contract on keeping such accounts expires.

Section 397

Unless this Code provides otherwise with regard to individual rights, the period of the statute of limitations is four years.

Section 398

In the case of the right (claim) to damages, the period of the statute of limitations (negative prescription) begins to run as of the day when the aggrieved (injured) party learned, or could have learned, of the damage and of the identity of the party liable for its compensation; however, it shall expire no later than ten years from the day when such a breach of duty occurred.

Section 399

Rights arising from damage caused to a consignment, or from late delivery of a consignment to the forwarder or carrier, become statute-barred after one year. In the case of rights arising from the entire destruction or loss of a consignment, the period of the statute of limitations begins to run as of the day when the consignment should have been delivered to the consignee and, in the case of other rights, as of the day when the consignment was delivered. In the case of wilful damage, the general period of the statute of limitations set out in section 397 shall apply.

Section 400

A change in the person of the debtor or the creditor shall not affect the running of the period of negative prescription (statute of limitations).

Section 401

The party against which a right is becoming statute-barred may extend the time of negative prescription by means of a written statement issued to the other party, even repeatedly; however, the total period of negative prescription may not exceed a period of 10 years from the date when it first began to run. Such a statement may be made even before the period of negative prescription begins to run.

Subdivision 4

Suspension and Interruption of the Time of Negative Prescription

Section 402

The time of negative prescription is interrupted when the creditor, in order to satisfy or determine his rights, performs any act in law which, under the statutory provisions on judicial proceedings, is deemed to be the commencement of such proceedings, or as an assertion of the right in already initiated proceedings.

Section 403

(1) The period of negative prescription (statute of limitations) is interrupted if the creditor initiates arbitration proceedings on the basis of a valid arbitration agreement in the manner specified in such an arbitration agreement, or in the rules governing such arbitration proceedings.

(2) If the commencement of arbitration proceedings cannot be determined under subsection (1), the arbitration proceedings shall be considered as having been initiated on the day when an application to commence arbitration proceedings was delivered to the other party at its seat, place of business, or residential address.

Section 404

(1) If a right which is subject to the statute of limitations was asserted as a counterclaim in judicial or arbitration proceedings, the period of the statute of limitations relating to such a right is interrupted as of the day of the judicial or arbitration proceedings concerning the right against which the counterclaim was made, if such a claim and counterclaim are related to the same contract, or to several contracts concluded on the basis of the same negotiations, or several mutually related negotiations.

(2) In cases to which subsection (1) does not apply, the counterclaim is considered as having been asserted on the day when the application to consider it was submitted in judicial or arbitration proceedings.

Section 405

(1) If a right was asserted, prior to becoming statute-barred under sections 402 to 404, but no decision was made regarding the case proper, the period of the statute of limitations is considered as not having been interrupted.

(2) If the period of the statute of limitations (negative prescription) has already expired at the time of the judicial or arbitration proceedings referred to in subsection (1), or if there is less than a year left before its expiry, the period of the statute of limitations shall be extended so as not to expire earlier than one year from the day when the judicial or arbitration proceedings ended.

Section 406

(1) Judicial or arbitration proceedings initiated against a co-debtor shall suspend (interrupt) the period of the statute of limitations in respect of another co-debtor who is liable jointly and severally with the former regarding the asserted claim, provided that the creditor notifies the co-debtor in writing of the initiated proceedings prior to expiry of the period of statute of limitations.

(2) If judicial or arbitration proceedings are initiated by a third party against a creditor whose right is becoming statute-barred, in respect of an obligation for whose performance the creditor has used fulfilments rendered by his debtor, the period of the statute of limitations applying to the creditor's right shall be interrupted if the creditor notifies the debtor in writing of the initiated proceedings prior to expiry of the period of the statute of limitations.

(3) If the proceedings referred to in subsections (1) and (2) come to an end, the period of the statute of limitations relating to the rights of the creditor shall be considered as not having been interrupted, but it shall not expire earlier than one year from the day of the end of these proceedings.

Section 407

(1) If the debtor acknowledges (recognizes) his obligation in writing, a new four-year period of the statute of limitations begins to run as of the day of such an acknowledgement (such a recognition). If the acknowledgement applies only to a part of the obligation, the new period of the statute of limitations begins to run only in respect of that part.

(2) Payment of interest is considered as acknowledgement of an obligation in respect of the amount on which interest is paid.

(3) If the debtor performs an obligation only partially, this performance is tantamount to acknowledgement of the balance of his debt, if it is possible to infer from the performance that the debtor also acknowledges the balance of the obligation.

(4) The consequences of acknowledging an obligation in the manner referred to in subsection (1) take effect even when the right corresponding thereto is already statute-barred at the time of acknowledgement.

Subdivision 5

General Restrictions Applicable to the Period of Negative Prescription

Section 408

(1) Irrespective of any other provisions of this Code, the period of the statute of limitations (negative prescription) expires no later than ten years after the day when it first began to run. However, an objection concerning the statute of limitations may not be considered in judicial or arbitration proceedings which were initiated prior to expiry of this time

limit.

(2) If a right was adjudged in a final (enforceable) judicial decision or arbitration award less than three months before expiry of the period of the statute of limitations, or after its expiry, the decision or award may be judicially executed if the proceedings relating to its enforcement are (were) initiated within three months of the day when such proceedings could have been initiated.

CHAPTER II

SPECIAL PROVISIONS ON SOME BUSINESS CONTRACTUAL OBLIGATIONS

Division I

Contract of Sale (Contract of Purchase)

Subdivision 1

Definition of a Contract of Sale (Contract of Purchase)

Section 409

Fundamental Provisions

(1) By "a contract of sale" (also referred to as "a contract of purchase"; in Czech "kupni smlouva") the seller undertakes to deliver to the buyer a movable thing (or goods), specified individually or at least in kind and quantity, and to transfer to the buyer the ownership title to such thing; the buyer undertakes to pay the selling price.

(2) The contract must contain the selling price, or at least specify the method of its subsequent determination, unless the negotiations of the parties on conclusion of a certain contract imply their intent to conclude the contract without fixing such price. In this case, the buyer is obliged to pay the selling price fixed in accordance with the provisions of section 448.

Commentary on sections 409 and 410:

A contract of sale binds the seller to pass on a movable thing specified in the contract to the buyer and to transfer to him ownership title to such thing, while it binds the buyer to pay the selling (contract) price. A contract on sale of immovables (real estate) is subject to the provisions of the Civil Code (section 588 et seq), unless the contract is based on a contract for the sale of an enterprise (section 476 et seq of the Commercial Code), or a contract for the purchase of a leased thing (section 489 et seq of the Commercial Code).

Section 410

(1) A contract for the supply of goods yet to be manufactured or produced is considered as a contract of sale, unless the party to which the goods are to be supplied has undertaken to transfer to the other party a substantial part of the things (or materials) required for manufacture or production of the goods (or merchandise) in question.

(2) A contract under which the preponderant part of the obligation of the party which is the supplier consists in performance of some activity or in assembly of goods is not considered to be a contract of sale.

Subdivision 2

Duties of the Seller

Section 411

The seller is bound to deliver the goods to the buyer, hand over to him any documents relating to the goods, and enable him to acquire ownership title to the goods in accordance with the contract and this Code.

Commentary on sections 411 to 442:

Section 411 stipulates the duties of the seller, which may be extended if so agreed by the contracting parties in their contract. The Commercial Code further regulates aspects of delivery, unless these are specified in the contract.

Delivery of Goods

Section 412

(1) If the seller is not bound by the contract to deliver the goods at a particular place, delivery takes place when the goods are handed over by the seller to the first carrier for shipment to the buyer, if the contract specifies that the seller must despatch the goods. The seller must enable the buyer to assert against the carrier the rights ensuing from a contract of carriage (shipping contract), unless the buyer has such rights on the basis of the contract of carriage.

(2) If the contract contains no provision on the despatch of the goods by the seller, and the goods are identified in the contract individually or by type, and the contract specifies that the goods are to be delivered from a certain stock, or to be manufactured or produced, and the contracting parties knew at the time when they concluded the

contract where the goods were stored, or where the goods were to be manufactured or produced, delivery is effected when the seller places the goods at the buyer's disposal at **that** place.

(3) In cases not subject to the provisions of subsections (1) and (2), the seller performs (fulfils) his obligation to deliver the goods by placing the goods at the buyer's disposal at the place where the seller has his seat or place of business, or an organizational component of his business, or his residential address, if he notifies the buyer of **such** location in time.

Section 413

If delivery of goods is effected by their despatch, and the goods handed over to the carrier are not clearly and adequately marked as a consignment for the buyer, the effects of delivery occur only if the seller notifies the buyer of the despatch of the goods without undue delay, and provides details of the despatched goods. If the seller fails to do this, delivery is considered to be effected only when the goods are handed over by the carrier to the buyer.

Section 414

(1) The seller must deliver the goods on the day specified in the contract or on a day determined in a manner specified in the contract; or at any time **within** the time-limit fixed in the contract or determinable by a manner specified in the contract, unless the contract or its purpose, as it was known to the seller at the time of conclusion of the contract, indicates that the time of delivery within the said time-limit (period) is to be determined by the buyer.

(2) Unless the contract indicates otherwise, the time-limit within which the goods are to be delivered begins to run as of the day the contract is concluded. However, if the contract specifies that the buyer must fulfil certain obligations prior to delivery of the goods (e.g. submit drawings required for manufacture of the goods, pay the selling price or a part of it, or secure its payment), this time-limit begins to run only as of the day when such obligation is fulfilled.

(3) If the seller delivers the goods prior to the specified time, the buyer has the right to **take** delivery of the goods or to refuse **such** delivery.

Section 415

Unless it follows otherwise from business usage or from established business (commercial) practice adhered to by the parties, the following expressions, specifying the time of performance of an obligation in the contract, shall have the following meanings:

- (a) "at the beginning of the period" - the first **10** days of the period;
- (b) "in the middle of the month" - a period **from** the 10th to the 20th day of the month;
- (c) "in the middle of the quarter" - the second month of the quarter;
- (d) "at the end of the period" - within the last 10 days of the period;
- (e) "immediately" ("forthwith") - within 2 days in the case of foodstuffs and raw materials, within 10 days in the case of engineering products, and within 5 days in the case of other goods.

Section 416

If the time of delivery of the goods has not been agreed on, the seller is bound to deliver the goods, without the buyer's invitation, within an appropriate time-limit after the conclusion of the contract, taking into account the nature of the goods and the place of delivery.

Documents Relating to the Goods

Section 417

The seller must hand over to the buyer the documents necessary for taking delivery of and using the goods, as well as other documents stipulated in the contract.

Section 418

The handing over of documents which are not subject to section 419 is effected at the place and time specified in the contract, or else at the place of delivery upon delivery of the goods. If the seller hands over such documents prior to the stipulated time, he may, up to that time, revise any faults in the documents, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or expense. This does not affect the right to claim damages.

Section 419

(1) Documents which are necessary for taking delivery of the forwarded goods, or for the free disposal of such

goods, or for their customs clearance (in the case of imported goods), are handed over by the seller to the buyer at the place of payment of the purchase price, provided that this hand-over is to take place at the time of payment, otherwise hand-over is to take place at the seat, place of business, or residential address of the buyer.

(2) The documents specified in subsection (1) must be handed over by the seller to the buyer in sufficient time to enable the buyer to freely dispose of the goods, or take delivery of the forwarded goods on arrival at their destination, and, in the case of imported goods, to clear such goods through customs without undue delay.

Quantity, Quality, Workmanship and Packing of Goods

Section 420

(1) The seller is bound to deliver the goods in the quantity, quality and workmanship (specification) required by the contract (i.e. in accordance with the description therein), and arrange for the goods to be packed and ready for transportation (shipment) in the manner specified in the contract.

(2) Unless the contract specifies the quality and workmanship of the goods otherwise, the seller must deliver the goods in the quality and workmanship appropriate to the purpose stated in the contract; or, in its absence, in a condition suitable for the purposes for which such goods are generally used.

(3) If goods are to be delivered according to a sample or model, the seller must deliver goods which have the same properties as the sample or model presented to the buyer. If there is a discrepancy between the determination of quality or workmanship of the goods, according to this sample or model, and the specification of the goods described in the contract, it shall be the specification given in the contract which shall be decisive. If there is no such discrepancy, the goods must have the properties stipulated in both the sample or model and the contract.

(4) Unless the contract indicates how the goods are to be packed and prepared for transportation, the seller is bound to pack the goods or prepare the goods for transportation in the manner which is commercially customary for such goods, or, if this cannot be determined, in such a manner as to preserve and protect the goods in question.

Section 421

(1) If it follows from the contract that the quantity of the goods is only approximately stipulated therein, the seller has the right to determine the precise quantity of the goods to be delivered, unless the contract grants this right to the buyer. If something else follows from the contract, the divergence from the quantity given in the contract may not exceed five per cent.

(2) If it follows from the nature of the goods that their quantity as given in the contract is only approximate, the difference between the approximately determined quantity and the actually delivered quantity may not exceed five per cent of the quantity given in the contract, unless the contract, or previous practice between the parties, or customary usage of the trade indicates otherwise.

(3) In cases to which subsections (1) and (2) apply, the seller has the right to claim payment of the selling price for the goods actually delivered.

Defects in Goods

Section 422

(1) If the seller breaches his duties as stated in section 420, the goods shall be considered as being defective. Delivery of goods other than the goods stipulated in the contract, or shortcomings in the documents required for using the goods, are also considered as defects in the goods.

(2) If it ensues from the transport document, the document on delivery of the goods, or a declaration by the seller that he is delivering the goods in a smaller quantity, or only a part of the goods, the missing goods are not subject to the provisions on defects in the goods.

Section 423

If, in accordance with the contract, things (materials, parts, etc.) provided by the buyer are utilized in the manufacture of goods, the seller is not liable for defects in the goods arising from the use of the things supplied by the buyer, provided that when exercising due diligence the seller could not have detected the unsuitability of such things for the manufacture of the goods in question, or he notified the buyer accordingly, but the buyer still insisted on their use.

Section 424

The seller is not liable for those defects in goods about which the buyer knew or ought to have known at the time the contract was concluded due to the circumstances under which it was concluded, unless such defects affect properties which under the contract the goods are supposed to possess.

Section 425

(1) The seller is liable for any defect which the goods have at the moment when the risk of damage to the goods passes to the buyer, even if such defect becomes apparent only afterwards. Duties ensuing to the seller from a warranty covering the quality of the goods are not affected by this.

(2) The seller is also liable for any defect arising after the time stipulated in subsection (1), if such defect is caused by a breach of the seller's duties.

Section 426

If the seller has delivered the goods, with the buyer's consent, prior to the stipulated time of delivery, he may, up to the actually stipulated time, deliver any missing part or make up any deficiency in (the quantity of the goods delivered, or deliver substitute goods in lieu of any defective goods delivered, or repair defects in the already delivered goods, provided that the exercise of this right does not cause disproportionate difficulties or unreasonable expenses to the buyer. However, the buyer retains the right to claim damages.

Section 427

(1) The buyer must examine the goods as soon as possible after the risk of damage to the goods has passed to him, taking into account the nature of the goods.

(2) If the contract provides for despatch of the goods by the seller, examination of the goods may be deferred until they have arrived at their destination. If the goods are redirected in transit, or are redespached by the buyer without him having an opportunity corresponding to the nature of the goods to examine them, and if the seller knew or ought to have known, at the time when the contract was concluded, of the possibility of such a change in the place of destination, or of the possibility of redespach, the examination may be deferred until after the goods have arrived at the new destination.

(3) If the buyer fails to examine the goods or arrange for them to be examined at the time when the risk of damage to the goods passes to him, he may assert claims ensuing from defects, discernible by such examination, only when he proves that the goods already had such defects at the time when the risk of damage passed to him.

Section 428

(1) The buyer's right arising from defects in goods may not be adjudged in judicial proceedings if the buyer fails to notify the seller of the defects in the goods without undue delay after:

- (a) the buyer has ascertained such defects; or
- (b) the buyer should have ascertained the defects during a mandatory examination under section 427(1) and (2) by exercising proper care (due diligence); or
- (c) the defects could have been ascertained later with the exercise of due diligence, but no later than two years from the day of delivery of the goods or from their arrival at the destination specified in the contract; in the case of defects covered by a warranty, the period of warranty replaces the aforesaid time-limit.

(2) The consequences referred to in subsection (1) are taken into account only if the seller raises an objection in judicial proceedings that the buyer failed to meet in due time his obligation to give notice of the defects in the goods.

(3) The consequences of subsections (1) and (2) do not take effect if defects in the goods are the result of facts which the seller knew of, or ought to have known of, at the time when the goods were delivered.

Quality Warranty

Section 429

(1) Under a written "quality warranty" (also referred to as "quality guarantee"; in Czech "záruka za jakost"), the seller assumes the obligation that for a specified period of time the delivered goods will be fit for the contractual or otherwise customary purpose, or that the goods will maintain their contractual or customary properties.

(2) The assumption of an obligation based on a warranty may arise from the contract or from a statement made by the seller, particularly in the form of "letter of warranty" (also referred to as "a letter of guarantee"; in Czech "záruční list")- The length of the warranty (guarantee) period, or the period of durability or utilization of goods marked on the packaging, has the same consequences as the assumption of an obligation based on a letter of warranty. If the contract or the warranty statement made by the seller specifies a different warranty period from that marked on the packaging of the goods, the period stated in the contract or in the warranty statement is valid.

Section 430

Unless it follows otherwise from the contents of the contract or the warranty statement (letter of warranty), the period of warranty begins to run as of the day of delivery of the goods. If the seller is bound to despatch the

goods, the period of warranty begins to run on the day the goods are delivered to the place of destination. The period of warranty is interrupted during the time when the buyer is unable to use the goods due to defects for which the seller is liable.

Section 431

The seller's liability for defects covered by a quality warranty does not arise from those defects caused to the goods by extraneous events after the risk of damage to the goods passed to the buyer, and not caused by the seller or persons with whose assistance the seller performed his obligation.

Section 432

The provisions of sections 426 to 428 and sections 436 to 441 also govern defects in the goods covered by a quality warranty.

Legal Defects Relating to Goods

Section 433

- (1) Goods have legal defects if, when sold, they are encumbered with the rights of a third party, unless the buyer has expressed his consent to such encumbrance.
- (2) If the right of a third party which is encumbering the goods is based on (intangible) industrial property or other intellectual property, the goods are considered to have legal defects:
 - (a) if the right in question enjoys legal protection under the law of the country where the seller has his seat or place of business or residential address; or
 - (b) if, at the time when the contract was concluded, the seller knew, or ought to have known, that the right in question enjoyed protection under the law of the country where the buyer has his seat, place of business or residential address, or that the right enjoyed protection under the law of the country where the goods were to be further sold or used and the seller was aware of such resale or place of use when the contract was concluded.

Section 434

An entitlement based on legal defects does not arise if the buyer knew of the rights of a third party to the goods at the time when the contract was concluded, or if the seller was bound under the terms of the contract to proceed in accordance with the documents provided to him by the buyer when fulfilling his contractual obligations.

Section 435

- (1) The buyer must notify the seller, without undue delay, when he learns that the right referred to in section 433 has been asserted by a third party, and indicate the nature of the right.
- (2) The seller's rights based on legal defects in goods may not be adjudged in judicial proceedings if the buyer fails to perform the obligation specified in subsection (1), and the seller raises non-performance of this obligation as an objection (or plea) in such proceedings.
- (3) These consequences do not arise if the seller knew of the assertion of the right by a third party at the time when the buyer became aware of its assertion.
- (4) The buyer's claims arising from legal defects in goods are governed by the provisions of sections 436 to 441.

Claims Based on Defects in Goods

Section 436

- (1) If a contract is fundamentally breached [section 345(2)] by delivery of defective goods, the buyer may:
 - (a) demand the elimination of such defects either by delivery of substitute goods to replace the defective goods, or by delivery of missing goods, or by rectification of legal defects;
 - (b) demand the elimination of certain defects in the goods by their repair, if feasible;
 - (c) demand an appropriate reduction of the selling price; or
 - (d) withdraw from the contract.
- (2) The choice of claims under subsection (1) pertains to the buyer only if he notifies the seller accordingly when sending the seller a notice of defects, or without undue delay after sending this notice. The buyer may not alter his asserted claim without the seller's consent. However, if the defects prove to be irreparable, or if disproportionately high costs would be incurred in making such repairs, the buyer may demand delivery of substitute goods, provided that he advises the seller accordingly, and without undue delay, after learning from the seller that the defects are irreparable. If the seller fails to eliminate the defects within a reasonable additional time-limit, or advises the buyer prior to expiry of this time-limit that he will not eliminate the defects, the buyer may withdraw from the contract or demand an appropriate reduction of the selling price.

(3) A buyer who does not notify the seller of which claim he has opted for within the time-limit mentioned in subsection (2) is entitled to assert claims based on defects in the goods, as in the case of a non-fundamental (non-essential) breach of contract.

(4) In addition to the claims specified in subsection (1), the buyer has the right to claim damages as well as a contractual penalty, if such penalty was agreed upon.

Section 437

(1) If delivery of defective goods constitutes a non-fundamental breach of contract, the buyer may demand either delivery of the missing goods and elimination of the other defects in the goods, or a reduction of the selling price.

(2) Unless the buyer claims a reduction of the selling price, or unless he withdraws from the contract under subsection (5), the seller must deliver missing goods or eliminate the legal defects of the goods. The seller must eliminate the other defects in a manner of his own choice, either by their repair or by delivery of substitute goods; however, his choice of the manner of eliminating the defects may not cause inordinate expenses to the buyer.

(3) If the buyer demands that the defects in the goods be eliminated, he must grant to the seller an adequate additional time-limit for this purpose. Within this additional time-limit, the buyer may not assert other claims based on the defective goods, with the exception of a claim for damages and a claim for a contractual penalty, unless the seller notifies the buyer that he will not meet his obligations within this time-limit.

(4) Until the buyer determines the time-limit under subsection (3), or asserts his claim to have the selling (contract) price reduced, the seller may notify the buyer that he will eliminate the defects within a certain time-limit. If, after this notification, the buyer does not advise the seller of his disapproval without undue delay, the aforesaid notification has the effect of stipulating the additional time-limit in accordance with subsection (3).

(5) If the seller does not eliminate the defects in the goods within the time-limit under subsection (3) or (4), the buyer may assert a claim to have the selling price reduced or withdraw from the contract, provided that the buyer notifies the seller of his intention to withdraw from the contract when determining the time-limit under subsection (3), or within a reasonable time prior to withdrawal from the contract. The buyer may not alter what he opted for without the seller's consent.

Section 438

Upon delivery of substitute goods, the seller is entitled to demand that the buyer return the goods being exchanged at the seller's expense, in the same condition in which the goods were delivered to the buyer. The provisions of section 441 apply *mutatis mutandis*.

Section 439

(1) The entitlement to a price reduction corresponds to the difference between the value which the goods would have had without defects and the value which the goods had when delivered with defects, the respective value of the goods being determined as of the time when the duly performance should have been rendered.

(2) The buyer may reduce the selling (contract) price otherwise payable to the seller by the amount of a reduction (discount). If the selling price has already been paid, the buyer may demand refund of the amount of such reduction, together with the interest agreed upon in the contract, or determined under section 502.

(3) If a defect was not notified in time [sections 428(1) and 435(1)], the buyer may exercise his rights under subsection (2) only with the seller's consent, or make use of his right to a price reduction for set-off against the seller's claim. This restriction does not apply if the seller knew of the defects at the time when the goods were delivered; with regard to legal defects, the decisive time is the time stipulated in section 435(1).

(4) Until defects are eliminated, the buyer is not obliged to pay a part of the selling price corresponding to the amount of his entitlement to a price reduction, should the defects not be eliminated.

Section 440

(1) Claims based on defective goods do not affect a claim to damages or a claim to a contractual penalty. A buyer who becomes entitled to a reduction of the selling price may not claim compensation for a lost profit due to a lack of those properties of the goods to which the reduction applies.

(2) The satisfaction which can be obtained by asserting one of the claims based on defective goods under sections 436 and 437 is not obtainable by asserting a claim based on another legal ground.

Section 441

(1) The buyer may not withdraw from the contract if he did not notify the seller of defects in due time.

(2) The consequences of withdrawal from the contract either do not take effect or become extinguished if the buyer is unable to return the goods in the same condition in which he received them.

(3) However, the provisions of subsection (2) do not apply:

- (a) if the impossibility of returning the goods in the condition stated therein is not due to the buyer's conduct or omission; or,
- (b) if a change in the condition of the goods is the result of a duly effected examination of the goods for the purpose of ascertaining defects.

(4) Furthermore, the provision of subsection (2) does not apply if, prior to ascertaining the defects, the buyer sold the goods, or a part of them, or consumed the goods or a part of them, or the goods were affected by customary use. In this case, the buyer is to return the unsold, unused or unmodified goods and compensate the seller to the extent to which he acquired benefits from the above-mentioned use of the other goods.

Delivery of a Larger Quantity of Goods

Section 442

(1) If the seller delivers to the buyer a larger quantity of goods than stipulated in the contract, the buyer may accept the entire delivery or reject the excess quantity.

(2) If the buyer takes delivery of all or a part of the excess goods, he must pay a corresponding amount for the excess goods computed according to the selling price stipulated in the contract.

Subdivision 3

Acquisition of Ownership Title

Section 443

(1) The buyer acquires ownership title to the goods as soon as the delivered goods are handed over to him.

(2) Prior to taking delivery of the goods, the buyer acquires ownership title to the goods in transit when he acquires the right to dispose of the consignment.

Commentary on sections 443 to 446:

The Commercial Code distinguishes the moment when risk of damage passes from the seller to the buyer (section 455 et seq of the Commercial Code) and the moment when ownership title is transferred. Under the law, ownership right (title) to movable goods is transferred to the buyer when the goods are passed to him, unless the buyer acquires ownership title to the goods in transit when he assumes the right to dispose of the consignment. The contracting parties may regulate differently the transfer of ownership title to the goods in their contract (section 445).

Section 444

The parties can agree in writing that the buyer will acquire ownership title to the goods prior to the time specified in section 443, provided that the contract concerns goods identified individually or identified by type and which, at the time of transfer of the ownership title, are adequately marked so as to be distinguishable from other goods, in a manner agreed on between the parties or communicated to the buyer without undue delay.

Section 445

The parties may agree in writing that the buyer will acquire ownership title to the goods later than specified in section 443. Unless such a reservation of ownership title indicates otherwise, it is presumed that the buyer is to acquire ownership title to the goods when he has paid the selling price in full.

Section 446

The buyer acquires ownership title even if the seller is not the owner of the sold goods, unless at the time when the buyer was to acquire ownership title to the goods, he knew or ought to have known or could have known that the seller was neither the owner nor authorized to dispose of the goods for the purpose of selling them.

Subdivision 4

Duties of the Buyer

Section 447

The buyer is bound to pay the selling price for the goods and take delivery of the goods in accordance with the contract.

Commentary on section 447 to 454:

With regard to payment of the selling price, the buyer is in the position of debtor and, if he is in default, the provisions of sections 365 to 369 apply. With regard to the duty to take delivery of goods, the buyer is in the position of creditor. If he is in default, the provisions of sections 370 to 372 of the Commercial Code apply.

Section 448

- (1) The buyer is bound to pay the agreed selling price.
- (2) If neither the selling price nor the method of determining it is stipulated in the contract and, if the contract is valid under section 409(2), the seller may demand payment of the selling price at which identical or comparable goods were sold at the time when the contract was concluded, under contractual terms similar to those contained in the contract.
- (3) If the selling price is calculated according to the weight of the goods, in case of doubt the net weight of such goods is decisive.

Section 449

If the selling price is to be paid upon the handing over of the goods or documents, the buyer is bound to pay the price at the place where the goods or the documents were handed over to him.

Section 450

- (1) Unless the contract provides otherwise, the buyer is bound to pay the selling price when the seller, in accordance with the contract and this Code, makes it possible for the buyer to dispose of the goods, or of the documents facilitating their disposal by the buyer. **The seller** may make the handing over of the goods "or the documents conditional upon payment of the selling price.
- (2) If, under the contract, the seller is to despatch the goods, he can do so on condition that the goods or the documents facilitating their disposal will be handed over to the buyer upon payment of the selling price, unless this contradicts the agreed manner of payment of the selling price.
- (3) The buyer is not bound to pay the selling price until he has an opportunity to examine the goods, unless this contradicts the agreed manner of delivery of the goods, or payment of the selling price.

Section 451

The buyer must perform the acts which are required by the contract and this Code so that the seller can make delivery of the goods. The buyer is to take delivery of the goods, unless the contract or this Code indicates that the buyer may refuse taking delivery of the goods.

Section 452

- (1) If, under the contract, the buyer is to determine subsequently the form, size or properties of the goods, and fails to do so within an agreed time-limit, and if the time-limit is not agreed, within a reasonable time after receipt of the seller's written request to do so, the seller himself can specify them, taking into account the buyer's requirements, provided that they are known to him. **This** provision does not affect any other claims of the seller.
- (2) If the seller has made the specification himself, he must communicate the details of such specification to the buyer and set a reasonable time-limit within which the buyer can **inform** the seller of a different specification. If, after the buyer has received the proposed details of the specification from the seller, he fails to respond within the specified time-limit, the specification notified by the seller becomes binding.

Section 453

The seller may require the buyer to pay the selling price, take delivery of the goods and perform his other duties, as long as the seller has not asserted his right based on a breach of contract which is incompatible with this demand.

Section 454

If it was agreed that the obligation to pay the selling price would be secured, the buyer must hand over to the seller documents which prove that payment of the purchase price has been secured in accordance with the contract; these documents must be handed over to the seller within the agreed **time**, or else in sufficient time prior to the agreed **time** of delivery of the goods. If the buyer fails to meet this obligation, the seller may refuse to deliver the goods until such documents are handed over. If the buyer does not secure payment of the selling **price** within a reasonable additional time-limit stipulated by the seller, the seller may withdraw from the contract.

Subdivision 5

Risk of Damage to Goods

Section 455

The risk of damage to goods [section 368(2)] passes to the buyer at the time when he takes over the goods from the seller or, if he does not do so in time, when the seller makes it possible for him to dispose of the goods and the buyer breaches the contract by not taking over such goods.

Commentary on sections 455 to 461:

In accordance with section 368(2), damage to a thing means the loss, destruction, impairment or devaluation of the thing. The risk of damage to the goods passes to the buyer when he takes over the goods from the seller, or at the time when the seller enables the buyer to dispose of the goods but the buyer fails to take over the goods, unless the parties agree otherwise (section 459), or unless section 458 applies.

Section 456

If the buyer is to take over the goods from a person other than the seller, the risk of damage to the goods passes to the buyer at the time set for delivery of the goods, provided that at this time the buyer has an opportunity to dispose of the goods and knows about it. If the buyer is given an opportunity to dispose of the goods only later, or if the buyer learns only later of the fact that he can dispose of the goods, the risk of damage passes to the buyer at the time when he has the opportunity of disposing of the goods and knows about it.

Section 457

If, under the contract, the seller is to hand over the goods to a carrier at a certain place for transportation to the buyer, the risk of damage to the goods passes to the buyer when, and where, the goods are handed over to the carrier. If the contract of sale includes a stipulation requiring the seller to despatch the goods, but the seller is not bound to hand over the goods to the carrier at a certain place, the risk of damage to the goods passes to the buyer when the goods are handed over to the first carrier for transportation to the place of destination. The fact that the seller has the documents which make it possible for him to dispose of the forwarded goods has no influence on the transfer of (he risk of damage to the goods).

Section 458

The risk of damage to goods identified only by their kind (type), and not taken over by the buyer does not, however, pass to the buyer until the goods have been clearly designated for the purpose of the contract by markings or by the transportation (shipping) documents, or by being specified in a notice sent to the buyer, or determined in another manner.

Section 459

The parties may agree that the risk of damage to goods shall pass, prior to the time specified in sections 455 to 458, only in the case of itemized goods, or goods defined according to their kind, provided that such goods are adequately set aside and determinate from other goods of the same type at the time of the transfer of the risk of damage.

Section 460

If at the time when the contract is concluded the goods are already being transported, the risk of damage to the goods passes to the buyer when the goods are handed over to the first carrier. However, if the seller, when concluding the contract, knew or, taking into account all circumstances, ought to have known, that the goods had been damaged, (he liability for such damage is borne by the seller.

Section 461

(1) Damage to the goods which occurred after the passing of the risk to the buyer does not affect the buyer's obligation to pay the selling price, unless the damage occurred due to a breach of an obligation by the seller.

(2) The effects under subsection (1) do not arise if the buyer asserts his right to demand delivery of substitute goods, or to withdraw from the contract.

Subdivision 6

Preservation of the Goods

Section 462

If the buyer is in delay in taking delivery of the goods or in paying the selling price, in cases when delivery of the goods and payment of the selling price are to be made concurrently and the goods are either kept by the seller or can be disposed of by him, the seller must take such measures as are reasonable in the circumstances to preserve the goods. The seller is entitled to retain the goods until he has been reimbursed his reasonable expenses by the buyer.

Commentary on sections 462 to 468:

The provisions on a contract on deposit of a thing (sections 516 to 526) apply, as appropriate, to the measures to be taken for the sake of preservation of the goods and related rights and duties. The right of retention (lien)

is subject to the provisions of the Civil Code.

Section 463

If the buyer has taken over the goods and intends to reject them, he is obliged to take such measures as are appropriate in the circumstances to preserve the goods. Until the seller has reimbursed the buyer reasonably for the expenses thus incurred, the buyer is entitled to retain the goods which are to be returned to the seller.

Section 464

If, after the goods have been transported to the place of destination, the buyer has an opportunity to dispose of such goods and asserts his right to reject them, he must take over the goods and keep them at the seller's expense, if this can be done without payment of the purchase price and without unreasonable inconvenience and expense. However, the buyer does not have this obligation when either the seller or a person authorized by the seller to attend to the goods is present at the place of destination. Upon the buyer taking over the goods, his rights and duties are governed by the provisions of section 463.

Section 465

The obligated (liable) party may perform the duties defined in sections 462 to 464 by storing the goods at the warehouse of a third party, at the expense of the other party, and may demand reimbursement of reasonable expenses thus incurred.

Section 466

The party which is in delay in taking delivery of the goods, or in taking delivery of the goods being returned, or which is in default with regard to payment of the selling price to be effected upon taking delivery of the goods, or with regard to reimbursement of expenses relating to performance of duties (obligations) under sections 462 to 464, may be urged to perform the respective duty (obligation). When urging the party in delay that delivery be taken of the goods, the other party is entitled to set a reasonable time-limit for doing so and, after (he time-limit has expired without result, is entitled to sell the goods in an appropriate manner. The party which is in default must be notified by the other party of the latter's intention to sell the goods. This intention may be communicated to the other party when setting the time-limit for taking delivery of the goods.

Section 467

If the goods are perishable, or if preservation of the goods involves excessive costs, the party obligated under the provisions of sections 462 to 464 must take measures to sell the goods and, if possible, to notify the other party of the intended sale.

Section 468

The party which has sold the goods is entitled to retain from the proceeds of the sale an amount corresponding to the expenses reasonably incurred in performance of the duties (obligations) stated in sections 462 to 464 and related to the sale of the goods. The balance of the proceeds must be paid to the other party without undue delay.

Subdivision 7

Special Provisions on Damages

Section 469

If one of the contracting parties has withdrawn from a contract in accordance with the provisions of this Code and, within an appropriate time following the withdrawal, either the buyer makes a substitute purchase or the seller makes a substitute sale of the goods which were the object of the repudiated contract, the entitlement to damages according to the provisions of this Code must include the difference between the selling price which was to be paid under the repudiated contract and the price agreed in the substitute transaction. In determining this difference, the contents of the contract must be taken into consideration. Entitlement to compensation of the remaining damage is not hereby affected.

Commentary on sections 469 and 470:

Section 469 includes special regulation of the scope of damages (in relation to section 379), while section 470 supplements the preceding section.

Section 470

(1) In cases to which the provisions of section 469 do not apply, the entitlement to damages by the party which has withdrawn from a contract involving goods sold on the basis of the current price shall include the difference between the selling price to be paid according to the contract and the current price of goods of the same type and of the same or comparable quality, sold under similar contractual terms. This does not affect the entitlement to compensation of remaining damage,

(2) Prices current at the time of withdrawal from the contract are considered as decisive; if, however, the goods were taken over prior to withdrawal from the contract, then the prices current at the time when the goods were taken over shall be decisive.

Division II

Agreements Relating to a Contract of Sale Subdivision 1 Purchase on Trial

Section 471

"A purchase on trial" (also referred to as "approval purchase"; "koupě na zkoušku") arises from the conclusion of a contract of sale where there is a condition that the buyer will approve the goods within a trial (approval) period. If such a trial period is not specified in the contract, it is presumed that the period is three months from the day when the contract is concluded.

Commentary on sections 471 and 472:

In the case of purchase on trial (approval purchase), the trial period is three months if its length is not included in the contract. However, the buyer cannot reject the goods if he cannot return them in the condition in which he took them over. Section 472 stipulates both a suspensory and resolutive condition for purchase on trial.

Section 472

(1) If the buyer has not taken over the goods, the provisory clause has the effect of a suspensory condition and this condition is considered as having been frustrated if, within the trial period, the buyer does not notify the seller that he approves of the goods.

(2) If the buyer has taken over the goods, the provisory clause has the effect of a resolutive (dissolving) condition, and it is presumed that the buyer has approved of the goods, unless he rejects them in writing within the trial period.

(1) The buyer does not have the right to reject the goods if he cannot return them in the condition in which he took them over.

Subdivision 2

Price Clause

Section 473

If, when setting a price, the parties agree that its amount should be subsequently adjusted to take into account production costs, and if the parties do not specify which components of the production costs are decisive, the selling price shall be changed to reflect price changes of the principal raw materials required to produce the sold goods.

Commentary on sections 473 to 475:

Section 473 stipulates how subsequently to determine the price of goods in relation to price fluctuations of raw materials (used in production of the goods) and relates to section 409(2) of the Commercial Code; section 474 determines the decisive time for considering such price fluctuations, while section 475 provides for extinguishment of the rights and duties from the price clause if not timely claimed.

Section 474

(1) If the parties do not specify in their contract which time **limit** is decisive for evaluating price fluctuations, the prices which are current at the time of conclusion of the contract and at the time when the seller is expected to deliver the goods are taken into account. If the goods are to be delivered within a specified time-limit, the **time** of actual timely delivery (performance of the contract) is decisive, or else the end of such time-limit.

(2) If the seller is in delay (default) in delivering the goods and, at the time of their actual delivery, the prices of the decisive components of the production costs are lower than at the time specified in subsection (1), the lower prices are the ones that shall be taken into account.

Section 475

The rights and duties of the parties based on a price clause terminate (extinguish) if the party concerned does not assert its rights against the other party, without undue delay, following delivery of the goods.

Division III
Contract of Sale of an Enterprise
Section 476

Fundamental Provisions

(1) Under a contract of sale of an enterprise (in Czech "smlouva o prodeji podniku"), the seller undertakes to pass over to the buyer a certain enterprise and to assign to him the ownership title to such enterprise, and the buyer undertakes to assume the obligations (debts) of the seller relating to the enterprise and to pay the selling price,

(2) The contract must be in writing.

Commentary on sections 476 to 488:

A contract on the sale of an enterprise may be concluded between entrepreneurs as well as other persons who are not entrepreneurs. On sale of an enterprise all the rights and obligations pass to the buyer [section 477(1)]. This means that even debts not shown in the seller's books of account will be transferred to the buyer; the latter may claim a reduction of the selling price if he did not know about them at the time of conclusion of the contract [section 486(3)]. If the title to real estate which is part of the enterprise's property is not transferred to the buyer, and this is not rectified, the buyer may cancel the contract.

Rights and duties arising from labour relations to the employees of the sold enterprise pass from the seller to the buyer. The buyer need not conclude new employment contracts with these employees. Half of the provisions regulating a contract for the sale of an enterprise are mandatory [sections 477, 478, 479(2), 480, 483(3) and 488],

Section 477

(1) All rights and obligations pertaining to the sale pass to the buyer.

(2) The passing of claims (receivables) is otherwise regulated by the provisions on assignment of claims (receivables).

(3) The passing of an obligation (debt) does not require the consent of the creditor, but the seller is liable for the buyer's performance of the assigned obligations (debts).

(4) The buyer must notify creditors without undue delay of his assumption of the obligations (debts) to them, and the seller must notify debtors of the assignment of claims to the buyer.

Section 478

(1) **If the** sale of an enterprise makes it undoubtedly more difficult for a creditor to recover his debts, he may file an objection with the court within 60 days of the day he learned of the sale of the enterprise, but no later than six months from the day when the sale of the said enterprise was entered in the Commercial Register [section 488(1)], and through his objection he may seek a court order that assignment of the seller's obligation (debt) to the buyer is not effective with respect to the creditor.

(2) If the seller is not entered in the Commercial Register, an objection may be filed with the court within 60 days of the day the creditor learned of the sale of the enterprise, but no later than six months after conclusion of the contract.

(3) If a creditor successfully asserts his right under subsection (1) or (2), the seller has to fulfil his obligation (pay his debt) to the creditor when it becomes due and is entitled to demand from the buyer settlement of such rendered performance with appurtenances.

Section 479

(1) All rights ensuing from intangible industrial and other intellectual property related to the business activity of the **sold** enterprise pass to the buyer of the enterprise. If performance of a specialized business activity is decisive for acquisition or maintenance of these rights, business activity, as performed by the buyer after sale of the enterprise, must also include such activity as was carried on in operating of the enterprise prior to its sale.

(2) However, there shall be no assignment of a right under subsection (1) if this would be contrary to a contract on exercise of rights ensuing from intangible industrial and other intellectual property, or the nature of these rights.

Section 480

Rights and duties arising from labour relations with employees of the enterprise pass from the seller to the buyer.

Section 481

Repealed

Section 482

It is presumed that the selling price of the enterprise is determined on the basis of data on the aggregate of the enterprise's things (i.e. assets), rights and liabilities entered in the books of account of the enterprise being sold on the day when the contract is concluded, and on the basis of other values stipulated **in the** contract but not included in the bookkeeping records. If the contract is to take effect on a later date, the selling price is increased or reduced, taking into account any increase or reduction in assets which occurs in the meantime.

Section 483

(1) On the effective day of the contract, the **seller** is bound to pass over to the buyer, and the buyer is bound to take over, all the things included in the sale of the enterprise, and a protocol regarding this take-over is drawn up and signed by both parties.

(2) The risk of damage to the things passes from the seller to the buyer at the time of the take-over.

(3) Ownership title to the things included in the sale passes from the seller to the buyer on the day when the contract comes into effect. Ownership title to real property (i.e. immovables) is transferred upon registration in the real estate cadastre. The provisions of sections 444 to 446 apply *mutatis mutandis*.

Section 484

The seller must notify the buyer, at the latest by the time the protocol is drawn up in accordance with section 483(1), of all defects in the transferred things, rights or other property values which he knows, or ought to know, or else he becomes liable for any damage that could be prevented by such notification.

Section 485

All the missing things and defects **in** the transferred things are listed in the protocol drawn up in accordance with section 483(1). Things which the seller has not passed to the buyer, even though, according to the bookkeeping records and the contract, such things are supposed to be part of the assets of the sold enterprise, are deemed to be missing. In considering defects in things, account must be taken of whether **such** things are fit for use in the operation of the enterprise, and of the time of their (previous) use, according to the bookkeeping records.

Section 486

(1) The buyer has the right to demand an appropriate reduction of the selling price (i.e. a discount) corresponding to the value of the missing or defective things. If missing things or ascertainable defects were not listed in the protocol under section 483(1), the right to a price reduction may not be adjudged in judicial proceedings, unless the seller knew of them at the time of the take-over of the things. With regard to defects **which** become discernible only in the subsequent operation of the enterprise, these consequences arise if these defects are not notified by the buyer to the seller, without undue delay, after they have been detected, or after they could have been detected through the exercise of due diligence. However any such defect must be ascertained within six months from the effective day of the contract in order to be legally recognized (section 482). The provisions of sections 428(2) and 439 apply, as appropriate (*mutatis mutandis*).

(2) The buyer is entitled to repudiate the contract if the enterprise is not fit for the operation specified in the contract and any defects which were reported in time are not rectifiable, or if the seller does not rectify them within an additional appropriate time limit, granted to him by the buyer. The provisions of section 441 apply *mutatis mutandis*.

(3) The buyer may assert his right to a reduction of the selling price in respect of debts which have passed to him, and which were not included in the bookkeeping records, on the effective day of the contract (section 482), unless the buyer knew of such debts at the time of conclusion of the contract.

(4) The provisions of sections 433 to 435 similarly apply to legal defects in the sold enterprise. If the title to real estate which is a part of the enterprise property is not transferred **to the** buyer, and the seller fails to rectify this defect within an appropriate additional time limit determined by the buyer, the latter may repudiate the contract.

(5) The rights defined in the preceding subsections do not affect claims to damages. The provisions of section 440 apply *mutatis mutandis*.

Section 487

The provisions of sections 477 to 486 also apply to contracts under which a part of an enterprise, being an independent organizational component, is sold.

Section 488

(1) If a person entered in the Commercial Register sells an enterprise, such person shall apply for entry of the sale of the enterprise, or an organizational component of it, **into** the Commercial Register.

(2) A legal entity which has sold an enterprise forming its assets may complete its liquidation and be deleted from the Commercial Register only one year after the sale, provided that no judicial proceedings under section 478 were initiated within that period, or at a later date **when** claims which were successfully asserted in such proceedings are secured or satisfied.

Section 488a

A contract of sale of an enterprise shall be subject to section 672a as appropriate

Division IIIA

Contract on Lease of an Enterprise

Section 488b

Fundamental Provisions

(1) Under a contract on lease of an enterprise ("smlouva o najmu podniku"), the lessor ("pronaji'matel") undertakes to let his enterprise to the lessee ("najemce") for the latter to operate it independently and manage it at his cost and risk and to have benefits therefrom. The lessee undertakes to pay the rent to the lessor.

(2) The amount of the rent or the method of its determination must be specified in the contract.

(3) A contract on lease of an enterprise must be in writing.

(4) A contract on lease of an enterprise takes effect when it is published according to section 33(1).

Commentary on sections 488b to 488i:

The provisions of new sections 488b to 488i introduce into the Commercial Code the statutory provisions concerning a contract on lease of an enterprise.

Section 488c

(1) An enterprise cannot be subleased (sublet).

(2) Unless this Code provides otherwise, a lease of an enterprise shall be subject to sections 663,665(1), 667 and 670 of the Civil Code.

Section 488d

A lessee may only be an entrepreneur who is entered in the Commercial Register and has the relevant business authorization, otherwise the contract is void.

Section 488e

(1) A lessee is obliged to operate the enterprise with due care (due diligence) and, without the lessor's consent, is not authorized to change the objects of business activity operated in such leased enterprise.

(2) The rights and obligations which pertain to a leased enterprise pass over to the lessor as of the effective day of the contract on lease of such enterprise. This shall also apply to the rights and obligations (duties) from labour relations. The provisions of section 477(2) to (4) shall apply as appropriate. The lessor shall be liable for obligations (liabilities) which pertain to the leased enterprise and arose before the effective day of the contract. The lessee operates the leased enterprise under his commercial name.

(3) A creditor may seek a court ruling pronouncing all the lessor's obligations (liabilities) pertaining to a leased enterprise payable at the day when the contract on lease of such enterprise takes effect if performance (fulfilment) of such obligations is at risk due to the lease of the enterprise. Should this right not be asserted within three months from the effective day of the contract on lease of the enterprise, it shall lapse.

(4) The rights and obligations from labour relations existing at the day when the lease terminates and from existing contracts on lease of nonresidential premises shall pass on the lessor. Other obligations relating to such leased enterprise shall become payable.

Section 488f

(1) Unless it is agreed otherwise, the lease shall be extended by the period for which the contract on lease of the enterprise was concluded, even repeatedly, if after expiry of the period for which the contract on lease of such enterprise was concluded, both parties continue to perform the terms of such contract.

(2) If a contract on lease of an enterprise is concluded for an indefinite time, a notice of termination may be given latest six months before the expiry of the accounting period at the last day of such accounting period, unless the contract specifies another notice of termination.

Section 488g

(1) On the basis of a contract of lease of an enterprise, the lessee becomes authorized to use the designation, know-how and the objects of industrial intellectual property belonging to the lessor **and relating to the leased enterprise within the extent to which this is necessary for the proper operation of the enterprise for the period of the lease.** The payment for the use (utilization) of these rights is included in the rent (lease charge). This shall not affect special provisions on licence contract and entry of a licence in relevant registers.

(2) As of the effective day of a contract on lease of an enterprise or its part, the ownership title to the products in stores, materials for the production (processing), spare parts and other things determined according to their kind to be consumed or processed in connection with the operation of the enterprise or which serve for the marketing purposes, shall pass to the lessee. However, passage of this ownership title shall only occur if the parties agreed an appropriate payment for these things, either as part of rent (lease charge) or in addition to it. The contracting parties shall draw up a hand-over protocol of these things, including a list of individual items.

(3) Authorization under subsection (1) shall lapse at the end of the lease contract or when it is noted in the relevant registry that the licence ended because of the end of the lease contract. Ownership to the objects under subsection (2) shall pass to the lessor at the moment when the lease contract ends. The parties shall draw up a protocol (a record) on handing over these things to the lessor and the lessor shall settle the price of things on the basis of (mutual) agreement.

Section 488h

Lease of an enterprise appropriate, to section 672a. or its part shall be subject, as appropriate, to section 672a.

Section 488i

A contract under which a certain part of an enterprise, which forms a separate organizational component, is leased, shall be similarly subject to the provisions of sections 488b to 488g.

Division IV

Contract for the Purchase of a Leased Thing

Section 489

Fundamental Provisions

(1) By a lease contract for the purchase of a leased thing (in Czech "smlouva o koupi najaté věci") the parties agree either in the **lease** contract or after its conclusion, that the lessee has the right to purchase (he leased thing, or set of things, during the period of validity of the lease contract, or after its termination.

(2) The contract must be in writing.

Commentary on sections 489 to 496:

In accordance with a contract for the purchase of a leased thing, ownership title to such leased thing (whether movable or immovable) is transferred from the lessor (the seller) to the lessee (the buyer). If the lessee does not claim his right to buy the leased thing in accordance with section 491, his right extinguishes. Should the selling price not be agreed, the price will be determined according to section 448(2). The mandatory provisions of section 493 stipulate that ownership title to a movable thing which was bought is transferred to the buyer on conclusion of the contract, whereas ownership title to immovables (real estate) is transferred upon its registration in the Real Estate Cadastre (Land Registry).

Section 490

If the lessee has the right to purchase the leased thing during the period of validity of the lease contract, his right to purchase the leased thing under the said contract is asserted upon delivery of written notification that he will purchase the leased thing. This results in termination of the lease contract, even if it was concluded for a fixed period,

Section 491

If, according to the contract for purchase of a leased thing, the lessee has the right to purchase such leased thing after termination of the lease contract, this right becomes extinguished if the lessee does not notify the lessor in writing and without undue delay, after termination of the lease contract, of his intent to purchase the thing in question.

Section 492

If the party which has the right to purchase the leased thing, in accordance with the contract for purchase of the leased thing, notifies the other party that it is asserting its right to purchase the leased thing being the object of the lease contract, the contract of purchase is established upon delivery of the said notification. The party having the right to purchase the leased thing has the status of buyer, and the other party the status of seller.

Section 493

(1) On conclusion of the contract for purchase of the leased thing (section 492), ownership title to the movable thing concerned is transferred to the buyer. Ownership title to real estate is transferred upon its registration (in Czech "vklad") in the Real Estate Cadastre.

(2) The risk of damage to the thing passes to the buyer when the contract of purchase (section 492) becomes effective.

Section 494

(1) If the contract for purchase of a leased thing does not specify the selling price or the manner of determining such price, the buyer shall pay the selling price determined according to the provision of section 448(2). Determination of the selling price is not affected by any damage or greater wear and tear of the thing, for which the lessee bears responsibility.

(2) The buyer must pay the selling price, without undue delay, after conclusion of the contract for purchase of the leased thing.

Section 495

(1) In assessing the defects in a thing, the properties which the leased thing ought to have had shall be decisive.

(2) The time-limit for notifying defects in a purchased thing begins on the day when the lessee took over the leased thing.

(3) If ownership title to the leased thing is not transferred to the buyer and the seller fails to rectify the defect within an additional reasonable time-limit granted to him by the buyer, the latter may withdraw from the contract.

Section 496

(1) The lease contract may provide that after it has been in operation for a certain period, the lessee is entitled to acquire **ownership** title to the leased thing free of charge if he asserts **this** right against the lessor.

(2) The person acquiring ownership title under subsection (1) may not claim defects in the thing, with the exception of legal defects, unless he was granted a warranty of quality (quality guarantee).

Division V

Credit Contract

Section 497

Fundamental Provisions

Under a credit contract (in Czech "smlouva o úvěru"), the "creditor" ("veritel") undertakes to provide to the "debtor" ("dluznic"), at his request, monetary resources up to a certain amount, and the debtor undertakes to pay back the provided monetary resources with interest.

Commentary on sections 497 to 507:

Credit contracts are regulated only in [the Commercial Code. However, the Civil Code contains the provisions on loan contracts (sections 657 and 658). Under a loan contract, the creditor lets the debtor immediately use things, specified according to their kind (in particular, money), whereas under a credit contract the (future) creditor undertakes to provide money at some future date when the money is required by the debtor. The creditor is usually a bank. Credits can be granted in currencies other than the Czech crown. The Czech crown is now convertible.

Section 498

The parties may determine that the object of their contract will be monetary resources in a currency other than Czech crowns, but not if this conflicts with the statutory provisions on foreign exchange. Unless the parties agree otherwise, the debtor shall return the monetary resources in the same currency in which the credit was provided, and pay interest in the same currency.

Section 499

It is possible to agree a fee payable to the creditor, if the creditor takes upon himself the obligation to make monetary resources available upon request (on demand), if the creditor's business involves the provision of credits.

Section 500

- (1) A debtor may assert his entitlement (claim) to have monetary resources made available to him within the time limit stipulated in the contract. If the time limit is not stipulated in the contract, the debtor may assert this entitlement until the contract is terminated by one of the parties.
- (2) Unless the contract specifies another time limit for the notice of termination, the debtor may cancel the credit contract with immediate effect, whereas the creditor may do so with effect from the end of the calendar month following the month in which notice was given to the debtor.

Section 501

- (1) The creditor is bound to make monetary resources available to the debtor when asked by the latter to do so in accordance with the contract. The monetary resources are to be provided at a time determined by the debtor, or else without undue delay.
- (2) If the contract stipulates that the credit may be used for a specific purpose only, the creditor may limit the provision of monetary resources only to the debtor's fulfilment of obligations (debts) relating to such purpose.

Section 502

- (1) As of the day when the debtor is provided with the monetary resources, he shall pay interest on them at the agreed rate, or else at the maximum rate set by law or on the basis of law. If an interest rate is not fixed in this manner, the debtor must pay the usual rate of interest demanded on credits by banks at the place of the debtor's registered office at the time of the conclusion of the contract. If the parties agree on a higher interest rate than the rate permitted by law or on the basis of law, the debtor is bound to pay the interest at the maximum permissible rate,
- (2) In case of doubt, it is presumed that the agreed interest rate is interest per annum.

Section 503

- (1) The obligation to pay interest becomes due at the same time as the obligation to repay the monetary resources which have been used. If the time-limit for repaying the rendered monetary resources is longer than one year, interest is payable at the end of each calendar year. At the time when the balance of the rendered monetary resources is to be repaid, interest on the balance of the monetary resources also becomes due.
- (2) If the rendered monetary resources are to be paid in instalments, interest on these instalments is due on the day when a particular instalment is due.
- (3) The debtor can return the provided monetary resources prior to the time limit set in the contract. He shall pay interest only for the period from the provision of the monetary resources until their repayment.

Section 504

The debtor must repay monetary resources which have been made available to him within the agreed time limit, or one month from the day when the creditor asks him to do so.

Section 505

If during the period of validity of the contract, the securing of an obligation to repay the monetary resources which have been provided extinguishes or deteriorates, the debtor must supplement the security up to its original extent. If the debtor fails to do so within an appropriate time limit, the creditor may withdraw from the contract and demand repayment of the debt from the debtor, together with interest. **The creditor's withdrawal from the contract shall not have any influence on securing obligations (liabilities) under such contract.**

Section 506

If the debtor is in arrears with payment of more than two instalments, or one instalment for a period longer than three months, the creditor has the right to withdraw from the contract and to demand from the debtor repayment of the debt, together with interest. **The creditor's withdrawal from the contract has no influence on securing obligations (liabilities) under such contract.**

Section 507

If, according to the contract, the provided monetary resources are to be used by the debtor for a particular purpose only and the debtor makes use of the money for another purpose, or, if the use of the money for the agreed purpose becomes impossible, the creditor has the right to withdraw from the contract and demand repayment of the used and unrepaid amount of money, together with interest, without undue delay. **The creditor's withdrawal from the contract has no influence on securing obligations (liabilities) under such contract.**

Division VI

Industrial Property Licence Contract

Section 508

Fundamental Provisions

Under an industrial property licence contract (in Czech "licenční smlouva k předmětům průmyslového vlastnictví"), the "licensor" ("poskytovatel") authorizes the "licensee" ("nabyvatel") to exercise (intangible) industrial property rights (hereafter "the rights") only to **an** agreed extent and within agreed territory, and the licensee undertakes to make determined payments or to provide other material values (**payment in kind**) in return. (2) The contract must be in writing.

Commentary on sections 508 to 515:

Intangible industrial rights (e.g. patents, trademarks) can be transferred on the basis of a contract between a licensor and a licensee; exercise of such rights is usually restricted to the countries specified in the contract. Section 509 stipulates that, if the law so requires, the rights need to be entered into the appropriate register to be exercisable, and that if their upholding requires that such rights are exercised, the licensee is bound to exercise them. Under Czech law, trademarks which are not in use for five years can be deleted from the Trademarks Register.

Section 509

- (1) If a particular Act so stipulates, the exercise of the rights granted on the basis of a contract, requires an entry in the respective register of such rights.
- (2) If the duration of the rights is dependent upon the exercise of them, the licensee is bound to exercise the rights.

Section 510

The licensor is bound to uphold the rights for the duration of the contract if their nature so requires.

Section 511

- (1) The licensor may continue to exercise the rights which are the object of the contract, and may also grant them to other persons.
- (2) The licensee may not allow other persons to exercise the rights.

Section 512

Following conclusion of the contract, the licensor is bound, without undue delay, to make available to the licensee all the documentation and information required for exercise of the rights under the contract.

Section 513

The licensee must keep confidential both the documentation and the information which have been made available to him under the contract with respect to third persons, unless it follows from the contract or the nature of the documentation and information that the licensor is not interested in keeping such information confidential. Those who take part in the business activities of the licensee and are bound to keep the information confidential shall not be considered as third persons. After termination of the contract, the licensee must return to the licensor all the documentation made available to him and keep the relevant information in confidence, until such information becomes *generally* known.

Section 514

- (1) If the licensee is restricted in the exercise of his rights by other persons, or if he ascertains that other persons are violating these rights, he must report this to the licensor without undue delay.
- (2) The licensor shall, without undue delay, take all necessary legal steps to protect the exercise of the rights by the licensee. When the licensor takes such steps, the licensee is bound to co-operate with him to the necessary extent.

Section 515

If the contract is not concluded for a definite period, it may be terminated by notice. Unless the contract sets a different period of notice, the given notice takes effect one year from the end of the month in which it is delivered to the other party.

Division VII

Contract on Deposit of a Thing

Section 516

Fundamental Provisions

(1) Under a contract on deposit of a thing (in Czech "smlouva o uložení věci")* the "depository" (in Czech "opatrovatel") undertakes on behalf of the depositor (in Czech "uložitel"), temporarily and gratuitously, to take care of a thing which he has in his keeping in connection with his commercial contract with the depositor.

(2) If the contract does not specify whether the thing is to be taken care of for a fee or gratuitously, and taking care of other parties' things is not the object of the depository's business activity, it applies that the parties have concluded a contract on deposit of a thing.

Commentary on sections 516 to 526: •

Parties to a contract on deposit of a thing are always entrepreneurs. According to this contract, a movable thing belonging to one entrepreneur is taken care of temporarily by another, who is in a business relationship with the former. The contract may be concluded orally or in writing.

Should one party not be an entrepreneur and/or should a fee be required, it is possible to conclude a contract on custody of a thing in accordance with sections 747 to 753 of the Civil Code.

Section 517

The depository must take proper care of the thing and see to it that, taking into account the nature of the thing and his own possibilities, it suffers no damage. If taking care of the thing requires special measures, the depository must take them, provided that they are specified in the contract, or that the depositor made them known prior to the conclusion of the contract. The depository will insure the thing against damage only if the contract so provides.

Section 518

Even if the depository undertakes in the contract to take care of the thing in a particular manner, he may depart from such manner if circumstances occur which the depository could not have envisaged at (he time of conclusion of the contract and which make performance of his obligation inordinately burdensome. The occurrence of such circumstances shall be communicated by the depository to the depositor.

Section 519

(1) If the depository entrusts the thing to a **third** person to take care of the thing without the depositor's consent, the depository becomes liable as if he himself was taking care of the thing. If he does so with the depositor's consent, the depository is liable as mandatary.

(2) If, contrary to the contract, the depository, entrusts the thing to a third person's care, the **risk** of damage to the thing passes to the depository. The provisions of section 518 are not thereby affected.

Section 520

The depository may not use the thing, or make it available for use by a third person, without the depositor's consent.

Section 521

(1) The depositor is bound to reimburse the depository for any damage caused to the latter by the deposited thing, unless the depository could have prevented the damage by exerting the care specified in section 517. The depositor must also reimburse the depository for any necessary and purposeful expenses incurred in the performance of his obligation.

(2) In the case of extraordinary expenditure, unforeseen at the time of conclusion of the contract, the depository seeks the depositor's consent prior to the expenditure, if possible. Unless the depositor advises the depository to the contrary, without undue delay, it is presumed that the depositor agrees to the proposed expenditure.

(3) If the depository makes the expenditure specified in subsection (2) without having asked in advance for the depositor's consent, and the depositor does not subsequently approve of the depository's expenditure, the depository may claim reimbursement of expenses to the extent by which the depositor enriched himself by saving on such expenses.

(4) The depositor is bound to pay the expenses which the depository is entitled to have compensated, without undue delay, after he has been asked by the depository to do so, but no later than when he collects the thing.

Section 522

The depository must return the deposited thing to the depositor at the place where it was to be deposited under the contract, or **else** at his seal, his place of business, or his residential address, or at the place where an organizational unit of the depository is taking care of the thing.

Section 523

(1) Even if the period for which the thing is to be deposited with the depository is agreed on, he must return it without undue delay when the depositor asks him to do so.

(2) The depositary may demand that the depositor take back the thing without undue delay, even before expiry of the contractual time of deposit, if further performance of his obligation would cause him excessive difficulties, unforeseen at the time of conclusion of the contract, or if a third person is demanding the deposited thing.

Section 524

If there is no agreement on how long the thing is to remain with the depositary, and it is not evident from the circumstances under which the contract was concluded, the depositary must return the thing to the depositor as soon as the latter asks him to do so, and the depositor shall take back the thing without undue delay after being asked to do so by the depositary.

Section 525

If the depositor does not take back the thing in time, the depositary may set a reasonable time-limit for him to do so. After such time-limit has expired without result, the depositary may withdraw from the contract. If the depositary so notified the depositor when setting the time-limit, he may sell the thing in an appropriate manner at the depositor's cost or store it with a third party at the depositor's expense.

Section 526

The provisions of sections 517 to 525 apply mutatis mutandis also to the determination of rights and duties of parties when, according to the provisions of this Code on other types of contracts (i.e. other than a contract on deposit of a thing), one party is bound to take gratuitous care of a thing, by keeping it for the other party, unless a different arrangement is implied by these provisions.

Division VIII

Contract on Storage

Section 527

Fundamental Provisions

(1) Under a contract on storage (in Czech "smlouva o skladovam"), the warehouse-keeper (also referred to as "a warehouseman"; in Czech "skladovatel") undertakes to receive a thing in order to store it and take care of it, and in return for this service the depositor (in Czech "ukladatel") undertakes to pay him a storage fee ("storage charge"; in Czech "skladné").

(2) If the contract does not specify whether a thing is to be taken care of for a storage fee or free of charge, and taking care of things (storing) is the object of the warehouse-keeper's business activity, it is considered that the parties have concluded a contract on storage.

Commentary on sections 527 to 535:

Both parties to a contract on storage are entrepreneurs, one of whom stores things as his business activity and provides a service to the other party in return for a storage charge. Under section 528 of the Commercial Code and section 1 of the Securities Act, a warehouse warrant is a security.

Section 528

(1) The warehouse-keeper must take over the thing handed over to him by the depositor and confirm receipt of it in writing.

(2) The confirmation that a thing has been accepted for storage ("a warehouse warrant" or "warehouse certificate"; in Czech "skladištní list") may have the character of a security to which the right to demand the handing over of the stored thing is attached.

(3) A warehouse warrant can be made out to bearer or as a registered warehouse warrant (i.e. registered in the name of a particular person). If it is made out to bearer, the warehouse-keeper shall hand over the thing to the person who presents it. If it is made out as registered warehouse warrant, the warehouse-keeper shall hand over the thing to the person whose name is stated in the warehouse warrant. Such warrant may be assigned by the entitled person (beneficiary) to other persons by endorsement, unless endorsement is excluded therein. The endorsement is subject to statutory provisions on bills of exchange.

(4) The person who, on the basis of a warehouse warrant is entitled to demand the handing over of a certain thing, has the status of depositor, and at the warehouse-keeper's request he confirms, by signing the warehouse warrant, that the stored thing has been taken over by him, however this person is not obliged to pay a storage fee. If such fee has not been paid, the warehouse-keeper is not obliged to hand out the goods if he exercises his right to retain the goods deposited in his store.

(5) A warehouse warrant must contain at least the following:

(a) the warehouse-keeper's commercial name or designation and seat, if a legal entity, or the full name and

- place of business or residential address, if an individual;**
 - (b) the depositor's commercial name or designation and seat, if a legal entity, or the full name and place of business or residential address, if an individual**
 - (c) specification and quantity, weight or volume of stored goods**
 - (d) the information whether such warehouse warrant was issued to bearer or to order, stating the name or commercial name or designation of the person to whose order it was issued**
 - (e) the designation of the place where the goods are stored;**
 - (f) the period for which such goods are (to be) stored;**
 - (g) the place and day of issue of such warehouse warrant and the signature of the warehouse-keeper.**
- (6) Should a warehouse warrant not include the name of the person to whose order it was issued, it shall be regarded as issued to order of the depositor.

Section 529

Unless the contract indicates otherwise, it is terminated if the depositor does not deliver the thing for storage to the warehouse-keeper within the time-limit stipulated in the contract, or else within six months of conclusion of the contract.

Section 530

The warehouse-keeper must store the thing separately from other stored things and mark it so as to identify it as a thing belonging to the depositor. The depositor has the right to check the condition of the stored thing and to take samples from it.

Section 531

- (1) The depositor pays a storage fee in the amount and manner agreed in the contract as of the day the warehouse-keeper receives the thing for storing.
- (2) If the amount of the storage fee is not agreed in the contract, the depositor pays the fee usual at the time of conclusion of the contract, taking into account the nature of the thing and the period and manner of storage.
- (3) If the storage period lasts longer than six months, the storage fee is paid semi-annually in arrears. Storage fees for an incomplete six month period and for a shorter period of storage are paid when the stored thing is reclaimed. The warehouse-keeper is entitled to be paid for storing the thing, even after expiry of the contract, if the depositor fails to withdraw the stored thing in time.
- (4) The storage fee covers all the costs connected with storing the thing except the cost of insurance. The warehouse-keeper is entitled to recover the insurance cost only if the contract obligates him to insure the thing.

Section 532

- (1) If storage is agreed for a fixed period, the depositor may withdraw the thing prior to expiry of this period, but before he does so he must pay the storage fee due for the entire contractual period. Prior to expiry of the contractual period, the depositor may again request the warehouse-keeper to accept the thing and store it until the end of the contractual period; the depositor is bound to reimburse the warehouse-keeper for expenses incurred as a result of his request,
- (2) If the contract fails to specify the time for which it is concluded, it is presumed that it is valid for an indefinite period of time. The depositor may demand at any time the return of the stored thing and must pay a storage fee for the actual storage period when collecting the thing stored. The contract is terminated when the stored thing is withdrawn.
- (3) The warehouse-keeper may terminate the contract by giving one month's notice. The period of notice begins to run on the first day of the month following the month in which the termination notice was delivered to the depositor.

Section 533

- (1) The warehouse-keeper is liable for any damage caused to the stored thing from the time of its receipt until it is withdrawn, unless he could not have prevented the damage despite the exercise of all reasonable (due) care.
- (2) The warehouse-keeper is not liable for damage to the stored thing if such damage was caused by:
 - (a) the depositor or by the owner of the thing;
 - (b) a defect or the natural characteristics of the stored thing; or
 - (c) defective packaging which the warehouse-keeper brought to the depositor's attention when the thing was accepted for storage, and this was noted in the document confirming acceptance of the thing; if the warehouse-keeper did not inform the depositor of the defective packaging, the warehouse-keeper

is liable for the damage only if the defect was discernible.

(3) If the damage occurs in the manner specified in subsection (2), the warehouse-keeper must exercise due care in order to minimize it.

Section 534

(1) The warehouse-keeper may withdraw from the contract if:

- (a) the depositor conceals the dangerous nature of a thing and the warehouse-keeper is thereby exposed to the risk of considerable damage;
- (b) the depositor is in arrears with the payment of a storage fee for at least three months;
- (c) there is a risk of substantial damage to the stored thing which the warehouse-keeper cannot avert; or
- (d) the depositor fails to withdraw the thing after expiry of the period for which the warehouse-keeper is under the obligation to store the thing.

(2) After withdrawal from the contract, the warehouse-keeper may stipulate an appropriate time-limit for the depositor to withdraw the thing, at the same time warning the depositor that if he fails to collect the thing, he will sell it. If the depositor does not withdraw the thing within the stipulated time-limit, the warehouse-keeper may sell the stored thing in an appropriate manner at the depositor's expense. The warehouse-keeper may **deduct** the storage fee and costs related to (he sale from its proceeds, and must remit the remaining amount (the balance) to the depositor, without undue delay.

Section 535

In order to secure his claims arising from the contract of storage, the warehouse-keeper has a statutory lien on the stored things as long as they are kept by him. This statutory lien takes precedence over other liens.

Division IX

Contract for Work

Subdivision 1

Fundamental Provisions

Section 536

(1) Under a "contract for work" (in **Czech** "smlouva o dílo"), the "contractor" ("zhotovitel") undertakes to carry out specific **work** and the "employer" ("objednavatel") undertakes to pay him a price for its performance.

(2) "Work" (in **Czech** "dílo") means the creation (i.e. fabrication) of a certain thing, unless it falls within the scope of a contract of sale, the assembly of a certain thing and its maintenance, performance of an agreed repair, or modification of a certain thing, or the materially expressed result of some other activity. The creation, assembly, maintenance, repair or modification of a construction project or its part is also deemed to be work.

(3) The price must be agreed in the contract, or the contract must at least specify the method of determining the price, unless **the negotiations of the parties imply their intent (will)** to conclude the contract without such determination,

Commentary on sections 536 to 565:

The essential requisites of a contract for work are the specification of the work and the determination of the price to be paid for it by the employer to the contractor. This type of contract is as applicable to a small repair as to a turn-key project. A contractor for the latter is usually selected on the basis of a public commercial tender (sections 281 to 288). The difference between a contract for work and a contract of sale is stipulated in section 4)0(2). The contractor discharges his obligation to execute work by its due completion and by the handing over of the object of work to the employer.

Subdivision 2

Performance of Work

Section 537

(1) The contractor is bound to execute the work at his own cost and at his own risk within the agreed time limit, or else within a reasonable time, taking into account the nature of the work to be performed. Unless it follows otherwise from the contract or the nature of the work, the contractor can execute the work in advance of the

agreed time.

(2) The employer is bound to take over the executed work.

(3) In executing the work, the contractor proceeds independently and is not bound to follow the employer's instructions concerning the method of implementing the work, unless he expressly undertook to follow them.

Section 538

The contractor may entrust another person (party) with execution of the work, unless the contract or the nature of the work implies otherwise. However, if the work is executed by another person, the contractor bears the same liability (or responsibility) as if he executed the work himself.

Subdivision 3

Things Necessary for Execution of the Work

Section 539

(1) The employer must deliver the things (e.g. materials and articles), which under the contract, he is required to provide, to the contractor for execution of the work within the time limit set in the contract, or else, without undue delay, after conclusion of the contract. In case of doubt, it is presumed that the price for execution of the work is not to be reduced by the price of the things provided by the employer.

(2) If the employer fails to provide these things in time, the contractor may grant him a reasonable time-limit for doing this and, after this time-limit has expired without result, the contractor may provide such things himself at the employer's cost, after notifying the employer thereof. The employer must reimburse their cost and other purposefully incurred expenses relating thereto, without undue delay after being asked by the contractor to do so.

(3) Things which are necessary for execution of the work and which, under the contract, the employer is not bound to provide shall be provided by the contractor.

Section 540

(1) The employer bears the risk of damage to the things which he provides for execution of the work and remains their owner until, as a result of the contractor's execution of the work, they become a component of the work as a result of processing.

(2) The contractor is liable for things taken over from the employer for the purpose of subsequent processing during execution of the work, or for the purpose of repair or modification, and his liability shall be the same as that of a warehouse-keeper.

(3) After completion of the work, or termination of his obligation to execute the work, the contractor is bound, without undue delay, to return things received from the employer which were not processed during execution of the work.

Section 541

In respect of things which the contractor provided for execution of the work, he has the status of seller, unless the provisions regulating the contract for work provide otherwise; in case of doubt, it is presumed that the purchase price of such things is included in the price for execution of the work.

Subdivision 4

Ownership Title to the Thing Being Made and the Risk of Damage

Section 542

f 1) If a contractor is making a thing at the employer's premises, or on his site, or on a site provided by the employer, the employer bears the risk of damage to the thing being made and shall be its owner, unless the contract stipulates otherwise.

(2) In cases not subject to subsection (1), the contractor assumes the risk of damage to the thing being made and is considered its owner. The provisions which apply to the passing of risk from a seller to a buyer similarly apply to the passing of risk from a contractor to an employer.

(3) Neither the risk of damage nor ownership title to the thing shall pass to the contractor if the object of the performance is maintenance, repair or modification of such thing.

Section 543

(1) If the contractor has ownership title to the thing being made, and the obligation to execute the work terminates for a reason for which the employer is not responsible, the employer is entitled to demand payment of the price for the things taken over from him by the contractor which the contractor processed in executing the work, or which cannot be returned. The employer's right to damages is not thereby affected.

(2) If the obligation to execute the work terminates for a reason for which the employer bears responsibility, the employer is entitled to demand reimbursement of the amount by which the contractor enriched himself.

Section 544

(1) If the employer holds ownership title to the thing being made and, due to its nature, the thing cannot be returned or handed over to the contractor, the employer is bound to pay to the contractor the amount by which the employer enriched himself from the contractor's performance, provided that the obligation becomes extinguished for a reason for which the employer is not responsible.

(2) If an obligation to execute work terminates in the cases mentioned in subsection (1) but for reasons for which the employer is responsible, the contractor may demand payment of the price of such things which he purposefully provided and which became part of the thing being made, unless the price of such things is included in the contractor's claim under section 548(2).

Section 545

The provisions of section 544 shall similarly apply to those cases in which execution of the work involves assembly, maintenance, repair or modification of a thing.

Subdivision 5

Price of the Work

Section 546

(1) The employer is bound to pay to the contractor the price agreed in the contract, or determined in a manner specified in the contract. If the price has not been agreed or if the method of determining the price has not been specified, and the contract is nevertheless valid [section 536(3)], the employer is bound to pay the price which is usually paid for comparable work and which would have been paid for comparable work under similar commercial terms at the time of conclusion of the contract.

(2) An agreement pertaining to, and payment of, advances on the price of (he work does not have any influence on the consequences stipulated in sections 548 and 549.

Section 547

Calculated Price

(1) The amount of the price is not affected by the fact that the price was determined on the basis of a calculation which is a part of the contract, or on the basis of a calculation of which the employer was advised by the contractor prior to conclusion of the contract.

(2) If the price was determined on the basis of a calculation and the contract implies that the calculation in its entirety is not guaranteed, the contractor may demand an appropriate increase of the price if, during execution of the work, it becomes necessary to carry out activities not included in the calculation and if such activities could not be predicted at the time of conclusion of the contract.

(3) If the price was determined on the basis of a calculation which is not binding according to the contract, the contractor may demand an increase of the price in the amount by which expenses reasonably incurred by the contractor exceed the expenses included in the calculation.

(4) If the employer disagrees to the price increase, the increase shall be determined by the court acting on the contractor's motion.

(5) The employer may withdraw from the contract, without undue delay, if the contractor demands an increase of price under subsections (2) and (3) by an amount exceeding ten per cent of the calculated price. In this case, the employer is bound to pay to the contractor the part of the price which corresponds to the extent of the partial execution of the work in accordance with the calculation.

(6) The contractor's right to have a price increase determined in accordance with subsections (2) and (3) expires if the contractor fails to notify the employer of the necessity of exceeding the calculated price and of the proposed amount of the price increase, without undue delay, once it has become obvious that exceeding the calculated price is unavoidable.

Section 548

(1) The employer must pay the price to the contractor within the time limit agreed in the contract. Unless the contract or law provides otherwise, payment of the price becomes due on completion of the work.

(2) If the contractor repudiates the contract due to delay (default) by the employer, and the obstacle preventing performance of the employer's obligation does not have its origin in circumstances excluding liability (section 374), the contractor is entitled to the price stipulated in the contract. However, whatever the contractor has saved by not fully completing the contracted work must be deducted from the price.

Section 549

(1) If, following conclusion of the contract, the parties agree to reduce the scope of the work but fail to agree on the consequences of this for the price, the employer shall pay an appropriately reduced price. If, similarly, the parties agree to extend the scope of the work, the employer shall pay an appropriately increased price.

(2) If, following conclusion of the contract, the parties agree to change the work but fail to come to an agreement regarding the consequences of this change for the price, the employer shall pay a price which is increased or reduced, taking into account the difference in the scope of the necessary activities and reasonable expenses related to the changed execution of the work.

Subdivision 6

Manner of Executing Work

Section 550

The employer may inspect execution of the work. If the employer ascertains that the contractor is executing the work in a way contrary to what was agreed, the employer is entitled to demand that the contractor eliminates any defects resulting from deficient workmanship and executes the work properly. If the contractor fails to eliminate the defects within a reasonable time limit granted to him for this purpose by the employer, and the contractor's conduct would indisputably lead to a substantial breach of the contract [section 345(2)], the employer is entitled to withdraw from the contract.

Section 551

(1) The contractor must inform the employer, without undue delay, of the unsuitable nature of things supplied by the employer, or of the inappropriateness of the employer's instructions, if the contractor ascertains their unsuitability through the exercise of due diligence. If such unsuitable things or instructions obstruct proper execution of the work, the contractor must suspend execution of the work to the extent necessary until the unsuitable things are exchanged or the inappropriate instructions corrected, or until he receives written notice that the employer insists on execution of the work using the supplied things or according to the given instructions. The time-limit set for completion of the work must be extended by the time for which it was necessary to suspend execution of the work. The contractor is also entitled to reimbursement of the expenses related to such suspension of the execution of work or related to the use of unsuitable things until the time when it was possible to ascertain their unsuitability.

(2) A contractor who has fulfilled his obligation under subsection (1) is not responsible when completion of the work is impossible, or for defects in the completed work, if this results from the use of unsuitable things or inappropriate instructions, and the employer insisted on their use in execution of the work and confirmed this to the contractor in writing. If the work is not completed, the contractor is entitled to payment of the price reduced by the amount which he saved due to non-execution of the work to the full extent.

(3) A contractor who has not fulfilled his obligation under subsection (1) is liable for defects in the work caused either by the use of unsuitable things supplied by the employer or by following the employer's (inappropriate) instructions.

Section 552

(1) If, during execution of the work, the contractor ascertains hidden obstacles in a thing which is to be repaired or modified, or hidden obstacles in the place where the work is to be accomplished, and these obstacles prevent execution of the work in the agreed manner, the contractor must notify the employer, without undue delay, of such obstacles, together with his proposal for a change in the work. Until agreement is reached regarding a change in the work, the contractor may suspend execution of the work. If within a reasonable time, the parties fail to agree on amending the contract, either of the parties may cancel it.

(2) If the contractor has not breached his obligation to check whether there are any such obstacles under subsection (1) prior to starting execution of the work, neither of the parties may claim damages; the contractor is entitled to payment for that part of the executed work which was completed until the time when, exercising due diligence, he was able to detect the obstacles.

Section 553

(1) If the contract provides that (he employer may inspect the object of work at particular stages of its execution, the contractor must invite the employer in time to carry out such inspection.

(2) If the contractor fails to meet the obligation under subsection (1), he must enable the employer to conduct a subsequent inspection and bear the expenses of such inspection.

(3) If the employer fails to attend an inspection to which he has been duly invited by the contractor, or which should have been conducted in accordance with an agreed schedule, the contractor may continue with execution of the work. However, if the employer's non-attendance is caused by an obstacle which he was unable to avert, the

employer may demand, without undue delay, the conduct of a subsequent inspection. However, the employer has to reimburse the contractor for the expenses incurred by the delayed inspection.

Subdivision 7

Completion of the Work

Section 554

(1) A contractor discharges his obligation to execute work by its due completion and by handing over the object of the work to the employer at the agreed place, or else at the place as determined by this Code. If the place of delivery differs from the place specified in subsections (2) and (4), the contractor shall ask the employer to take delivery of the work.

(2) If such place has not been agreed and the contract obligates the contractor to despatch the object of the work, delivery of the object of the work is effected by handing it over to the first carrier who is responsible for forwarding it to the place of destination. The contractor must make it possible for the employer to assert the right arising to him from the contract of carriage, unless the employer already has such right on the basis of that contract.

(3) If the contract does not specify both the place of delivery and the contractor's obligation to despatch the object of the work, the handing over is accomplished at the place stipulated in the contract as the place of execution of the work; if such place is not fixed in the contract, delivery is effected at the place which the employer knew or must have known at the time of conclusion of the contract as the place where the contractor would execute his work. (4) In cases to which the provisions of subsections (1) to (3) do not apply, the handing over of the object of the work is effected at the place where the contractor has his seat, place of business or residential address, or at the location of an organizational part of his business, provided that he notifies the employer of the place in time.

(5) The employer acquires ownership title to the object made for him upon its handing over, if beforehand the contractor had ownership title to it; the risk of damage to the object of the work passes to the employer, if before its handing over it was borne by the contractor. The provisions of sections 444 to 446, 455 to 459 and section 461 shall apply *mutatis mutandis*.

(6) If either of the parties so requests, a protocol confirming the handing over of the object of the work is made and signed by both parties.

Section 555

(1) Should the contract not obligate the contractor to despatch the object of the work, the contractor fulfils his duty to perform the work if he makes it possible for the employer to dispose of the object of the work at the place specified in section 554. If the contractor's obligation also includes assembly of a thing which he manufactured, repaired or modified, this obligation is discharged upon the proper completion of such assembly.

(2) If the contract stipulates that proper completion of the work is to be demonstrated by agreed-upon tests, the work is only considered as completed upon successful completion of such tests. The contractor must invite the employer in time to attend these tests.

(3) Failure on the part of the employer to attend the tests to which he has been invited in time does not prevent performance of the tests. The provisions of section 553(3) on the repetition of tests applies *mutatis mutandis*.

(4) The results of the tests are entered in a protocol signed by both parties. If the employer is not present, a trustworthy and impartial person who attended the tests signs the protocol on the employer's behalf.

Section 556

If the work involves an activity other than creation of a thing, or assembly, maintenance, repair or modification of a thing, the contractor must proceed in such activity within the scope set by the contract, exercising due care (due diligence), so as to attain the materially expressed result of the activity specified in the contract. The contractor must hand over the materially expressed result of the work to the employer.

Section 557

The contractor is entitled to make available the result of the activity which is the object of the work under section 556 to a third party, if the contract so permits. If the contract does not prohibit such transfer of the object of the work, the contractor may provide it unless, taking into account the nature of the work, it is contrary to the interests of the employer.

Section 558

If the object of the work (under section 556) is the result of an activity **which** is protected by legislative provisions on intangible industrial or other intellectual property, the employer may use the result of such work only for the purpose specified in the contract concluded for the work. The employer may use such result for other purposes only with the contractor's consent.

Section 559

The contractor is liable for violating the rights of another person ensuing from intangible industrial or intellectual property as a result of making use of the object of the work, if such violation occurs under the Czech law or under the law of the country in which the result of the work is to be used, and the contractor was aware of this at the time of conclusion of the contract. The provisions of sections 434 and 435 apply *mutatis mutandis* to legal effects in the work.

Subdivision 8

Defects in Work

Section 560

- (1) Work is considered to have defects if its execution does not meet the requirements specified in the contract.
- (2) The contractor is liable for defects in work at the time it is being handed over (section 554); however, if the risk of damage to the manufactured thing passes to the employer later, the time of this passage to the employer is decisive. The contractor is liable for those defects in his work which are subject to a quality warranty to the extent of such warranty.
- (3) The contractor is liable for defects in work which arise after the time specified in subsection (2), if such defects are caused by a breach of his obligations.
- (4) If work involves creation of a thing, the provisions of sections 420 to 422 and section 426 shall apply *mutatis mutandis*.

Section 561

The contractor is not liable for defects if these are caused by the use of things supplied for processing by the customer, provided that the contractor, despite exercising due care (due diligence), was either unable to detect their unsuitability or informed the employer of their unsuitability but the latter insisted on their use. The contractor is similarly not liable for defects caused by observance of inappropriate instructions given to him by the employer, provided that the contractor informed the employer of their inappropriateness and the employer insisted on their observance, or if the contractor was unable to determine their inappropriateness.

Section 562

- (1) The employer must inspect the object of the work, or arrange for its inspection, as soon as possible after the work has been handed over.
- (2) A right based on defects in the work may not be granted in court, if the employer fails to notify the defects:
 - (a) without undue delay, after they have been ascertained;
 - (b) without undue delay, after he should have ascertained them when exercising due care during an inspection under subsection (1);
 - (c) without undue delay, after they could have been ascertained subsequently through the exercise of due care, but no later than within two years and, in the case of construction work, within five years of the handing over of the object of the work. As regards defects covered by a quality warranty, the period of warranty is effective instead of the aforesaid time limit.
- (3) The provisions of section 428(2) and (3) apply *mutatis mutandis* to the consequences stipulated in subsection (2).

Section 563

- (1) The period of quality warranty applying to the work begins to run as of the day when the work is handed over.
- (2) The provisions of sections 429 to 431 apply *mutatis mutandis* to a quality warranty.

Section 564

The provisions of sections 436 to 441 apply *mutatis mutandis* to defects in the work. However, the employer may not demand execution of substitute work if the object of the work, owing to its nature, cannot be returned or handed over to the contractor.

Section 565

If the employer asserts his right under section 564 to cancel a certain contract concerning an object of work which cannot be returned or handed over to the contractor, the provisions of section 441 do not apply. However,

the employer is not entitled to withdraw from the contract if he failed to notify the contractor of defects in the object of the work in time.

Division X

Mandate

Section 566

(1) A "mandate" (in Czech "mandátní smlouva") is a contract under which the "mandatary" (in Czech "mandatář") undertakes to arrange, at the mandant's expense and for a fee, a specific business matter by performing legal acts on behalf of the mandant, or by conducting other activity, and the "mandant" (or "mandator"; in Czech "mandant") undertakes to pay him a fee for his services.

(2) If the mandatary's business activities include arranging the affairs of others, it is presumed that payment for the mandatary's services has been agreed.

Commentary on sections 566 to 576:

'By a mandate one person authorizes another to arrange something for him. However, if the mandatary is required to perform an act in law in the name of the mandant, the latter needs to provide him with a written power of attorney [section 568(3)].

Arrangements of affairs by one person for another can also be subject to other contracts: a commission agent's contract, a contract on commercial representation, etc.

Section 567

(1) The mandatary must proceed with due care (due diligence) when making arrangements for others.

(2) The mandatary must perform an activity which he has undertaken to perform in accordance with the mandant's instructions and interests, and of which the mandatary is aware or ought to be aware. The mandatary is bound to inform the mandant of all the circumstances he becomes aware of while arranging a matter for the mandant and which might result in a change of the mandant's instructions.

(3) The mandatary may depart from the mandant's instructions only if it is necessary and in the interest of the mandant, and if it is impossible to receive the mandant's consent in time. However, even in such case, the mandatary may not depart from instructions, if it is prohibited by the contract or by the mandant.

Section 568

(J) The mandatary is bound to arrange a matter personally only if it is stipulated in the mandate. If the mandatary breaches this duty, he becomes liable for any damage thus caused to the mandant.

(2) The mandant is bound to hand over to the mandatary things and information necessary for the arrangement of a certain (specific) matter, unless their nature indicates that they are to be obtained by the mandatary,

(3) If the arrangement of a specific matter requires performance of acts in law (transactions) in the name of the mandant, the mandant must issue in time the necessary written power of attorney to the mandatary.

(4) If the power of attorney is not included in the contract, it cannot be replaced by the mandatary's obligation to act in the name of the mandant, not even in cases where the person with whom the mandatary is negotiating knows of this obligation.

Section 569

The mandatary must return to the mandant, without undue delay, such things which he has taken over from him when arranging a matter on his behalf.

Section 570

The mandatary is liable for any damage caused to things taken over from the mandant when arranging a matter on his behalf, and for any damage caused to things taken over from third persons on the mandator's behalf, unless he could not have averted such damage even when exercising due diligence. The mandatary must insure such things in time only if the contract so provides, or if the mandant asks him to do so; in both cases the insurance is at the mandant's expense.

Section 571

(1) If the amount of remuneration is not set in the contract, the mandant is bound to pay to the mandatary the remuneration which was customary for activity similar to that undertaken by the mandatary on the mandant's behalf at the time of conclusion of the mandate.

(2) Unless the mandate provides otherwise, the mandatary is entitled to his remuneration once he has duly performed the activity specified in the mandate, regardless of whether it has led to the expected result or not. If it may be expected that the arrangement of a matter on the mandant's behalf will cause considerable expenditure, the

mandatary may ask for an appropriate advance on conclusion of the contract.

Section 572

The mandant must reimburse the mandatary for all the expenses which the mandatary necessarily and purposefully incurred when performing his obligation, unless it ensues from the nature of such expenses that they are included in the mandatary's remuneration.

Section 573

The mandatary is not liable for a breach of obligation by another person with whom he has concluded a contract when arranging a matter for the mandant, unless in the mandate he agreed to guarantee the performance of obligations assumed by other persons in connection with the arrangement of a certain matter.

Section 574

- (1) The mandant may terminate the mandate in part, or in full, at any time.
- (2) Unless the notice of termination provides otherwise, it takes effect on the day when the mandatary learned of it, or on the day when he could have learned of it.
- (3) As from the day when the termination notice becomes effective, the mandatary must terminate performance of the activity to which the notice applies. However, the mandatary must warn the mandant of all measures which must be taken in order to prevent any immediate threat of damage ensuing from the mandatary's incomplete performance in arranging a certain matter.
- (4) The mandatary is entitled to compensation of expenses (section 572) and a proportionate part of remuneration for services duly rendered prior to the day when the termination notice comes into effect.

Section 575

- (1) The mandatary can terminate the mandate; termination takes effect at the end of the month following the month in which such termination notice is delivered to the mandant, unless the termination notice sets a later date.
- (2) The mandatary's obligation to perform activities on behalf of the mandant terminates on the day the notice becomes effective. If this termination of activities could entail damage to the mandant, the mandatary must inform the mandant of the measures to be taken to prevent such damage. If the mandant cannot take such measures, even through other persons, and he asks the mandatary to take them himself, the mandatary is bound to do so.
- (3) If the mandatary is an individual (a natural person), his obligation terminates upon his death; if the mandatary is an entity (i.e. a legal person), its obligation terminates upon its dissolution (i.e. upon the entity's deletion from the Commercial Register).
- (4) As regards activities performed between the day on which the termination notice is delivered and the day of its effectiveness, the mandatary is entitled to claim both expenses (under section 572) and partial remuneration appropriate to the results attained in arranging the matter according to the mandate.

Section 576

The provisions of sections 567 to 575 apply *mutatis mutandis* to other cases involving an obligation to arrange a certain matter at someone else's expense under other provisions of this Code, unless these provisions indicate otherwise.

Division XI

Commission Agent's Contract

Section 577

Fundamental Provisions

Under a "commission agent's contract" (in Czech "smlouva komisionářská"), the "commission agent" (in Czech "komisionář") undertakes to arrange in his own name, but at the principal's account a certain business matter for the "principal" (or "committer"; in Czech "komitent"), and the principal undertakes to pay him a commission for his services.

Commentary on sections 577 to 590:

According to a commission agent's contract (a contract with a commission agent), the agent arranges a certain commercial affair in own name, but at the principal's account for his principal (committer) and is paid a commission for his services. A forwarding contract (sections 601 to 609 of the Commercial Code) and commissioned contracts for the sale or purchase of securities (section 28 of the Securities Act) are regarded

as special types of commission agent's contract.

Section 578

- (1) When arranging matters, the commission agent must act with the due care in accordance with the principal's instructions.
- (2) He may diverge from the principal's instructions only if it is in the interest of the principal and if he cannot obtain the latter's consent in time. If the commission agent breaches this obligation, the principal need not consider negotiations as being conducted on his account (i.e. at his expense), if he rejected such negotiations without undue delay after he learned of their contents,

Section 579

- (1) The commission agent is bound to protect the principal's interests as these are known to him, and keep the latter well informed of all circumstances which may lead to a change in the principal's instructions. The commission agent is bound to arrange insurance only if it is specified in the contract, or if the principal has instructed him to; in both cases, at the principal's expense.
- (2) The commission agent is bound to provide the principal with reports on arrangement of the principal's business affairs in the manner specified in the contract, or else as requested by the principal.

Section 580

- (1) Unless the contract provides otherwise, the commission agent must use other persons to perform obligations based on his contract with (he principal, if he is unable to perform them himself.
- (2) If the commission agent uses other persons to perform in his stead, he is liable for their performance as if he were arranging the matter himself.

Section 581

No rights and duties ensue to the principal as a result of the commission agent's relationship with third parties. However, the principal may directly require a third party to hand over a thing or (o fulfil an obligation which the commission agent has transacted for him, if the commission agent cannot do so himself due to circumstances concerning his person.

Section 582

The principal may demand from the commission agent fulfilment of a third party's obligation, without such party having fulfilled its obligation to the commission agent, only if the commission agent has undertaken this obligation in writing, or if he has violated the principal's instructions regarding the party with which the respective contract was to have been concluded at the account of the principal. In such case, the provisions on suretyship apply *mutatis mutandis*.

Section 583

- (1) Ownership title to movables entrusted to the commission agent for sale is held by the principal until title to them passes to a third party. Ownership title to movables acquired for the principal by the commission agent passes to the principal at the time when such movables are handed over to the commission agent.
- (2) The commission agent is liable for damage caused to the things mentioned in subsection (1), in accordance with the provisions of a contract on storage.

Section 584

- (1) After he has arranged a determined transaction, the commission agent must submit a report on the result to the principal and draw up a final account.
- (2) In his report, the commission agent must state the name of the person with whom the contract was concluded. If he fails to do so, the principal may claim fulfilment from the commission agent of the obligations resulting from this contract.

Section 585

The commission agent must transfer to the principal, without undue delay, rights acquired as a result of arranging a certain business transaction on his behalf and turn over to him everything that he has acquired as a result of such transaction, and the principal is bound to receive it.

Section 586

If the person with whom the commission agent concluded a contract for his principal breaches his

obligations towards the principal, the commission agent is obliged, at the account of the principal, to demand fulfilment of these obligations or, if the principal agrees, to pass to the principal the claims arising from these obligations.

Section 587

(1) If the amount of the commission has not been agreed upon, the commission agent is entitled to a commission corresponding to his accomplished activities and the achieved results, taking into account the commission customary for comparable activities at the time the contract was concluded.

(2) The commission agent is entitled to payment of his commission as soon as he meets the obligations stipulated in sections 584 to 586.

Section 588

In addition to paying him a commission, the principal is bound to compensate the commission agent for all necessary and purposefully incurred expenses connected with fulfilment of his obligation on behalf of the principal. In case of doubt, it is presumed that the commission also includes compensation for such expenses.

Section 589

The provisions of sections 574 and 575 apply as appropriate to a commission agent's contract.

Section 590

If the object of a commission agent's obligation is an activity of an ongoing nature, the provisions governing contracts on commercial representation also apply, as appropriate (*mutatis mutandis*), to the relationship between the principal and the commission agent.

Division XII

Inspection Contract

Section 591

Fundamental Provisions

Under an inspection contract (in Czech "smlouva o kontrolní činnosti"), the inspector (in Czech "vykonavatel kontroly") undertakes to inspect impartially the condition of a certain thing, or to attest the results of a certain performance (or activity), and to issue a certificate of his inspection to this effect; the client requiring such inspection undertakes to pay him a fee.

Commentary on sections 591 to 600:

The mandatory provisions on inspection contracts stipulate the duties of an inspector, whose inspection of the condition of a certain thing or attestation of the results of a particular activity must be impartial. The inspector issues an inspection certificate to the customer, who pays him a fee.

Section 592

(1) The inspector is bound to conduct his inspection impartially and to describe the condition of a thing as ascertained in a certificate of inspection.

(2) Any provisions of a contract determining the duties of the inspector which could influence the impartiality of the inspection, or the correctness of the inspection certificate, are null and void.

Section 593

The inspector must conduct the inspection with due diligence, taking into account the specified method of inspection, and the place, time and scope of the inspection, as well as the condition in which the object of inspection is found at the time when the inspection is conducted.

Section 594

(1) The inspector is bound to conduct the inspection to the extent and by the method specified in the contract, or else to the extent and in the manner customary for similar inspections.

(2) Unless the contract indicates otherwise, it is assumed that the inspection will be carried out, without undue delay, at the place where the object of the inspection is located. If the contract does not specify such location, the client must advise the inspector beforehand of its place and time.

Section 595

(1) The inspector is entitled to a fee after fulfilling his obligation of conducting an inspection and after issuing a certificate.

- (2) If the amount of the fee has not been agreed, the client shall pay to the inspector the fee which was customary at the time **when** the contract was concluded, taking into account the object, scope, method, and place of the inspection.
- (3) In addition to the fee, the client must also reimburse the inspector for necessary and reasonably incurred expenses arising from conduct of the inspection, unless it ensues from their nature that they are included in the fee.

Section 596

The client must co-operate with the inspector to the extent necessary for conduct of the inspection; in particular, **the client** must provide the inspector with access to the object of the inspection.

Section 597

Execution of the inspection does not **affect** legal relationships **between** the client and other persons, particularly **those** persons to whom the object of inspection is to be provided, or those who **provide it**.

Section 598

If the inspector has not conducted the inspection properly, he is not entitled to claim a fee and expenses stipulated in section 595 and, on expiry of the period of time set **for the** inspection, the client may withdraw from the contract.

Section 599

The inspector is liable to compensate the client for damage caused by his breach of the duty to conduct the inspection properly only insofar as this damage cannot be compensated by assertion of the client's claim against the person who rendered the faulty performance which is the object of the inspection. However, the client may not demand that he be compensated for what he failed to notify or demand in time from the person liable for the faulty performance (being the object of the inspection), or for what the client may not demand due to an agreement concluded with this person, because under the agreement such claim is excluded after the inspection.

Section 600

If the inspector is bound to compensate the client for damage under section 599, upon payment of compensation for such damage the inspector assumes the client's claims against the third party liable for the defective performance which was the object of the inspection, as if these claims had been ceded to him.

Division XIII

Forwarding Contract

Section 601

Fundamental Provisions

(1) Under a "forwarding contract" (in Czech "smlouva zasilatelská"), the "forwarding agent" (in Czech "zasilatel") undertakes in his own name to arrange transportation of a thing (i.e. a consignment) for the "sender" (or "consignor"; in Czech "příkazce") at the sender's account, from one specific place (the place of despatch) to another determined place (the place of destination), and the sender undertakes to pay the forwarding agent a fee.

(2) The "forwarding agent" is entitled to demand that he be given a written forwarding order (in Czech "zasilatelský příkaz") if the contract is not in writing.

Commentary on sections 601 to 609:

A forwarding contract is a special type of commission agent's contract (sections 577 to 590). Should a forwarding contract not be concluded in writing, the forwarding agent has the right to demand a written forwarding order. The forwarding agent is paid for his services.

Section 602

(1) The forwarding agent must fulfil the instructions of the sender within the scope of the contract. The forwarding agent must advise the sender of any obvious incorrectness in the latter's instructions. If the forwarding agent does not receive the necessary instructions from the sender, he must ask the sender for them. However, if there is a danger of delay, the forwarding agent is bound to proceed even without such instructions, so as to protect to the utmost the sender's interests as known to the forwarding agent.

(2) If the contract stipulates that, prior to releasing the consignment or documents facilitating disposal of the consignment, the forwarding agent shall collect a certain amount of money from the consignee or perform some other act of collection; the provisions on documentary collection through a bank (section 697 et seq) shall apply, as appropriate.

Section 603

(1) In performing his obligation, the forwarding agent is bound to proceed with due diligence in deciding

which mode and conditions of transportation best serve the interests of the sender, as determined by the contract, and his instructions, or which are otherwise known to the forwarding agent.

(2) The forwarding agent is liable for damage caused to received consignment between its receipt and passing it to a carrier, unless he could not avert the damage despite exercising due diligence.

(3) The forwarding agent is bound to have the consignment insured only if the contract so stipulates.

Section 604

The sender must provide the forwarding agent with correct data about the contents of the consignment and its nature, as well as with other information required for conclusion of a contract of carriage; the sender is liable for any damage caused to the forwarding agent due to a breach of this duty.

Section 605

(1) Unless it is contrary to the contract or the sender prohibits it prior to the commencement of transportation, the forwarding agent may himself effect the transportation which he is to arrange.

(2) If the forwarding agent uses another forwarding agent (i.e. an intermediate forwarding agent) to arrange the transportation, he bears the same liability as if he arranged the transportation himself.

Section 606

(1) The forwarding agent must inform the sender of any damage threatening the consignment, or of any damage caused to the consignment, as soon as he learns of it, or else he is liable for any damage thus caused to the sender as a result of his failure to meet this obligation.

(2) If there is an imminent danger of substantial damage to the consignment, and if there is no time to seek the sender's instructions, or if the sender is in delay in providing such instructions, the forwarding agent may sell the consignment in an appropriate manner on the sender's account.

Section 607

(1) The forwarding agent is entitled to the agreed fee or, if such fee has not been agreed, the fee which was customary at the time of conclusion of the contract for arranging comparable transportation. In addition, the forwarding agent is entitled to reimbursement of necessary and reasonable expenses which he incurred for the purpose of fulfilling his obligation. Furthermore, the forwarding agent is entitled to reimbursement of other costs which were purposefully incurred in fulfilling his obligation.

(2) The sender must provide the forwarding agent with a reasonable advance to cover expenses relating to fulfilment of his obligation, and he must do so prior to commencement of the forwarding agent's fulfilment.

(3) The sender is bound to pay the forwarding agent his fee and the expenses he incurred, without undue delay, after the forwarding agent has taken care of transportation of the consignment by concluding the necessary contracts with carriers or intermediate forwarding agents, and has informed the sender accordingly.

Section 608

In order to secure his claims against the sender, the forwarding agent has a statutory lien on the consignment while it is held by him, or by somebody else on his behalf, or while he possesses documents which entitle him to dispose of the consignment.

Section 609

The provisions governing a contract with a commission agent apply in a subsidiary manner to the forwarding contract.

Division XIV

Contract on the Carriage of Things

Section 610

Fundamental Provisions

Under a "contract on the carriage of things" (in Czech "smlouva o přepravě věcí"), the "carrier" (in Czech "dopravce") undertakes to carry a thing or things ("a consignment", in Czech "zásilka") from a determined place ("the place of despatch"; in Czech "místo odeslání") to another determined place ("the place of destination"; in Czech "místo určení"), and the consignor (in Czech "odesílatel") undertakes to pay him a carriage charge.

Commentary on sections 610 to 629:

A contract on carriage of things applies to carriage by different modes of transport, including by pipeline. In the field of international transportation, international treaties which are binding on the Czech Republic apply.

Section 611

(1) The carrier is entitled to demand from the consignor confirmation of the transportation required in a document (a consignment note) and the consignor is entitled to demand from the carrier written confirmation of receipt of the consignment.

(2) If special documents (manifests) are required for transportation, the consignor must hand them over to the carrier no later than the time the consignment is handed over for transportation. The consignor is liable for damage caused to the carrier by a failure to hand over such documents, or by the inclusion of incorrect facts in them.

(3) Unless the contract provides otherwise, the contract is terminated if the consignor has not asked the carrier to take over the consignment

within the time-limit set in the contract, or else within six months from the day of conclusion of the contract.

Section 612

(1) Under the terms of the contract, the carrier may be bound to issue a bill of lading (in Czech "nalozny list") to the consignor on receipt of the consignment.

(2) The bill of lading is a negotiable instrument to which is attached the right to demand delivery (i.e. take-over) of the consignment in accordance with the contents of the document. The carrier is bound to pass the consignment to the person so authorized under the bill of lading, if such person presents the bill of lading and confirms in it receipt of the consignment.

Section 613

(1) A bill of lading can be made out to bearer or registered in the name of a certain person, or to order.

(2) The rights attached to a bill of lading made out to bearer are assigned on delivery of the bill of lading to the person who is to acquire such rights. The rights attached to a bill of lading registered in someone's name can be assigned to another person in accordance with the provisions governing the assignment of claims. The rights attached to a bill of lading issued to the order of an authorized person can be assigned by a special or blank endorsement. If the bill of lading does not state to whose order it was made out, it is presumed that it was issued to the order of the consignor.

Section 614

(1) The carrier is bound to state the following details in the bill of lading:

- (a) the designation of the legal entity and its seat, or the name and place of business or residential address of the individual who is the carrier;
- (b) the designation of the legal entity and its seat, or the name and place of business or the residential address of the individual who is the consignor;
- (c) the designation of the consignment;
- (d) information about whether the bill of lading was made out to bearer or the named consignee, or to his order;
- (e) the place of destination;
- (f) the place and date of issue of the bill of lading and the signature of the carrier.

(2) If the bill of lading is issued in several copies, the number of copies must be marked on each copy. After the consignment has been passed to the authorized (entitled) person against one copy of the bill of lading, the other copies become null and void.

Section 615

The carrier is bound to issue a new bill of lading as a substitute for a destroyed or lost bill of lading, stating that it is a substitute bill of lading. In the case of misuse of the original bill of lading, the consignor is bound to compensate damage caused thereby to the carrier.

Section 616

The contents of the bill of lading are decisive for claims raised by the person who is entitled under the bill of lading. The carrier may object to them, by referring to the provisions of the contract concluded with the consignor, only if such provisions are included in the bill of lading, or if they are expressly referred to therein. The carrier may raise against a person entitled under the bill of lading only objections which ensue from the contents of the bill of lading, or from the relationship between the carrier and the entitled person. The provisions of section 627 are not affected thereby.

Section 617

(1) The carrier must transport the consignment to the place of destination with due diligence within the agreed time limit, or else without undue delay. In case of doubt, the time-limit begins on the day following the day

on which the carrier takes over the consignment.

(2) If the carrier knows the consignee, he is bound to deliver the consignment to him, unless the contract provides that the consignee is to pick up the consignment at the place of destination, in which case the carrier must notify the consignee of the arrival of the consignment.

Section 618

(1) As long as the carrier has not passed over the consignment to the consignee, the consignor is entitled to require that the carriage be suspended and the consignment returned to him, or that it be disposed of in another manner; the consignor shall reimburse the carrier for all effective expenses relating thereto. However, if a bill of lading was issued, the consignor may demand this only on the basis of the bill of lading. If the bill of lading has already been handed over to the person authorized to demand delivery of the consignment, such instructions may be given only by that person. If several copies of the bill of lading have been issued, presentation of all the copies is required.

(2) If the contract of carriage stipulates that, prior to delivering the consignment, the carrier must collect a certain amount of money from the consignee, or effect another act of collection, the provisions on documentary collection through a bank apply as appropriate (section 697 et seq).

Section 619

If the consignee is specified in the contract, he acquires the rights arising from the contract when he demands delivery of the consignment after its arrival at the place of destination, or on expiry of the time by when it was supposed to arrive there. As of that moment, claims pertaining to damage to the consignment are also assigned to the consignee. However, the carrier shall not hand over the consignment to the consignee if this is contrary to the instructions given to him by the consignor under section 618. In such case the right to dispose of the consignment continues to be held by the consignor. If the consignor designates another person to the carrier as the consignee, this person assumes the same rights from the contract as the original consignee.

Section 620

(1) If a bill of lading has been issued, the handing over of the consignment may be claimed upon presentation of the bill of lading by a person entitled to do so according to the bill of lading- Such a person shall be:

- (a) under a bill of lading registered in name, the person identified therein;
- (b) under a bill of lading issued to order, the person to whose order the bill of lading has been made out, unless it has been assigned by endorsement or, if the bill of lading has been so assigned, the person last named in an uninterrupted series of endorsements, or if the last endorsement is blank, its bearer (i.e. the person who presents the bill of lading);
- (c) under a bill of lading issued to bearer, its bearer.

(2) If a bill of lading has been assigned by endorsement, the carrier shall be relieved of his obligation if he hands over the consignment in good faith to the person to whom the bill of lading has been assigned by endorsement, irrespective of whether the entitlements based on the contract of carriage have been transferred to such person. The provisions on bills of exchange shall apply as appropriate to endorsements.

Section 621

The carrier may perform the obligation by using the services of another carrier to effect the carriage; if he does so, he bears the same liability as if he effected the carriage himself.

Section 622

(1) The carrier is liable for damage caused to the consignment from the moment it is taken over by the carrier until its handing over to the consignee, unless the carrier could not avert the damage even when exercising all due diligence.

(2) However, the carrier is not liable for damage caused to the consignment if he proves that it was caused by:

- (a) the consignor, the consignee, or the owner of the consignment;
- (b) a defect in the consignment or the natural properties of the consignment, including normal loss (i.e. wastage); or
- (c) defective packing to which the carrier drew the consignor's attention when he took over the consignment for carriage and, if a freight bill or a bill of lading was issued, this defect in the packing was recorded therein; if the carrier failed to draw the consignor's attention to the defective packing, he is not liable for damage caused to the consignment due to a defect in packing only if the defect was undetectable when the consignment was received for carriage.

(3) In the case of damage caused to the consignment under subsection (2), the carrier must exercise due diligence to minimize such damage.

(4) Liability (responsibility) can be extended by contract in accordance with the preceding subsections.

Any provisions in the contract which would limit the liability of the carrier, as stipulated in subsections (1) to (3), are null and void.

Section 623

(1) The carrier must promptly notify the consignor of damage caused to the consignment prior to its delivery to the consignee. However, if the consignee has already acquired the right to delivery of the consignment, the carrier notifies the consignee. The carrier is liable for damage caused either to the consignor or to the consignee by breach of this duty.

(2) If the consignment is under imminent threat of substantial damage and there is no time to seek the consignor's instructions, or if the consignor is in delay with his instructions, the carrier may sell the consignment in an appropriate manner on the consignor's account.

Section 624

(1) If a consignment is lost or destroyed, the carrier is bound to pay the price which the consignment had at the time when it was received by the carrier,

(2) If the consignment is damaged or impaired (devalued), the carrier is bound to pay the difference between the price of the consignment when it was received by the carrier and the actual price of the damaged or impaired consignment.

Section 625

(1) The carrier is entitled to be paid an agreed charge and, if no remuneration has been agreed upon, he is entitled to be paid the charge which was customary at the time of conclusion of the contract, taking into account the contents of the carrier's obligation.

(2) The carrier is entitled to payment of a carriage charge after completing carriage of the consignment to the place of destination, unless the contract specifies a different time as decisive.

(3) If the carrier cannot fully accomplish carriage of the consignment due to circumstances for which he is not responsible, he is entitled to a proportionate part of the carriage charge, taking into account the carriage already accomplished.

Section 626

The consignor must provide the carrier with correct information about the contents and nature of the consignment, and is liable for any damage caused to the carrier by breach of this duty.

Section 627

On receipt of the consignment, the consignee assumes guarantee for payment of the carrier's claims against the consignor as these ensue from the contract of carriage concerning the consignment, provided that he knew, or ought to have known, of such claims.

Section 628

(1) In order to secure claims arising to him from the contract, the carrier has a lien on the consignment as long as he has the right to dispose of it.

(2) If the consignment is encumbered by several liens, the carrier's lien takes precedence over previous liens, and the carrier's lien takes precedence over the lien of the forwarding agent.

Section 629

Implementing regulations may govern differently carriage by rail, air, road, inland waterways and sea, with regard to the formation of the contract, transport documents, exclusion of things from transport, receipt of consignments by carriers and their delivery to the consignees, and the scope of claims against carriers and their assertion. However, the regulation of the carrier's liability for damage as stipulated in sections 622 and 624 may not be restricted with regard to damage caused to the consignment.

Division XV

Contract on Leasing a Means of Transportation

Section 630

Fundamental Provisions

(1) Under a "contract on leasing a means of transportation" (in Czech "smlouva o nájmu dopravního prostředku"), the lessor undertakes to make available a means of transportation to the lessee for purposes of

temporary use, and the lessee undertakes to pay a hire charge to the lessor.

(2) The contract must be in writing.

Commentary on sections 630 to 637:

The general regulation of a lease contract is subject to sections of the Civil Code.

The Commercial Code does not define the term "a means of transportation", so that it de facto applies to all those means of transportation regulated by the provisions of other Acts.

Section 631

(1) The lessor must provide the lessee with the means of transportation concerned, together with the necessary documents, at the time set in the contract, or else, without undue delay, following conclusion of the contract. The means of transportation must be in working order and fit for the use specified in the contract, or else for the use to which such means of transportation is normally put.

(2) The lessor is liable for any damage caused to the lessee if the leased means of transportation is not fit for the purpose defined in subsection (1). The lessor is relieved of this liability if he proves that, despite exercise of all due diligence, he was unable to detect or anticipate the unsuitability of the means of transportation prior to it being taken over by the lessee.

Section 632

(1) The lessee is entitled to use the hired means of transportation for the purposes referred to in section 631(1).

(2) Unless the contract stipulates otherwise, the lessee may not let another person use the hired means of transportation,

(3) The lessee is bound to take care that the hired means of I ran spoliation does not suffer any damage. The lessor is liable for damage, unless the damage is caused by the lessee or by persons to whom the lessee made the hired means of transportation available. The lessee must have the hired means of transportation insured only if the contract so specifies.

(4) The lessor's right to damages relating to the leased means of transportation terminates if the lessor fails to claim such damages from the lessee within six months of the day when the lessee returned the hired means of transport.

Section 633

(1) The lessee must maintain the hired means of transportation, at the expense of the lessor, in the condition in which he took it over from the lessor, allowing for normal wear and tear.

(2) The lessee must notify the lessor, without undue delay, of the need for any repairs which the lessee is obliged to carry out under subsection (1). If the lessee fails to meet this obligation, he loses the right to reimbursement of the repair expenses; however, he may claim the amount by which the lessor has become enriched as a result of such repairs.

(3) The lessee must assert his claim for reimbursement of expenses under subsection (1) with the lessor no later than three months after payment of such expenses; if the lessee fails to do so, his right may not be recognized in judicial proceedings, should the lessor rightfully object that the right was not exercised in time.

Section 634

(1) The lessee must pay the lessor the hire charge in the agreed amount, or the hire charge customary at the time of conclusion of the contract, taking into account the nature of the hired means of transportation and the determined manner of its use.

(2) Unless the contract provides otherwise, the lessee is bound to pay the hire charge at the end of the period during which he used the hired means of transportation. However, if the contract was concluded for a period of longer than three months, the hire charge is payable at the end of each calendar month in which the means of transportation is used,

Section 635

(1) The lessee is not bound to pay the hire charge for a period when he was unable to use the hired means of transportation as a result of its unsuitability or because it needed repair, unless the inability to use the means of transportation was caused by the lessee or by persons (i.e. a third party) whose access to the means of transportation was facilitated by the lessee.

(2) If the lessee fails to notify the lessor of the impossibility of using the hired means of transportation without undue delay, the lessee's obligation to pay the hire charge remains valid.

Section 636

(1) The right to use the hired means of transportation terminates on expiry of the time for which the contract was concluded, or on destruction of the hired means of transportation.

(2) A contract on the lease of a means of transportation which is concluded for an indefinite period of time may

be terminated by giving notice.

(3) The notice of termination takes effect after 30 days, unless the contract provides for a different period of notice, or the notice stipulates a later date. The contract may also specify that it can be terminated on delivery of the notice. Section 637

Upon termination of the right to use a means of transportation, the lessee must return the means of transportation to the place where he took it over, unless the contract provides otherwise.

Division XVI

Contract on Operating a Means of Transportation

Section 638

Fundamental Provisions

(1) Under a "contract on operating a means of transportation" (in Czech "smlouva o provozu dopravního prostředku"), the "operator" (in Czech "provozce") undertakes to transport cargo identified by the "charterer" ordering the operation of the means of transportation (i.e. the client; in Czech "objednatel"), so that one or more trips agreed in advance, for purposes of either transporting such cargo or effecting trips within the agreed-upon period, can be made at the discretion of the charterer, in return for which the charterer undertakes to pay a charter rate (charterage).

(2) The contract must be in writing.

Commentary on sections 638 to 641:

Under his type of contract, the operator provides means of transportation with trained crews, fuel and everything else necessary for transporting cargo on certain routes or within a particular period of time, and is paid for the service he provides. This contract differs from a contract on carriage of a thing, because the cargo need not be specified.

Section 639

(1) The operator must make sure that the means of transportation is fit for the trips which are the object of the contract, and that it can be used for the transportation specified in the contract. The operator's liability is governed, as appropriate, by the provisions of section 631.

(2) The operator must provide a trained crew, fuel and whatever else is necessary to undertake the agreed trips.

Section 640

The charterer may assign his right to demand the agreed operation of the agreed means of transportation to another person (party).

Section 641

If, under the contract, the cargo in question is accepted for carriage by the operator of a ship, the provisions on the contract of carriage apply, as appropriate, to the rights and obligations of the contracting parties, provided that the nature of the contract so permits.

Division XVII

Brokerage Contract (Contract with an Intermediary)

Section 642

Fundamental Provisions

Under a "brokerage contract" (or "contract with an intermediary"; in Czech "smlouva o zprostředkování"), the "broker" (or "the intermediary"; in Czech "zprostředkovatel") undertakes to engage in activities aimed at providing the "client" (or "the interested party"; in Czech "záměce") with the opportunity of concluding a certain contract with a third party, and the client undertakes to pay the broker a "fee" ("a commission" or "brokerage"; in Czech "provize").

Commentary on sections 642 to 651:

A brokerage contract (a contract with an intermediary) differs only slightly from a contract on commercial representation. The difference lies in the duration of the contract. A brokerage contract tends to be concluded for a single transaction or a short period, whereas a contract on commercial representation is usually concluded for a lengthy period.

Section 643

The broker (intermediary) must advise the client, without undue delay, of any circumstances which are important for the latter's decision-making on conclusion of the contract being negotiated, and the client is bound

to keep the broker advised of all facts which are of decisive importance for conclusion of the contract.

Section 644

The broker is entitled to a commission on conclusion of the contract which is the object of his negotiating (mediating) activities.

Section 645

If it follows from the contract that the broker (intermediary) is only obligated to provide an opportunity for the client to conclude a contract of a particular content with a third party, the broker is entitled to a commission brokerage on providing such opportunity for the client.

Section 646

If, under the brokerage contract, the broker (intermediary) becomes entitled to a commission only after the third party has fulfilled the obligation ensuing to it from the negotiated contract, the broker also becomes entitled to a commission when the third party's obligation to the client is terminated, or suspended, due to a reason for which the client is responsible. If the basis for determining the amount of the broker's commission is fixed according to the extent of the third party's fulfilled obligation, this basis shall also include a non-rendered performance by the third party, should its failure to perform be caused by reasons for which the client is responsible.

Section 647

- (1) The broker (intermediary) is entitled to an agreed commission, or to the commission customary for negotiating comparable contracts at the time when the brokerage contract was concluded. However, the broker is not entitled to a commission if the contract with a third party is concluded without his assistance or if, contrary to the terms of the brokerage contract, he also acted as broker for the other (third) party to the concluded contract.
- (2) In addition to his commission, the broker is entitled to reimbursement of expenses related to his negotiating (mediating) activity, provided that this is expressly agreed in the contract. In case of doubt, it is presumed that the broker is entitled to such reimbursement only when he becomes entitled to his commission.

Section 648

The broker is obliged to keep the documents which he has acquired when performing his negotiating (mediating) activity for his client for as long as such documents may be important for protection of the interests of the client.

Section 649

- (1) The broker is not liable for the performance of third persons with whom he negotiated (mediated) a contract; however, the broker may not propose to the client that he should conclude a contract with a party about which he knows, or ought to know, that there is a well-founded doubt whether such a party will duly and in time perform any obligations arising from the contract being negotiated.
- (2) If the client so requests, the broker must inform him about the credibility of the party proposed by the broker as a party with which the client should conclude the contract.

Section 650

The brokerage contract is discharged if the client's contract with a third party which is the object of the brokering activities is not concluded within the time limit specified in the brokerage contract. If no time has been specified, either party may terminate the contract by notifying the other party.

Section 651

The broker's right to a commission is not impeded by the fact that a contract with a third party (section 644), or performance of a third party's obligation (section 646), is only concluded after termination of his brokerage contract, if he negotiated a contract with a third party.

Division XVIII

Contract on Commercial Representation

Section 652

Fundamental Provisions

- (1) Under a "contract on commercial representation" (in Czech "smlouva o obchodním zastoupení")* the "commercial representative" (in Czech "obchodní zástupce") as an independent entrepreneur undertakes to engage in long-term activity on behalf of the principal aimed at the conclusion of specified contracts

(referred to as "commercial transactions"; "obchody"), or to negotiate and conclude transactions in the name of the principal and on his account.

(2) A commercial representative cannot be:

- (a) a person who as an organ may bind a legal entity;
- (b) a partner or member who under the law is authorized to bind the other partners or members; or
- (c) liquidator or bankruptcy trustee or composition trustee.

(3) The provisions on commercial representation shall not apply to:

- (a) commercial representative whose activity is not paid; or
- (b) persons operating on a stock exchange or a commodity exchange.

(4) The contract on commercial representation must be in writing.

Commentary on sections 652 to 672:

A commercial representative engages systematically in activity aimed at the conclusion of contracts by his principal and receives a commission for his services.

A contract on commercial representation is subject to the law of the country in which the principal has his seat or residential address, unless the contracting parties agree on other applicable law in their contract.

Section 653

In the specified territory, the commercial representative is obligated to pursue with due diligence the commercial activity which is the object of his obligation. If the territory is not defined in the contract, it is presumed that the commercial representative shall pursue his activity on the territory of the Czech Republic.

Section 654

(1) The object of the obligations undertaken by the commercial representative is to find parties interested in concluding such commercial transactions as are specified in the contract.

(2) If the contract provides that the commercial representative shall perform acts in law in the name of the principal, the rights and duties relating thereto shall be governed by the provisions on mandate.

(3) Without being given a power of attorney by the principal, the commercial representative may not, in the name of his principal, conclude commercial transactions, receive performance for him, or undertake other acts in law in the name of the principal.

Section 655

(1) The commercial representative shall carry out activity which he has undertaken to do fairly, exercising due diligence (specialist care), in good faith and shall heed the principal's interests, act in compliance with his authorization and the principal's reasonable instructions and advise the principal of all necessary information at his disposal.

(2) The commercial representative must keep the principal informed of trends on the market and of all circumstances which are important for the principal's interests, and in particular for the decisions he makes concerning the conclusion of commercial transactions.

(3) If the contract allows the commercial representative to conclude commercial transactions in the name of the principal, the commercial representative must conclude them only on such commercial terms as are set by the principal, unless the principal agrees to another procedure.

(4) If the commercial representative is unable to perform his activity, he must notify the principal accordingly, without undue delay.

Section 655a

(1) The principal shall act fairly and in good faith in relation to his commercial representative. He shall in particular:

- (a) provide to the commercial representative the necessary documentation relating to the object of transactions; and**
- (b) supply to the commercial representative the necessary information relating to performance of obligations under the contract on commercial representation, in particular inform the commercial representative, within a reasonable time-limit of expected substantial reduction of activity in comparison with what the commercial representative could reasonably expect.**

(2) The principal shall inform the commercial representative within a reasonable time-limit if he accepted, rejected or failed to discharge (perform, fulfil) a transaction obtained by the commercial representative.

Section 656

The commercial representative is also bound, within the scope of his obligations, to assist in implementation of the concluded commercial transactions according to the **principal's** instructions and in the principal's interests, which are, or ought to be, known to the commercial representative, particularly when resolving discrepancies arising from the concluded commercial transactions.

Section 657

In the course of his commercial activity, the commercial representative may not, without the principal's consent, disclose information acquired from the principal to other parties, or use such information for his own benefit or for the benefit of other parties, if this is contrary to the interests of the principal. This duty remains binding even after termination of the contract on commercial representation.

Section 658

(1) Unless section 642 to 672a provide otherwise, a contract on commercial representation shall be subject to a brokerage contact (a contract with an intermediary).

(2) The commercial representative is liable for the discharge of obligations by a third party with which he proposed that the principal conclude a commercial transaction, or with which he has concluded a commercial transaction in the name of the principal, **only** if he has undertaken to bear such liability in writing **and if he receives extra remuneration for assuming such liability**. In such case, his rights and duties are subject to the provisions on suretyship.

Section 659

(1) The commercial representative is entitled to an agreed commission, or else to the commission which is customarily paid for comparable commercial representation, with regard to the line (kind) of goods which the contract on commercial representation concerns. Where there is no customary practice, the commercial representative is entitled to a reasonable commission, taking into account all the circumstances of the concluded transaction. Each partial remuneration, which changes according to the number and value of individual transactions, shall be considered to be part of the commission.

(2) In addition to his commission, the commercial representative is entitled to reimbursement of expenses related to his activity, but only if such reimbursement was agreed on and, unless the contract implies otherwise, only when he is entitled to the commission from the commercial transaction to which such expenses are related.

(3) The commercial representative may not claim a commission or reimbursement of expenses if he acted as commercial representative or broker for the party with which the principal concluded the commercial transaction.

Section 659a

(1) A commercial representative is entitled to a commission on commercial transactions during the duration of his contractual obligation:

(a) if the commercial transaction has been concluded because of his activity, or

(b) if the transaction is concluded with a third party whom he has acquired as a customer for transactions of the specific kind prior to effectiveness of his contract on commercial representation.

(2) During the period covered by his contract on commercial representation, the commercial representative is entitled to a commission also where he has an exclusive right to a specific geographical area or groups of customers and a transaction has been concluded with a customer belonging to that area or group, unless it is a case under section 659(3).

Section 659b

A commercial representative is also entitled to a commission on a commercial transaction after his contract on commercial representative has terminated:

(a) if the transaction is mainly attributable to this commercial representative's efforts and the transaction is entered into within a reasonable period after termination of the contract on commercial representation; or

(b) if, in accordance with the conditions under section 659a, a third party's order reached the principal or the commercial representative before termination of the contract on commercial representation.

Section 659c

A commercial agent is not entitled to the commission under section 659a if the commission is payable to the previous commercial representative under section 659b, unless it is equitable because of the circumstances for the commission to be divided between these two commercial representatives.

Section 660

- (1) Unless an agreement was concluded under section 661, the entitlement to a commission arises when:
 - (a) the principal has executed the transaction (i.e. the obligation under such transaction);
 - (b) the principal should have executed the transaction according to the transaction concluded with a third party; or
 - (c) a third party has executed the transaction.
- (2) The entitlement to a commission arises at the latest when the third party has executed his part of the transaction or would have done so if the principal had executed his part of the transaction. However, if such third party is to execute his obligation only after more than six months from the day when the transaction is concluded, the commercial representative shall be entitled to a commission after conclusion of the transaction.
- (3) The commission shall become payable not later than on the last day of the month following the quarter in which the entitlement to such commission arose.
- (4) Derogations from subsections (2) and (3) may be agreed if they are in favour of the commercial representative.
- (5) If the basis for determining the commission depends on the scope of fulfilment of a third party's obligation, this basis must also include such non-rendered part of the obligation if the failure to perform was due to reasons for which the principal was responsible.

Section 661

If it ensues from the contract that the commercial representative is only obligated to provide an opportunity for his principal to conclude a commercial transaction of a certain content with a third party, the commercial representative is entitled to his commission on providing such opportunity for the principal.

Section 662

- (1) The right to a commission extinguishes if it is obvious that the transaction between the principal and a third party will not be executed and this is due to reason for which the principal is not to blame, unless the contract on commercial representation stipulates differently.
- (2) Any commission which the commercial representative has already received shall be refunded if the right (entitlement) to the commission extinguishes under the preceding subsection.
- (3) Derogations from subsection (1) may be agreed only if they are in favour of the commercial representative.

Section 663

- (1) The principal **shall** provide his commercial representative with all the documents and aids necessary for fulfilment of the representative's obligations.
- (2) The documents and aids referred to in subsection (1) remain the property of the principal, and the commercial representative must return them on termination of the contract, unless **with** regard to their nature they were used up when the representative was fulfilling his obligations.
- (3) The commercial representative is obligated to keep any documents which he acquired in connection with his activity on behalf of the principal, for as long as they may be important **for the** protection of the principal's interests.

Section 664

Non-exclusive Commercial Representation

Unless it follows from the contract otherwise, the principal may also authorize other persons to engage in the commercial representation which has been agreed with the commercial representative, and the commercial representative may engage in the kind of activity which he has undertaken for the principal also for other persons, or conclude commercial transactions which are the object of commercial representation on his own account or on another person's account.

Exclusive Commercial Representation

Section 665

If an exclusive commercial representation has been agreed, the principal is obligated not to use another representative for commercial transactions within the specified territorial area and in the specified scope

being the object of **such** representation, and the commercial representative is not authorized to take on commercial representation of another party within such scope, nor to conclude commercial transactions on his own account or on another party's (person's) account.

Section 666

The principal is entitled to conclude commercial transactions on the territory to which an exclusive commercial representation contract relates, without his exclusive representative's collaboration, but he must pay him the commission on such commercial transactions as if his exclusive commercial representative had assisted him in concluding them [section 659a(2)], unless the contract provides otherwise.

Termination of Commercial Representation

Section 667

The obligation of the commercial representative terminates with expiry of the time for which the contract was concluded. However, if the parties continue to abide by the terms of the contract, it is presumed that the validity of the contract has been extended by the period for which it was originally concluded, up to a maximum of six months. If after expiry of the additional period, the parties still continue to abide by the terms of the contract, **the contract changes to that concluded for indefinite period.**

Section 668

- (1) **A contract is concluded for an indefinite period of time, if the contract so stipulates or if it does not contain any provisions on the length of time for which it is concluded, or unless limitation of the time ensues from the purpose of the contract.**
- (2) **A contract which is concluded for an indefinite period of time may be terminated by either party giving notice.**
- (3) **The period of notice shall be one month for the first year of contract, two months for the second year, and three months for the third year and subsequent years. The parties may not agree on shorter periods of notice.**
- (4) **If the contracting parties agree on longer periods of notice than (those under subsection (3)), the period of notice to which the principal is committed may not be shorter than that which must be complied with by the commercial representative.**
- (5) **The preceding subsections shall also apply to a contract for a fixed period if it was converted to a contract for indefinite period under section 667, whereby the period of notice shall also take into account the time of the contract for a fixed period before the conversion of such contract to that for indefinite period.**

Section 669

Entitlement to Indemnity

- (1) **The commercial representative is entitled to an indemnity after termination of his contract if:**
 - (a) **the commercial representative has acquired new customers for the principal or has significantly increased the volume of business (trade) for the principal with existing customers and the principal continues to derive substantial benefits from the business (trade) with such customers; and**
 - (b) **the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial representative on business transacted with such customers; these circumstances also include the application or non-application of a restraint of trade clause in the meaning of section 672a.**
- (2) **The amount of indemnity may not exceed the representative's commission calculated from his annual average remuneration over the preceding five years and if his contract goes back less than five years the indemnity shall be calculated on the average for the period in question.**
- (3) **The grant of such an indemnity shall not prevent the commercial representative from seeking damages.**
- (4) **The right to an indemnity shall also arise if termination of the contract is caused due to the commercial representative's death.**
- (5) **The commercial representative shall lose his right (entitlement) to indemnity under subsection (1) if he fails to notify the principal of assertion of his rights within one year when the contract was terminated.**
- (6) **The parties cannot derogate by agreement from the preceding subsections to the detriment of the commercial representative when their contract is operative.**

Section 669a

- (1) **Entitlement to an indemnity under section 669 shall not arise where:**
 - (a) **the principal has terminated the contract on commercial representation because of default attributable to the commercial representative which would justify withdrawal from the contract;**

- (b) **the commercial representative has terminated the contract, unless such termination is justified by circumstances attributable to the principal or on grounds of age, infirmity (disability) or illness of the commercial representative in consequence of which he cannot reasonably be required to continue his activities; or**
 - (c) **with the agreement of the principal, the commercial representative assigns his rights and duties under the contract on commercial representation to another person.**
- (2) The parties may not by agreement derogate from the provisions of the preceding subsection to the detriment of the commercial representative before the contract on commercial representation expires.**

Section 670

If an exclusive representation was agreed upon for a fixed period, either party may terminate the contract by the procedure specified in section 668(3), provided that in the last 12 months the volume of transactions did not reach the sum set in the representation contract, or the volume proportionate to sales on that market.

Section 671

Repealed

Section 672

- (1) If the principal who concluded an exclusive commercial representation contract uses also the services of another commercial representative, the exclusive commercial representative is entitled to withdraw from the contract.
- (2) If the commercial representative who concluded an exclusive representation contract with the principal also performs some activity which is within the scope of his exclusive contract with the principal for other parties (persons), the principal is entitled to withdraw from the contract.

Section 672a

Restraint of Trade Clause

- (1) **The contract on commercial representation may include a written agreement that the commercial representative may not execute activity which was the object of his commercial representation within the stated geographical area either on his own account or someone else's account or some other activity which would be competitive in relation to the principal's activity.**
- (2) **A restraint by trade clause contrary to the provisions of subsection (1) shall not be valid.**
- (3) **In the case of doubt, the court may limit or nullify a restraint of trade clause which would restrict the commercial representative more than the necessary protection of the principal requires.**

Division XIX

Silent Partnership Contract

Section 673

Fundamental Provisions

- (1) **Under a "silent partnership contract" (in Czech "smlouva o tichem společenství"), the "silent partner" (in Czech "tichý společník") undertakes to make a certain investment contribution to an entrepreneur's business and thereby to participate in it, while the "entrepreneur" (in Czech "podnikatel") undertakes to pay him a part of the profits proportionate to the silent partner's share in such business (trading result) after the entrepreneur deducts the proportionate mandatory allocation of money transferred to a reserve fund if such fund must be created. The extent of the silent partner's share in a profit and loss must be equal.**
- (2) The contract must be in writing.

Commentary on sections 673 to 681:

A silent partner is also referred to as a sleeping partner or dormant partner. No new entity arises from a relationship based on a silent partnership contract, under which the silent partner provides an investment contribution to an entrepreneur's business (undertaking) and thus participates in its trading result.

Section 674

- (1) The investment contribution may be in the form of a fixed amount of money, a certain thing, a particular right or another property value which can be used in business activity.
- (2) A silent partner is obligated to pass his contribution to the entrepreneur, or make it available for use in the latter's business activity at the agreed time, or otherwise, without undue delay, after conclusion of the contract.
- (3) Unless the contract provides otherwise, the entrepreneur becomes the owner of the investment contribution received from the silent partner, with the exception of real estate. If the silent partner's investment contribution is in the form of

real estate, the entrepreneur is entitled to its use for the duration of the contract. If the silent partner's investment contribution is in the form of a right and the contract does not provide otherwise, the entrepreneur is entitled to exercise that right for the duration of the contract.

Section 675

The silent partner has the right to inspect commercial documents and books of account relating to the entrepreneur's business in which he participates. He also has the right to demand a copy of the financial statements.

Section 676

- (1) The silent partner's share in the results of the business is determined on the basis of the financial statements.
- (2) The silent partner's claim to a proportionate part of the profits arises 30 days after the financial statements are drawn up. If the entrepreneur is a legal entity, this time-limit runs from the day of approval of the financial statements in accordance with the entity's statutes or deed of association, or the law.
- (3) In the event of a subsequent loss, the silent partner does not have to refund a profit share which he received.

Section 677

- (1) A share in any loss will reduce the silent partner's investment contribution. The reduced amount of the silent partner's investment contribution will be increased from the silent partner's share in profits in subsequent years. After the original amount of his investment contribution has been restored, he again becomes entitled to payment of his profit share.
- (2) When sharing a loss made by the business, the silent partner is not obligated to supplement his investment contribution and he shares in the loss only up to the amount of his investment contribution.

Section 678

- (1) Rights and duties against third persons (parties) ensuing from the business are borne by the entrepreneur only.
- (2) However, the silent partner is liable for the entrepreneur's obligations (debts):
 - (a) if his name is included in **the commercial name** of the entrepreneur's business; or
 - (b) if he has informed the person with whom the entrepreneur is negotiating a contract that he and the entrepreneur are engaged in the business activity jointly.

Section 679

- (1) The participation of the silent partner in the business terminates:
 - (a) on expiry of the period of time for which the contract is concluded;
 - (b) by giving notice of termination, if the contract was not concluded for a specific period of time;
 - (c) if the silent partner's share in the losses of the business equals the amount of his investment contribution;
 - (d) by termination of the business activity (or undertaking) to which the contract applies;
 - (e) as a result of the declaration of a bankruptcy order on the entrepreneur's property, or as a result of the rejection of an application for such bankruptcy order due to a lack of assets on the part of the entrepreneur;
 - (f) **as a result of the declaration of a bankruptcy order on the silent partner's property; the provisions of section 148(3) shall similarly apply.**
- (2) Unless the contract provides for a different notice period, the contract may be terminated by giving notice no later than six months before the end of the calendar year.

Section 679a

Prior to expiry of the period fixed for the duration of a silent partnership, a judicial cancellation of obligations arising from the silent partnership contract can be sought due to serious reasons. This shall apply even to a contract concluded for indefinite period.

Section 680

The entrepreneur shall refund to the silent partner his investment contribution, increased or reduced by his share in business activity.

Section 681

Unless it follows otherwise from the provisions of sections 673 to 680, **the silent** partner has in respect of his investment contribution the legal status of creditor in respect of his claim, but the silent partner is not entitled to demand back his investment contribution prior to expiry of the contract.

Division XX

Letter of Credit

Section 682

Fundamental Provisions

(1) Under a "contract on the opening of a letter of credit" (in Czech "smlouva o otevření akreditivu"), the bank assumes an obligation in respect of its "committer" (in Czech "příkazce") to make a payment on demand to a certain person (the "beneficiary"; in Czech "oprávněný") from the committer's account, provided that the beneficiary meets the conditions stipulated in the letter of credit within a specified time, and the committer undertakes to pay the bank a fee for its services.

(2) The contract must be in writing.

Commentary on sections 682 to 691:

One party to a contract on the opening of a letter of credit is always a bank. Fulfilment of the bank to the beneficiary will usually consist in payment of a certain sum (from the committer's account), provided that the beneficiary meets the conditions stipulated in the letter of credit within the specified period of time. The committer pays a fee to the bank for its service.

Section 683

(1) In accordance with the contract, the bank notifies the beneficiary in writing of the issue of a letter of credit in his favour and informs him of its contents. The letter of credit must specify the bank's obligation to render performance to the beneficiary, the validity of the letter of credit, and the conditions stipulated in the letter of credit to be met by the beneficiary so that he may demand performance (fulfilment) from the bank.

(2) The bank shall notify the beneficiary, in accordance with subsection (1), without undue delay, after conclusion of the contract with the committer, unless it follows from the contract that the bank is to notify the beneficiary only when the committer instructs it to do so.

(3) The obligation of the bank towards the beneficiary arises upon the notification referred to in subsection (1).

(4) The committer's obligation towards the bank arises when the letter of credit is issued.

(5) The letter of credit may specify in particular the bank's obligation to pay a specific sum or to accept a bill of exchange.

Section 684

If no fee for opening a letter of credit was agreed, the committer is obligated to pay to the bank the fee which was customary at the time of conclusion of the contract.

The Bank's Relationship to the Beneficiary

Section 685

The bank's obligation arising from the letter of credit is not dependent on the legal relationship between the committer and the beneficiary.

Section 686

(1) If the advisory note on a letter of credit does not specify that the letter of credit is revocable, the bank can modify it or revoke it only with the consent of the beneficiary and the committer.

(2) If the advisory note on a letter of credit specifies that the letter of credit is revocable, the bank can modify it or revoke it until the beneficiary meets the conditions stipulated in the letter of credit.

(3) A letter of credit may be modified or revoked only in writing.

Section 687

(1) If an irrevocable letter of credit is confirmed (i.e. guaranteed) by another bank, on the initiative of the bank bound to render performance in respect of such irrevocable letter of credit, the beneficiary is entitled to demand performance from the other bank as soon as this bank notifies him that it has confirmed the letter of credit. The bank which asked for confirmation of the letter of credit, and the bank which confirms it, are liable to the beneficiary jointly and severally.

(2) In order to modify or revoke a letter of credit confirmed by another bank, the consent of the confirming bank is also required.

(3) If the bank which confirmed a letter of credit rendered performance to the beneficiary in accordance with the contents of the letter of credit, it shall be entitled to claim this performance from the bank which asked for confirmation of the letter of credit.

Section 688

A bank which merely advises the beneficiary that another bank has issued a letter of credit in his favour is **liable** for any damage arising from the incorrectness of such information, but it does not assume any

obligation arising from the letter of credit.

Documentary Letter of Credit

Section 689

Under a documentary letter of credit, the bank is bound to provide fulfilment (i.e. make payment) to the beneficiary, provided that the documents specified in the advisory note on the letter of credit are duly presented within the period of validity of the letter of credit.

Section 690

(1) The bank is bound to examine, with due diligence, the relevance of documents presented to it and the consistency of their contents with (he conditions specified in the advisory note on the letter of credit.

(2) The bank is liable for any damage caused to the committer due to loss, destruction or damage of documents taken over from the beneficiary, unless it was unable to avert such damage even when exercising due care.

Section 691

Other Letters of Credit

The provisions of sections 689 and 690 apply, as appropriate, to other letters of credit under which it is possible to demand fulfilment upon meeting conditions other than the presentation of documents.

Division XXI

Collection Contract

Section 692

Fundamental Provisions

Under a "collection contract" (in Czech "smlouva o inkasu"), a bank undertakes to arrange collection (i.e. acceptance) of a certain monetary payment from a certain "debtor" (in Czech "dlužník"), or to handle other acts of collection, on behalf of the "committer" (in Czech "přikazce").

Commentary on sections 692 to 699:

A collection contract is usually concluded with a bank, although collection can also be carried out by a person other than a bank if the person in question is duly authorized for collection activity (section 762).

Under a collection contract, the bank, in accordance with the committer's instructions, will ask the determined debtor to pay a certain amount of money (the debt) and will pass the collected sum to the committer. The committer will pay a fee to the bank.

Section 693

(1) The bank will demand that a debtor pays a specific sum of money (debt), or executes some other act, in accordance with the committer concluded with the customer. If the debtor refuses to pay the required sum of money or perform the required act in law, or if he fails to do so without undue delay, the bank shall immediately inform the committer accordingly.

(2) In handling collection, the bank must proceed with due diligence and according to the committer's instructions, but it is not liable if the collection fails to materialize.

Section 694

The collected sum of money or securities which were the object of the collection shall be passed by the bank to the committer, without undue delay. The bank is liable for any damage caused by loss, destruction or damage of documents received, unless it could not prevent such damage despite the exercise of due diligence.

Section 695

If, under the contract, the bank arranges for collection through another bank specified by the committer, the collection is effected through this bank at the committer's cost and risk.

Section 696

If the fee for handling the collection is not specified in (he committer, the committer is bound to pay the bank the fee which was customary at the time the contract was concluded.

Documentary Collection

Section 697

Under a "contract on documentary collection through a bank" (in Czech "bankovní dokumentární inkaso"), the

bank undertakes to deliver to a third party documents conferring the right to dispose of goods, or other documents, provided that a specified sum of money is paid upon their presentation or another act of collection is effected.

Section 698

The bank must take over the documents specified in the contract and treat them with due care.

Section 699

The rights and duties of the contracting parties are governed in a subsidiary manner by the provisions on mandate.

Division XXII

Contract on Deposit of a Thing with a Bank

Section 700

Under a “contract on deposit of a thing with a bank” (in Czech “smlouva o bankovním uložení věci”), the bank undertakes to receive certain “thing” (the object of deposit “, in Czech “předmět uložení”), except securities, in order to deposit them and manage (or administer) them, and the “depositor” (in Czech “uložitel”) undertakes to pay the bank a fee for its services.

Commentary on sections 700 to 707;

The parties to a contract on deposit of a thing with a bank are, on one hand, a bank and, on the other, an individual or a legal entity wishing to deposit a thing or things with the bank in return for which a fee is paid to the bank. It is to be noted that securities are subject to contracts regulated by the Securities Act (under the provisions of section 34 et seq).

Section 701

(1) The bank is obligated to receive (i.e. take over) the object of deposit and exercise due diligence in order to protect it from loss, destruction, impairment or devaluation.

(2) If the amount of a fee for the bank's services has not been agreed, the bank has the right to demand the fee customarily paid for such service at the time of conclusion of the contract.

Section 702

(1) Taking into consideration the nature of the object of deposit, the bank must perform, with due diligence, all acts necessary for exercising and upholding the rights ensuing to the depositor from the object of his deposit, and pass to him, without undue delay, everything it receives as a result of asserting such rights.

(2) The depositor is bound to furnish the bank with the power of attorney required for the acts in law referred to in subsection (1) and to pay the expenses incurred by the bank when performing its duties.

Section 703

The depositor may demand the return of the object deposited, or its part, at any time, and may deposit it again unless the contract terminates in the meantime. From the time the bank returns the object of deposit to the depositor until its redeposit, the bank is not bound by the provisions of sections 701 and 702.

Section 704

The bank is liable for any damage arising to the depositor due to loss, destruction, or impairment of the object of deposit, unless the bank could not avert such loss, destruction or damage even when exercising due diligence.

Section 705

Both parties may terminate the contract with immediate effect at any time. The contract also terminates if the depositor collects all the items constituting the object of deposit and does not manifest an intention to continue the contract.

Section 706

After termination of the contract, the bank returns to the depositor the object of his deposit and the depositor takes it over, without undue delay, and pays the outstanding fee to the bank for the period of deposit.

Section 707

The bank has a lien on the object of deposit in order to secure its rights arising from the contract on deposit of a thing with the bank as long as the object of deposit is in its care.

Division XXIII

Current Account Contract

Section 708

Fundamental Provisions

(1) Under a "current account contract" (in Czech "smlouva o beznem uctu") the bank undertakes to establish a current account in a specific currency as of a certain date for the owner of the account (account holder).

(2) The contract must be in writing

Commentary on sections 708 to 715:

Under a current account contract, a bank establishes a current account in a certain currency (in Czech crowns or a foreign currency) for an account holder from a certain date. The account holder may be an individual or an entity. One current account can be opened for more than one person. A current account is used both for receipt of payments from others and for effecting payments from this account.

Section 709

(1) The bank is obligated to receive (i.e. accept) on current account monetary deposits or payments, made in favour of the holder of the account, in the currency in which the account is held, to pay out a requested sum of money upon written order by the account holder, or in accordance with the conditions specified in the contract, or make payments on his behalf to persons designated by him. Unless the instruction specifies the time when such payment is to be made, the bank effects the payment on the day following the day on which the instruction is delivered to the bank.

(2) If one current account is established for several persons, each one of them has the status of account holder.

Section 710

If the contract stipulates that the bank shall honour payment instructions up to a certain amount, even if there are insufficient funds in the account, the rights and duties of the parties with regard to such payments are governed by the provisions on a credit contract (section 497 et seq.).

Section 711

(1) The bank has the right to demand reimbursement of expenses related to the making of payments on and from the holder's account, and to use the funds in the holder's account for the set-off of such expenditure.

(2) The bank shall correct any accounting errors without undue delay. The right to claim damages shall not be hereby affected.

Section 712

(1) The bank is obligated to notify the holder of the account of payments accepted and made within the time-limit stipulated in the contract, or else without undue delay.

(2) The holder of the account is entitled to demand that the bank provide evidence of the payments made.

Section 713

(1) The bank is obligated to credit the current account of the holder with funds as of the day on which the bank acquired the right to dispose of them, and from that day interest on such funds is due to the holder of the account.

(2) The funds drawn by the holder of the account, in accordance with section 709, are debited by the bank as of the day on which such funds are paid out, or as of the day on which the payments are made, and the bank does not credit interest on the drawn amount for that day.

Section 714

(1) The bank must pay interest on the balance of the account. The interest is payable at the end of each calendar quarter, unless the contract stipulates otherwise, and is credited to the current account.

(2) If the interest rate is not specified in the contract, the bank pays the interest required by law or on the basis of law, or else at the rate which is customarily paid for accounts kept under similar conditions.

Section 715

(1) The holder of the account may terminate (cancel) the contract in writing at any time with immediate effect.

(2) The bank may terminate the contract in writing, with effect from the end of the calendar month following the month in which notice was served on the holder of the account.

(3) The bank must pay the balance held on the current account to the holder of the account or, if so instructed by the holder of the account, transfer the balance to another account with the same bank or another bank, after deducting the expenses thus incurred.

(4) The bank must notify the account holder of the balance of his account at the end of each calendar year, without undue delay.

Division XXIV

Deposit Account Contract

Section 716

Fundamental Provisions

(1) Under a "deposit account contract" (in Czech "smlouva o vkladovém účtu"), the bank undertakes to establish this account for a holder in a particular currency and to pay interest on the funds deposited therein, while the account holder undertakes to deposit funds in the account and to allow the bank to make use of them (for a fixed time).

(2) If the contract does not specify the currency in which the account is to be kept, it is presumed that the account is being established in Czech currency.

(3) The contract must be in writing

Commentary on sections 716 to 719:

The difference between a current account and a deposit account applies to withdrawal of money from the accounts: an agreed sum of money should be kept in a deposit account for an agreed period of time without being withdrawn, whereas money from current account can be withdrawn at any time. The bank pays higher interest rates on amounts kept on deposit account.

Section 717

(1) If the holder of the account disposes of the deposited funds prior to the time stipulated in the contract, or if (his time is not stipulated prior to expiry of the termination notice period, the right to interest expires or is reduced in the manner specified in the contract. If the contract does not stipulate a different effective date for a notice of termination, it takes effect three months from the day when the account holder delivered a written notice of termination to the bank. A notice of termination may also be given in respect of only a part of the deposited funds. The right to interest is extinguished or curtailed only with regard to interest on such part of the funds for which the termination period was not observed.

(2) If the contract so provides, the account holder is not entitled to dispose of the funds deposited in the account prior to expiry of the period stipulated in subsection (1).

Section 718

(1) The bank is obligated to pay interest at the rate set in the contract or, if the rate is not specified, at the rate which is set by law or on the basis of law, or else at the customary interest rate, taking into account the length of time for which the funds were deposited in the account.

(2) Interest is payable after expiry of the time for which the funds are deposited in the account, or after the effective day of the notice of termination, given under section 717(1). If the deposit account was not established for a definite period, or if it was established for a period of longer than one year, interest is due no later than at the end of each calendar year.

(3) If the funds were deposited in the account for a period of longer than one year, the bank shall pay interest after expiry of each calendar year, if so requested by the account holder.

(4) Interest is computed as of the day on which the bank acquired the right to dispose of the funds. The account holder is not entitled to be paid interest for the day on which he withdraws the funds.

Section 719

(1) After expiry of the stipulated period, or after the effective day of termination notice under section 717(1), the bank is obligated to pay the account holder the released funds, or transfer them to his account with another bank.

(2) If notice of termination given under section 717(1) applies to only a part of the funds held in the account, the consequences stipulated in subsection (1) apply to that part.

Division XXV

Traveller's Cheques

Section 720

Fundamental Provisions

A "traveller's cheque" (in Czech "cestovní sek") is a security which entitles the person named in it to receive payment (i.e. cash) in the sum indicated therein upon presentation for payment, in accordance with the terms set by the issuer of the cheque.

Commentary on sections 720 to 724:

A traveller's cheque is a security, but it is not subject to the provisions of the Bills of Exchange and Cheques Act. Regulation of traveller's cheques is contained in the Commercial Code. Traveller's cheques are usually issued by banks but can also be issued by some other entities. The person named in the traveller's cheque receives cash on presentation of such cheque, provided that the terms stipulated by the issuer are met.

Section 721

The issuer of a traveller's cheque must honour it (i.e. pay cash) or arrange for it to be honoured.

Section 722

- (1) A traveller's cheque must:
- (a) indicate that it is a traveller's cheque;
 - (b) contain an instruction or promise to pay a specific sum of money to the entitled person (payee);
 - (c) state **the commercial name, designation or name** of the issuer and include his signature or a satisfactory substitute for his signature.
- (2) If a traveller's cheque includes an instruction (or order) to pay, it must also contain the designation of the person to whom the instruction is addressed.
- (3) If the traveller's cheque does not indicate who is the entitled person (payee), any person who presents the cheque may demand that it be honoured.
- (4) A traveller's cheque may be issued in **other** than Czech currency.

Section 723

- (1) **When a traveller's** cheque is presented for payment, the payer (or payer) has the right to demand proof of identity of the payee (i.e. the holder of the cheque) and his verifying signature on the traveller's cheque.
- (2) Encashment of the traveller's cheque must be confirmed on the cheque by the signature of the holder (payee).

Section 724

Traveller's cheques are not subject to the legislative provisions on bills of exchange and cheques.

Division XXVI

Promise of Indemnity

Section 725

Fundamental Provisions

- (1) Under a "promise of indemnity" (**in Czech** "slib odškodnění"), (he "promisor" (in Czech "slibující") undertakes to pay indemnity to the "promisee" (in Czech "příjemce slibu") for damage arising from a certain act or activity requested of him by the promisor, but which the promisee is not obligated to do.
- (2) A promise of indemnity must be in writing (in the form of a letter of indemnity).

Commentary on sections 725 to 728:

A promise of indemnity is an undertaking whereby the promisor agrees to indemnify the promisee (whom he requests to perform a certain activity) upon the occurrence of an anticipated loss (damage). The provisions of section 725 are mandatory.

Section 726

- (1) The promisor's obligation is established on delivery of (he promisor's letter of indemnity to the promisee.
- (2) The promisee is obligated to perform an act or activity at the request of the promisor only if the promisee undertakes to do so.

Section 727

The promisor is bound to reimburse all expenses incurred by the promisee and indemnify him for any damage which he suffered in respect of the act requested of him by the promisor.

Section 728

The promisee must take timely measures, at the promisor's expense and in the necessary extent, to prevent or minimize damage.

CHAPTER III

SPECIAL PROVISIONS ON CONTRACTUAL RELATIONS IN INTERNATIONAL TRADE

Division I

Scope of Regulation

Section 729

The provisions of this Chapter apply, in addition to the other provisions of this Code, to obligations stipulated in sections 261 and 262, if at least one participant (i.e. person) has his seat, place of business, or residential address on the territory of a country different from that of the other participants, provided that their relationships are governed by Czech law.

Commentary on sections 729 to 755:

Commercial contracts in which one contracting party is a foreign person may be regulated by the Czech Commercial Code if the contracting parties agree to this, or if the Czech Commercial Code is applicable according to the Act on Private International Law (No. 97/1963 Coll., as subsequently amended). Commercial practice (trade usage) observed in international trade is also taken into account when considering obligations arising from contracts. The Commercial Code also includes provisions on special clauses, such as the prohibition of re-exports (sections 739 to 741, sales restrictions (sections 742 and 743), currency (section 744), exclusive sales contracts (sections 745 to 749) and linked transactions (sections 750 to 755).

Division II

General Provisions

Section 730

Commercial Practice (Trade Usage)

Under the provisions of section 264, customary commercial practice (trade usage) which is generally observed in international trade in a particular field of business (trade) must be taken into consideration.

Section 731

Official Licences

- (1) The debtor must duly apply for an export licence, a transit licence or any other official licence which is required for fulfilment of his obligation at the place of performance.
- (2) The creditor must duly apply for an import licence or any other official licence which is required for receipt of fulfilment at the specified place of performance.
- (3) The duty under subsection (1) arises if such licences are required at the time of performance, irrespective of whether they were already required at the time of conclusion of the contract.
- (4) If an application for a licence, submitted by the applicant, is rejected and this decision is final, the consequences of the impossibility of performance take effect. The party which unsuccessfully applied for a licence must indemnify the other party for any loss caused by termination of the obligation, unless the contract in question was concluded with a suspensive condition, according to which validity of the contract was made dependent on the granting of such licence.
- (5) The relationships of obligation governed by the provisions of sections 730 to 738 of this Code are not subject to the provisions of section 47 of the Civil Code.

Section 732

Currency of a Monetary Obligation

- (1) The debtor must fulfil his monetary obligation in the currency which was agreed on. In case of doubt, he must pay for damages in the same currency in which he is obligated to provide compensation if he violates the contract or terminates his obligation.
- (2) If the statutory provisions of the country where the debtor has his seat, place of business or residential address, or other relevant legislative provisions, prevent payment in the currency specified in subsection (1), the debtor is bound to compensate the creditor for any loss caused to the latter by payment in a different currency.

Section 733

Currency Conversion

If a monetary fulfilment is agreed on by the parties in a particular currency, and the debtor, under the contract concluded with the creditor or under an international treaty or other legal regulation, is to make payment in respect of his obligation in a different currency, conversion of the currencies shall be effected according to the median exchange rate effective at the time when the monetary (pecuniary) fulfilment is rendered at the place specified in the contract, or else at the place where the creditor has his seat, place of business or residential address.

Section 734

Customary Price or Fee

If this Code stipulates that the customary price or fee is decisive in determining the amount of a monetary obligation, the prices and fees which are customary on the international market are taken into consideration.

Section 735

Defaulting on Fulfilment of a Monetary Obligation

In the case of a default on the fulfilment of a monetary obligation, interest on the amount in arrears is payable in the same currency as the monetary obligation. The debtor is obligated to pay interest on the sum in arrears at a rate one per cent higher than the interest set under section 502, with the decisive rate of interest being the rate fixed or offered by banks on credits granted for a period corresponding to the debtor's default in the country where the debtor has his seat, place of business or residential address.

Section 736

Circumstances Excluding Liability

Circumstances excluding liability (or responsibility) do not include the non-granting of an official licence, which is to be applied for under section 731.

Section 737

(1) In applying the provisions of section 381, account is taken of the rate of profit usually attained in the country where the entitled (authorized) person has his seat, place of business or residential address.

(2) In applying the provisions of section 470, the decisive price is the customary price which is usually agreed at the place where the goods are to be delivered, or if there is no such price at that place, the customary price at **another** comparable place, bearing in mind the differences in transportation costs.

Section 738

If a commercial representative has his registered office, place of business or residential address outside the territory of the Czech Republic, the decisive factor in applying the provisions of section 653 is the country in which the commercial representative has his seat, place of business, or residential address at the time the commercial representation contract is concluded.

Division III

Special Clauses

Subdivision 1

Prohibition of Re-export

Section 739

If a contract of sale states in writing that the buyer is prohibited from re-exporting goods which he bought, the buyer is liable to the seller if such goods are exported by any party from the specified area. The buyer is obligated to compensate the seller for any damage which he suffered by a breach of this obligation, irrespective of whether the goods were exported by the buyer himself or by another party, and whether the buyer bound the other parties having acquired the goods in an appropriate manner not to export them.

Section 740

A buyer who has assumed the duty not to export the goods is obligated to prove, at the seller's request, where the goods are located, or that they have been consumed without having been exported.

Section 741

If there is doubt about the territory from which re-export is prohibited, it is presumed that it is the territory of the country where the goods were to be despatched by the seller in accordance with the contract of sale, or else the country where the buyer has his seat, place of business or residential address at the time the goods were delivered.

Subdivision 2

Clauses on Sales Restrictions

Section 742

(1) Under a "clause on sales restrictions" (in Czech "ujednani o omezenf prodeje"), the seller undertakes not to sell specified goods to a certain category of customers or to a certain country, or to **sell** such goods only on a limited scale or under the terms specified in the agreement.

(2) This clause (agreement) must be in writing and its validity depends on the validity of the contract of sale in which it is included or to which it is related.

Section 743

Unless the purpose of a clause (an agreement) concluded under section 742 is fulfilment of an obligation set by an international treaty, or prevention of a violation of rights ensuing from intangible industrial or other intellectual property, the obligation to observe this clause shall be discharged if it is breached by the buyer, or no later than after the lapse of two years from delivery of the goods.

Subdivision 3

Currency Clause

Section 744

(1) If a contract stipulates that the price or another monetary obligation is understood to be at a particular rate of exchange for the currency in which the obligation is to be fulfilled (i.e. the secured currency), in relation to a certain other currency (i.e. the reinsuring currency), and if after conclusion of the contract the rates of exchange of both currencies alter, the debtor is bound to pay the amount either reduced or increased proportionately, so that the amount of the reinsuring (or securing) currency remains unchanged.

(2) If the contract does not specify which exchange rates are to be taken into account, it is presumed that these will be the median exchange rates effective in the country where the debtor has his registered office, place of business or residential address at the time the contract was concluded and at the time when the monetary obligation is fulfilled.

(3) If the clause uses several currencies as reinsuring (or securing) currencies, the average of the exchange rates between the secured and the reinsuring currencies shall apply, unless the clause provides otherwise.

Subdivision 4

Exclusive Sales Contract

Section 745

Fundamental Provisions

(1) Under an "exclusive sales contract" (in Czech "smlouva o vyhradnim prodeji"), the supplier undertakes not to deliver the goods specified in the contract to a person in a particular area other than the customer.

(2) The contract is not valid if it is not in writing, or if it fails to specify the area or the types of goods to which it applies.

Section 746

During the contract's validity the supplier may not supply the specified goods either directly or indirectly to persons in the agreed area, with the exception of the exclusive customer designated in the exclusive sales contract, and, if applicable, to other persons designated therein. The exclusive sales contract does not deprive the supplier of the right to publicize his products and engage in market research in the agreed area.

Section 747

Individual sales within the framework of an exclusive sales contract are effected on the basis of separate sales contracts. Part of the contents of these contracts may be agreed when the relevant exclusive sales contract is concluded.

Section. 748

If a contract does not specify the period of time for which it is concluded, the contract shall expire one year after the date of its conclusion. If it follows from the contract that the contracting parties intended to

conclude the contract for an indefinite period of time and failed to agree on notice of termination, either party may give notice, which will take effect at the end of the calendar month following the month in which the notice of termination was delivered to the other party.

Section 749

(1) If a customer fails to adhere to the schedule of deliveries of goods envisaged in the contract, or if he buys goods that are the object of an exclusive sales contract from another supplier, although such right does not apply to him under the contract, the supplier may withdraw from the contract, but he is not entitled to damages.

(2) If the supplier, contrary to the terms of the contract, supplies other customers, the exclusive customer may withdraw from the contract.

Subdivision 5

Contracts on Linked Transactions

Section 750

Interdependent Contracts

If the contract, or the circumstances under which the contract was concluded and which were known to both parties at its conclusion, indicate that performance of this contract (i.e. the principal contract) is dependent on performance of another contract (i.e. the subsidiary or accessory contract), performance of the subsidiary contract is considered as a suspensory condition for the effectiveness of the principal contract. If part performance under the principal contract is to be rendered, or is rendered in advance, non-performance (non-fulfilment) of the subsidiary contract is considered as a resolutive (dissolving) condition.

Multilateral Barter Transactions

Section 751

For the purposes of this Code, multilateral barter transactions are commercial transactions in which several parties conclude one or several interdependent contracts, under which reciprocal deliveries of goods between parties having their seat, place of business or residential address on the territory of different countries are to be effected, but the purchase price is settled only among those parties having their seat, place of business or residential address on the territory of the same country.

Section 752

Relationships arising from multilateral barter transactions are subject to the provisions regulating contracts of sale. Each party is entitled to the performance specified in the contract, in accordance with the provisions governing contracts for the benefit of a third party. However, the parties to the said transactions may not cancel or change the contract without the consent of the party for whom the performance is determined.

Section 753

None of the parties to a multilateral barter transaction may postpone delivery of goods to a party which has its seat, place of business or residential address on the territory of another country simply because another party having its seat, place of business or residential address on the territory of the same country failed to perform its obligations towards this party.

Section 754

Parties to a multilateral barter transaction which have their seat, place of business or residential address on the territory of the same country are jointly and severally liable for performance of the obligation of each one of them to the parties which have their seat, place of business or residential address on the territory of another country.

Section 755

A party to a multilateral barter transaction does not have the right to repudiate the contract when one of the other parties is in default with its performance, while another party has already fulfilled its obligation, unless the party withdrawing from the contract compensates the damage caused to the party which has already performed its obligation.

PART FOUR COMMON, TRANSITORY AND CONCLUDING PROVISIONS

Section 756

The provisions of this Code apply only if an international treaty binding on the Czech Republic and

published in the Collection of Laws does not provide otherwise.

Commentary on sections 756 to 775 and Transitory Provisions:

When the Czech Republic is bound by an international treaty (convention, agreement) which has been published in the (Czech) Collection of Laws, the provisions of the treaty take precedence over the regulation in the Commercial Code (e.g. the U.N. Convention on Contracts for International Sale of Goods).

The Transitory Provisions of Act No. 370/2000 Coll. stipulate time-limits for compliance with the amendments introduced by the said Act.

Section 757

The provisions of section 373 et seq apply, as appropriate, to liability for damage caused by a breach of the obligations stipulated by this Code.

Section 758

(1) When contracts are concluded by parties which are persons having their registered office, place of business or residential address solely on the territory of the Czech Republic, the provisions of this Code apply to the setting of the price or fee to be paid for the rendered performance only when such setting of the price or fee is not contrary to generally binding statutory provisions on prices. In other cases, the price or fee may not exceed the maximum permissible level under these provisions.

(2) Prices, fees and other monetary (pecuniary) fulfilments which are the object of obligations arising from contracts governed by this Code, and which are also subject to the statutory provisions referred to in subsection (1), are considered to be the prices under the said provisions.

Section 759

If a contract, the parties to which are persons who have their seat, place of business or residential address on the territory of the Czech Republic, or who have an enterprise or an operational component of such enterprise there, specifies the quality of a thing contrary to statutory provisions, the quality shall be determined according to those statutory provisions regulating the quality of things permissible for use; this does not apply if it is implied by the contract or a declaration by the party which is to acquire the thing, or by that party's business activity, that the thing will be exported.

Section 760

The provisions of this Code on relationships of obligation, which apply to the assertion of a right in court, judicial proceedings or court orders, also apply mutatis mutandis to the assertion of a right before an arbitrator, arbitration proceedings or arbitration awards, provided that they are based on an effective arbitration agreement.

Section 761

(1) The right of state-owned organizations to manage state-owned property is governed by the existing statutory provisions, including the provisions of sections 64, 65 and 72 to 74b of the Economic Code, until new legislation is enacted by the Federal Assembly and the National Councils.

(2) The provisions of sections 70 to 75 similarly apply to the liquidation of legal entities other than business companies, provided that such legal entities have no legal successors and the legislative provisions governing them do not provide otherwise.

Section 762

(1) The provisions governing bank guarantees, letters of credit, contracts on collection through banks, contracts on deposit of a thing at a bank, contracts on current accounts, and contracts on deposit accounts also apply when, instead of a bank, another party (i.e. person) so authorized (or licensed) provides a bank guarantee and concludes any of the aforesaid contracts.

(2) The provisions of sections 187(1)(c), 191, 211(1) and (3), 215 and 216(1) of this Code shall not apply if the Czech National Bank decides on the reduction of the registered capital under other statutory provisions.

Section 763

(1) This Code regulates legal relationships which arose after the date when this Code became effective. Legal relationships which arose before the effective date of this Code, and the rights which ensued from such legal relationships, as well as the rights which ensued from liability for breaching obligations related to economic and other contracts concluded prior to the effective date of this Code, are governed by the legislative provisions and regulations which applied to them prior to the effective date of this Code. However, contracts on current accounts, contracts on deposit accounts and contracts on deposit of a thing at a bank are governed by this Code from the date it becomes effective, even if such contracts were concluded prior to that date.

(2) The hitherto effective statutory provisions apply to all time limits which began to run prior to the effective day of this Code, and also to time-limits for asserting rights which are governed, under the provisions of the preceding subsection, by the hitherto effective statutory provisions and regulations, even when such time-limits begin to run after the effective day of this Code.

Section 764

(1) The legal aspects of general commercial partnerships, limited partnerships, limited liability companies and joint stock companies, which were formed under the statutory provisions in effect prior to the effective date of this Code, are governed by the provisions of this Code as of its effective date.

(2) The provisions of a partnership contract, deed of association or statutes of the partnerships and companies mentioned in subsection (1) which do not conform to the mandatory provisions of this Code become null and void as of the effective date of this Code. Partners or company organs shall amend their partnership contracts, deeds of association (formation) or statutes within one year from the effective date of this Code and send the amended documents to their registration court. If they fail to do so, the registration court shall notify them and provide them with a reasonable additional time-limit in which to do so. If they fail to act within such an extended period, the court shall terminate the operations of such a company (or partnership) and order its liquidation.

(3) Shares issued prior to the effective date of this Code, and to which certain advantages are attached which are not permissible under this Code, lose such advantages on the effective date of this Code.

Section 765

(1) Co-operatives established prior to the effective date of this Code are transformed either into companies or co-operatives under this Code, in a manner to be determined by a particular Act.

(2) Co-operatives transformed under subsection (1) must amend their articles of association within a time limit set by the particular Act referred to in subsection (1). Within this time-limit the transformed co-operatives must submit their statutes, amended under this Code, to the registration court, so that the necessary amendments can be entered in the Commercial Register. Co-operatives must also submit a copy of the minutes of the members' meeting which approved the amended statutes. The entry in the Commercial Register is also to include the amount of their recorded registered capital and individual members' contributions to it. Upon entry of such amendments in the Commercial Register, such a co-operative shall be considered as a co-operative incorporated under this Code.

(3) The legal nature of the co-operatives referred to in subsection (1) is governed by the legislation which was in force prior to the effective date of this Code, until entry of the amendments [under subsection (2)] into the Commercial Register.

(4) If the co-operatives referred to in subsection (1) do not apply for amendment of entries in the Commercial Register under subsection (2) within the set time-limit, even after notification by the registration court, the registration court shall order their liquidation.

(5) The provisions of the particular Act referred to in subsection (1), which regulate business shares in the net worth of the co-operative, also apply to determination of the liquidation share. If such distribution is not approved by the member's meeting, the decision in this matter shall be taken by a court.

Section 766

(1) The founders of co-operative enterprises (under Act No. 162/1990 Coll., on Agricultural Co-operatives, Act No. 176/1990 Coll., on Housing, Consumer, Producer and Other Co-operatives) and of enterprises attached to citizens' associations and participants in joint enterprises (under the Economic Code) must convert such enterprises into business companies, or partnerships, or co-operatives under this Code, within one year at the latest from the date of effectiveness of this Code, or terminate them within the same period. If they fail to do so, their liquidation shall be ordered by the court without even an application. The same also applies to partnerships limited by shares. The provisions of section 69 apply *mutatis mutandis*.

(2) The legal nature and internal relations of the legal entities referred to in subsection (1) above are governed by the statutory provisions effective prior to this Code coming into effect until their conversion into business companies, partnerships or co-operatives, or until their liquidation.

(3) If the founder of the legal entities referred to in subsection (1) above is a co-operative, the time-limit stipulated in subsection (1) begins to run as of the date of effectiveness of the particular Act.

Section 767

(1) Liquidation of legal entities under sections 764 and 766 is effected under the provisions of this Code. However, the liquidation balance shall be distributed in accordance with previous legislation, statutes, founding deed, deed of association or partnership contract (agreement) and other documents; if distribution is not so regulated, the

appropriate provisions of this Code shall apply, i.e. those whose contents most resemble the liquidated entity.

(2) The existence of legal entities which conduct business activities but are not specified in sections 764 to 766, and which were established under previous legislation prior to the date of effectiveness of this Code, will remain unaffected by this Code. Their legal nature and internal legal relations are subject to the legislation under which they were established,

Section 768

(1) Entries made in the "Enterprise Register" (in Czech "podnikový rejstřík"), under the legislative provisions which applied prior to the effective date of this Code, are considered as entries made in the "Commercial Register" (in Czech "obchodní rejstřík") under this Code.

(2) Legal entities which, under the legislative provisions effective prior to the effective date of this Code, were entered (i.e. incorporated) into the Enterprise Register (podnikový rejstřík) shall be incorporated into the Commercial Register (obchodní rejstřík) on the effective date of this Code.

(3) Entries in the Enterprise Register which are contrary to the provisions of this Code must be amended in accordance with this Code within one year of its effective date. If an incorporated entity fails to do so, the court will invite such an entity to amend its entry and provide an appropriate time-limit for such an amendment. This shall not apply to the legal entities referred to in section 766.

(4) Legal entities or their organizational parts which are to be entered into the Commercial Register under this Code, and which are not entered there on the day this Code comes into effect, must submit an application for entry within six months from the effective date of this Code.

Section 769

The duty to publish information which is stipulated by this Code shall be met by its publication in the "Commercial Bulletin" (in Czech "Obchodní věstník").

Section 770

The Government of the Czech Republic shall issue a regulation (or order) concerning the method and conditions for publishing information (data) required by this Code and the requirements for proving facts to be entered in the Commercial Register,

Section 771

The Government of the Czech Republic shall issue the implementing regulations under section 629.

Section 772

The following are hereby repealed:

1. section 352 of the Civil Code No. 141/1950 Coll.;
2. International Trade Code No. 101/1963 Coll.;
3. Economic Code No. 109/1964 Coll. in the wording of Act No. 82/1966 Coll., Decree No. 13/1967 Coll., Act No. 69/1967 Coll., Act No. 72/1970 Coll., Act No. 138/1970 Coll., Act No. 144/1975 Coll., Act No. 165/1982 Coll., Act No. 98/1988 Coll., and Act No. 103/1990 Coll.;
4. Enterprise with Foreign Capital Participation Act No. 173/1988 Coll., as amended by Act No. 112/1990 Coll.;
5. Act on National Economic Planning No. 67/1989 Coll.;
6. Joint Stock Companies Act No. 104/1990 Coll.;
7. Act on Agricultural Co-operatives No. 162/1990 Coll.;
8. Act on Housing, Consumer, Producer and Other Co-operatives No. 176/1990 Coll.;
9. section 1(2), section 3(2) and section 4 of the Act on Auctions other than in Cases of Distraint No. 174/1950 Coll.;
10. Act on Economic Relations with Foreign Countries No. 42/1980 Coll. as amended by Act No. 102/1988 Coll., and Act No. 113/1990 Coll., except for the provisions of sections 2, 3, 13 to 16, 17(2)(c), 18(1), 19(10), 22(j), 43 to 56, 58 and 64;
11. section 13(1) and 16(3) of the Act on Associations of Citizens No. 83/1990 Coll.;
12. Federal Government Order on Obligatory Negotiations of Supplier-Consumer Relations and the Binding Effects of the State Plan concerning certain Supplies No. 81/1989 Coll.;
13. Federal Government Order No. 256/1990 Coll., listing certain items and activities whose import and export requires a foreign trade licence;
14. Federal Government Order No. 132/1991 Coll., stipulating when a joint venture entity may be established without a licence;
15. Decree of the Ministry of National Defence No. 118/1964 Coll., stipulating fundamental conditions for the supply of products and the provision of the results of research for the defence of the state, as amended by Decree No. 144/1989 Coll.;

16. Decree of the Ministries of General Engineering and Heavy Engineering No. 135/1964 Coll., stipulating fundamental conditions for the supply of engineering products, as amended by Decree No. 57/1972 Coll., No. 107/1981 Coll., and No. 28/1990 Coll.;
17. Decree of the Ministry of General Engineering No. 136/1964 Coll., stipulating fundamental conditions for the provision of supplies for repairs of general engineering products, as amended by Decree No. 27/1990 Coll.;
18. Decree of the Ministry of General Engineering No. 137/1964 Coll., stipulating fundamental conditions for the provision of supplies for repair of road transport vehicles, as amended by Federal Government Order No. 38/1966 Coll., and Decree No. 26/1990 Coll.;
19. Decree of the State Material Reserves Administration No. 174/1964 Coll., stipulating fundamental conditions for the supply of state reserves, as amended by Decree No. 181/1989 Coll.
20. Decree of the State Commission for Technology, and of the Ministry of Finance and Chier Arbitrator No. 87/1966 Coll., on certain economic measures for capital projects, as amended by Government Order No. 136/1973 Coll.;
21. Decree of the Ministry of Agriculture and Food and the Ministry of Forestry and Water Management No. 73/1967 Coll., stipulating fundamental conditions applying to supplies for the repair of machinery used in agriculture and forestry, field and earth-moving work, chemical and other agricultural work, as amended by Decree No. 147/1989 Coll.;
22. Decree of the Ministries of Chemical Industry, Construction, Consumer Industry, Heavy Industry, and Foreign Trade No. 187/1968 Coll., stipulating the period of guarantee for supplies used in the construction of residential housing;
23. Decree of the Federal Ministry of Transport No. 152/1971 Coll., on economic obligations in road freight transportation;
24. Decree of the Federal Ministry of Transport No. 156/1971 Coll., on economic obligations in inland water freight transportation;
25. Decree of the Czechoslovak State Bank's Chairman and the Federal Ministry of Finance No. 118/1972 Coll., on deposit procedures in socialist organizations;
26. Decree of the Federal Ministry of Technical and Investment Development No. 101/1973 Coll., on project competition, as amended by Decree.No. 124/1991 Coll.;
27. State Arbitration Decree No. 104/1973 Coll., stipulating fundamental conditions for the supply of construction work;
28. Decree of the Federal Ministry of Technical and Investment Development and State Arbitration No. 77/1977 Coll. on the centralized regulation of products and materials in construction;
29. Decree of the Federal Ministry of Metallurgy and Heavy Engineering No. 82/1977 Coll., stipulating fundamental conditions for the supply of metallurgical products, ores, magnesium products and metal waste, as amended by Decree No. 30/1990 Coll.;
30. Decree of the Federal Ministry of Fuel and Energy No. 106/1977 Coll., stipulating fundamental conditions for the supply of solid fuels, as amended by Decree No, 1/1987 Coll., and Decree No. 3/1990 Coll.;
31. State Arbitration Decree No. 44/1978 Coll., stipulating fundamental conditions for the supply of chemical industry products, as amended by Decree No. 26/1982 Coll., and Decree No. 12/1988 Coll.;
32. Decree of the Federal Ministry of Agriculture and Food No. 84/1978 Coll., stipulating fundamental conditions for the repair of agricultural machinery, as amended by Decree No. 148/1989 Coll.;
33. Decree of the Federal Ministry of Transport No. 1/1980 Coll., stipulating fundamental conditions for the operation of aircraft in agriculture, forestry and water economy, as amended by Decree No. 37/1990 Coll.;
34. State Arbitration Decree No, 28/1980 Coll., stipulating fundamental conditions for the supply of polygraphic products, as amended by Decree No. 199/1989 Coll.;
35. State Arbitration Decree No. 38/1980 Coll., stipulating fundamental conditions for the supply of products from domestic trade distributive organizations, as amended by Decree No. 200/1989 Coll.;
36. Decree of the Federal Ministry of Foreign Trade No. 61/1980 Coll., on the establishment and activities of subsidiaries of Czechoslovak legal entities in foreign countries;
37. Decree of the Federal Ministry of Foreign Trade No. 62/1980 Coll., on the inspection of foreign trade activities;
38. Decree of the Federal Ministry of Foreign Trade and the Federal Ministry of Technical and Investment Development No. 64/1980 Coll., on procedures relating to intangible industrial rights and know-how in connection with foreign countries;
39. Decree of the Federal Ministry of Foreign Trade No. 140/1980 Coll., on preventive control of exported and imported goods and on the use and utilization of imported goods;
40. State Arbitration Decree No. 27/1981 Coll., stipulating fundamental conditions for the supply of health and

veterinary products, as amended by Decree No. 142/1989 Coll.;

41. Decree of the Federal Ministry of Foreign Trade No. 53/1981 Coll., on conditions for providing foreign economic services in transport;

42. Decree of the Czech Ministry of Culture No. 57/1981 Coll., on granting, amending and revoking licences for the provision of foreign economic services in culture, and on the inspection of such services;

43. Decree of the Slovak Ministry of Culture No. 61/1981 Coll., on granting, amending and revoking licences for the provision of foreign economic services in culture, and on the inspection of such services;

44. Decree of the State Arbitration No. 91/1981 Coll., stipulating fundamental conditions for the supply of vegetables and fruit to internal trade organizations and the processing industry, as amended by Decree No. 180/1989 Coll.;

45. Decree of the Federal Ministry of Finance No. 179/1982 Coll., on the extent and conditions of insurance applicable to socialist organizations;

46. Decree of the Federal Ministry of Technical and Investment Development No. 181/1982 Coll., on fundamental conditions for supplies to institutes of scientific-technological development, as amended by Decree No. 154/1989 Coll.;

47. Decree of the Czech Ministry of Health No. 23/1983 Coll., on granting, amending and revoking licences for the provision of foreign economic services in spa treatment, and on the inspection of such services;

48. State Arbitration Decree No. 24/1983 Coll., on fundamental conditions for the supply of collectable scrap and materials, as amended by Decree No. 140/1989 Coll.;

49. Decree of the Federal Ministry of Foreign Trade No. 104/1983 Coll., on the import of capital equipment;

50. Decree of the Federal Ministry of Transport No. 8/1984 Coll., on fundamental conditions of certain activities effected by Czechoslovak State Railways in connection with transportation;

51. State Arbitration Decree No. 11/1984 Coll., on fundamental conditions for the supply of construction materials and building components;

52. Decree of the Slovak Ministry of Health No. 61/1984 Coll., on granting, amending and revoking licences for the provision of foreign economic services in spa treatment, and on the inspection of such services;

53. Decree of the Federal Ministry of Metallurgy and Heavy Engineering, the Federal Ministry of General Engineering, and the Federal Ministry of Electrical Engineering No. 13/1985 Coll., on fundamental conditions for engineering and electrical engineering supplies determined for major projects in Czechoslovakia, as amended by Decree No. 29/1990 Coll.;

54. Decree of the Federal Statistical Office No. 49/1985 Coll., on fundamental conditions for the supply of work and services in automated data processing, as amended by Decree No. 170/1989 Coll.;

55. Decree of the Federal Ministry of Foreign Trade, the Federal Ministry of Metallurgy and Heavy Engineering, the Federal Ministry of General Engineering, and the Federal Ministry of Electrical Engineering No. 31/1986 Coll., on fundamental conditions for the supply of exported capital equipment;

56. Decree of the Federal Ministry of Agriculture and Food No. 130/1988 Coll., on the principles applying to sales of agricultural products to members and employees of socialist organizations involved in agricultural production;

57. Decree of the Federal Ministry of Agriculture and Food No. 155/1988 Coll., on fundamental conditions for supplies of agricultural products;

58. Decree of the Federal Ministry of Agriculture and Food No. 156/1988 Coll., on fundamental conditions for supplies of foodstuffs and certain other products;

59. Decree of the Federal Ministry of Transport and Communications No. 143/1989 Coll., on the agreement on preparation of railway rolling stock consignments;

60. State Arbitration Decree No. 57/1990 Coll., on interim amendment of the provisions on economic obligations stipulated in section 295(2) of the Economic Code in branches of the Federal Ministry of Metallurgy, Engineering and Electrical Engineering, the Czech Ministry of Construction and Building and the Slovak Ministry of Construction and Building;

61. Decree of the Federal Ministry of Foreign Trade No. 265/1990 Coll., on establishment and operation of commercial representative offices by foreign persons;

62. Decree of the Federal Ministry of Foreign Trade No. 533/1990 Coll., on granting licences for foreign trade activities, on effecting foreign trade activities without registration or licence, and on performance of foreign trade activities by foreign persons;

63. Decree of the Czechoslovak State Bank No. 386/1991 Coll., on payment relationships and settlements;

64. Decree of the Czechoslovak State Bank No. 414/1991 Coll., on inter-bank payment relationships and settlements;

65. Decree of the Federal Ministry of Transport No. 17.525/1981, on procedures of Czechoslovak organizations when providing foreign economic services during the transportation of things (registered in Volume No.

33/1981 Coll.);

66. State Arbitration Decree No. 2/1984 of November 15, 1984, amending economic obligations related to construction of the nuclear energy plant at Temelfn (registered in Volume No. 1/1985 Coll.);

67. Decree of the Ministry of Internal Trade No. 4/1952, stipulating detailed provisions for auctions other than distraints;

68. Fundamental conditions for the supply of products, exported by the foreign trade organizations Chemapol Praha and Chemapol Bratislava, issued by the Minister of Foreign Trade on 25 July 1964, as amended by Federal Ministry of Foreign Trade Decree No. 12/1977 and published in the Bulletin of the Federal Ministry of Foreign Trade;

69. Fundamental conditions for the supply of products imported by the foreign trade organizations Chemapol Praha and Chemapol Bratislava, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30 March 1965 and by Federal Ministry of Foreign Trade Decree No. 10/1977, and published in the Bulletin of the Federal Ministry of Foreign Trade;

70. Fundamental conditions for the supply of products exported by the foreign trade organizations Metalimex and Kerametal, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Federal Ministry of Foreign Trade Decree No. 27/1977, and published in the Bulletin of the Federal Ministry of Foreign Trade;

71. Fundamental conditions for the supply of products imported by the foreign trade organizations Metalimex and Kerametal, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30 March 1965 and by Federal Ministry of Foreign Trade Decree No. 26/1977, and published in the Bulletin of the Federal Ministry of Foreign Trade;

72. Fundamental conditions for the supply of products exported by the foreign trade organization Pragoexport, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Federal Ministry of Foreign Trade Decree No. 11/1977, and published in the Bulletin of the Federal Ministry of Foreign Trade;

73. Fundamental conditions for the supply of products exported by the foreign trade organizations Ligna Praha and Drevounia Bratislava, issued by the Minister of Foreign Trade on 25 July 1964, as amended by Federal Ministry of Foreign Trade Decree No. 13/1977, and published in the Bulletin of the Federal Ministry of Foreign Trade;

74. Fundamental conditions for the supply of products imported by the foreign trade organizations Ligna Praha and Drevounia Bratislava, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30 March 1965 and by Federal Ministry of Foreign Trade Decree No. 9/1977, and published in the Bulletin of the Federal Ministry of Foreign Trade;

75. Fundamental provisions for the supply of products exported by the foreign trade organization Czechoslovak Ceramics, issued by the Minister of Foreign Trade on 25 July 1964, as amended by Federal Ministry of Foreign Trade Decree No. 25/1977, and published in the Bulletin of the Federal Ministry of Foreign Trade;

76. Fundamental conditions for the supply of products imported by the foreign trade organization Czechoslovak Ceramics, issued by the Federal Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30 March 1965 and by Federal Ministry of Foreign Trade Decree No. 24/1977, and published in the Bulletin of the Federal Ministry of Foreign Trade;

77. Fundamental conditions for the supply of engineering products for export, issued by the Minister of Foreign Trade on 25 July 1964, as amended by Federal Ministry of Foreign Trade Decree No. 5/1977, and published in the Bulletin of the Federal Ministry of Foreign Trade;

78. Fundamental conditions for the supply of imported engineering products, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30 March 1965 and by Federal Ministry of Foreign Trade Decree No. 5/1980, and published in the Bulletin of the Federal Ministry of Foreign Trade;

79. Fundamental conditions for the supply of products exported by the foreign trade organizations Centrotex, Exico and Karaexport, issued by the Minister of Foreign Trade on 25 July 1964, as amended by Federal Ministry of Foreign Trade Decree No. 6/1979, and published in the Bulletin of the Federal Ministry of Foreign Trade;

80. Fundamental conditions for the supply of raw materials, materials and products imported by the foreign trade organizations Centrotex, Exico and Karaexport, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30 March 1965 and by Federal Ministry of Foreign Trade Decree No. 5/1979, and published in the Bulletin of the Federal Ministry of Foreign Trade;

81. Fundamental conditions for the supply of products exported by the foreign trade organization Ferromet, issued by the Minister of Foreign Trade on 25 July 1964, as amended by Federal Ministry of Foreign Trade Decree No. 7/1978, and published in the Bulletin of the Federal Ministry of Foreign Trade;

82. Fundamental conditions for the supply of products imported by the foreign trade organizations Artia and Slovart, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30 March 1965 and by Federal Ministry of Foreign Trade Decree No. 19/1981, and published in the Bulletin of the Federal Ministry of Foreign Trade;

83. Fundamental conditions for the supply of products exported by the foreign trade organizations Artia and Slovart, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30 March 1965 and by Federal Ministry of Foreign Trade Decree No. 18/1981, and published in the Bulletin of the Federal Ministry of Foreign Trade;

84. Fundamental conditions for the supply of exported foodstuffs and agricultural products, issued by the Minister of Foreign Trade on 25 July 1964, as amended by Federal Ministry of Foreign Trade Decree No. 33/1977, and published in the Bulletin of the Federal Ministry of Foreign Trade;

85. Fundamental conditions for the supply of imported foodstuffs and agricultural products, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30 March 1965 and by Federal Ministry of Foreign Trade Decree No. 19/1983, and published in the Bulletin of the Federal Ministry of Foreign Trade;

86. Decree of the Federal Ministry of Foreign Trade of 7 July 1978, stipulating fundamental conditions for the supply of glass products exported by the joint stock company Skloexport.

Section 773

The transportation (carriage) regulations and implementing provisions relating to Act No. 61/1952 Coll., on maritime navigation and on liability for damage caused to consignments, do not apply if they conflict with the provisions stipulated in sections 622 and 624 of this Code; the other provisions of these regulations will remain unaffected.

Section 774

The Decree of the Federal Ministry of Finance No. 63/1989 Coll., on auditors and their activities, also applies to auditors' activities under section 39 of this Code, until new statutory provisions are enacted.

Section 775

This Code comes into effect on 1 January 1992.

(Act No. 264/1992 Coll. came into effect on 1 January 1993; Act No. 591/1992 Coll. came into effect on 1 January 1993; Act No. 286/1993 Coll. came into effect on 29 November 1993; Act No. 156/1994 Coll. came into effect on 29 July 1994; Act No. 84/1995 Coll. came into effect on 1 July 1995; Act No. 94/1996 Coll. came into effect on 1 June 1996; Act No. 142/1996 Coll. came into effect on 1 July 1996, except for sections 183a to 183d and 186a to 186d, which came into effect on 30 May 1996; Act No. 77/1997 Coll. came into effect on 1 July 1997; Act No. 15/1998 Coll. came into effect on 1 April 1998; Act No. 165/1998 Coll. came into effect on 1 September 1998; Act No. 356/1999 Coll. came into effect on 1 March 2000; Act No. 27/2000 Coll. came into effect on 1 May 2000; Act No. 29/2000 Coll. came into effect on 1 July 2000, **Act No. 30/2000 Coll. came into effect on 1 January 2001**; Act No. 105/2000 Coll. came into effect on 1 May 2000; **Act No. 367/2000 Coll. came into effect on 1 January 2001**; **Act No. 370/2000 Coll. came into effect on 1 January 2001, except for the provisions of section 21(5) taking effect on 1 February 2001; except for the provisions of sections 27a(4) and 28(4) taking effect on the Czech Republic's accession to the European Union; except for the provisions of section 31a taking effect on 25 October 2000; except for the provisions of section 183b(3)(a) which cease to apply on the Czech Republic's accession to the European Union.)**

Article II of Act No. 142/1996 Coll. Transitory Provisions

1. Joint stock companies entered in the Commercial Register on the day when this Act comes into effect must amend their articles of association by 30 June 1997 to comply with the new statutory provisions. The provisions of the articles of association which are contrary to this Act shall be invalid as of the day this Act comes into effect.

2. If the procedure relating to entries into the Commercial Register commenced prior to this Act coming into effect, such procedure shall be concluded under the hitherto effective legislation, unless the applicant withdraws or changes his application seeking such entry.

3. If the general meeting of a joint stock company decides to increase or reduce its registered capital, terminate public tradability of its shares, change the type of its shares or restrict their transferability before this Act comes into effect, the hitherto effective legislation shall apply, unless the general meeting decides otherwise.

4. If, under this Act, a joint stock company is required to establish a reserve fund due to acquisition of own shares, it must create such reserve fund in respect of those shares which are in its ownership on the day when

this Act comes into effect, and this reserve fund must be created no later than 30 June 1997; otherwise a joint stock company must sell its own shares or interim certificates, or reduce its registered capital by the nominal value of such shares or interim certificates. A court may, even without a petition, wind up such joint stock company and order its liquidation, if the company does not comply with this duty.

5. Persons who attain the proportion of voting rights under section 183d by the day this Act comes into effect must comply with the reporting duty stipulated in **that** provision within 60 days from the effective date of this Act.

6. If, on the day this Act comes into effect, a controlled person, or a person controlled by the former, owns shares of a controlling person, as of 1 January 1997 the provisions of section 161f shall apply to such person in respect of these shares. Time-limits, within which a controlled person is required to sell shares of a controlling person, also start to run as of this date.

7. If, on the day when this Act comes into effect, a shareholder owns such a proportion of a company's shares traded on a public market as to establish the duty for him to make a public offer (of a contract) for the purchase of shares under section 183b, he is not obliged to make such offer, unless the conditions establishing the **duty** under section 183b arise after this Act comes into effect.

8. The provisions of section 183b shall not apply to state financial institutions, the National Property **Fund of the Czech Republic**, the Land Fund of **the Czech Republic** or to a person who acquires shares of a company under a ruling (decision) on privatization according to a particular Act.

9. If this Act requires entry of certain data into the Commercial Register, the persons entered in the Commercial Register must submit an application seeking entry of this data by 31 December 1996.

10. If executive officers, members of boards of directors or supervisory boards have not complied with requirements under section 194(7) by the day **this** Act comes into effect, their tenure of the office shall terminate on 31 December 1996, should they not comply with the stipulated requirements by the said date.

11. Persons entered in the Commercial Register on the day when this Act comes into effect must place a copy containing the full wording of their founding deed (deed of association) and the statutes in the registry of documents and submit an application for entry of the data required by this Act into the Commercial Register no later than 30 June 1997. For the first time financial statements relating to the 1996 accounting period are required to be placed in the said registry of documents.

12. If an announcement convening a general meeting was published, or invitations to attend it were sent, by the day when this Act comes into effect, the hitherto existing statutory provisions shall apply when considering whether such general meeting was duly convened.

13. The hitherto effective statutory provisions shall apply if, by the day this Act becomes effective, it has been decided to merge, consolidate, divide or convert a company.

Part Seven of Act No. 370/2000 Coll. Joint, Transitory and Concluding Provisions

Article VII Joint Provisions

1. Where the statutory provisions use the term "základní jmění", it shall mean the same as "základní kapitál" ("registered capital").

2. Where the statutory provisions use the term "zapisované základní jmění", it shall mean the same as "zapisovaný základní kapitál" ("recorded registered capital").

3. Where the statutory provisions use the term "obchodní jméno", it shall mean, as appropriate, the same as "obchodní firma" ("commercial name") or "firma, jméno a příjmení fyzické osoby nebo název právnické osoby" name, full name of an individual or designation of a legal entity").

Where this Code uses the term "roční účetní zaverka" ("annual financial statements"), it shall mean the same as "řádná účetní závěrka" ("ordinary financial statements").

Article VIII Transitory Provisions Relating to Part One

1. Changes of terms ensuing from Part One which concern information entered in the Commercial Register shall be made in the Commercial Register by the registration court even without a petition to that effect and without any proceedings for up to two years after the effective day of this Act.

2. Should this Act impose on a person (an entity) which does not come into being on entry in the Commercial Code the duty to be entered in the Commercial Register, such person (entity) shall file a petition for entry in the Commercial Register within six months of the effective day of this Act.

3. Should this Act impose the duty to enter certain facts in the Commercial Register which did not have to

be entered there before, or to deposit a document (deed) in the registry of documents which was not deposited there before, the person concerned must file a petition for such entry in the Commercial Register or deposit such document (deed) in the registry of documents within one year of the effectiveness of this Act, unless this Act provides otherwise. These duties shall not apply to entries concerning conversions of legal entities if these occurred under the hitherto effective statutory provisions.

4. Printed business documents (section 13a) which do not have the particulars stipulated in this Act may be used for a period of up to six months after the effectiveness of this Act. Entrepreneurs are obliged to adapt their commercial name to the requirements of this Act within two years of this Act coming into force.

5. If a company (entity) was founded before the effective day of this Act, until its incorporation it shall follow the procedures prescribed in the hitherto operative provisions, unless its founders (promoters) agree to proceed under this Act.

6. If a decision to increase or reduce a company's registered capital was taken before the effective day of this Act, it shall proceed under the hitherto effective statutory provisions until the increase or reduction of registered capital is entered in the Commercial Register, unless within three months of the effective day of this Act the general meeting decides that it will proceed according to this Act.

7. If before the effective day of this Act it was decided to wind up or convert a company (entity), the procedure under the hitherto effective statutory provisions shall be followed, unless the members or the competent statutory organ of the company decide within three months of the effectiveness of this Act that the procedure under this Act will be followed. Reasons excluding the possibility of filing a complaint seeking judicial nullification of a general meeting's resolution shall also apply to a resolution to wind up a company without liquidation, even if such resolution was adopted before the effective day of this Act. The provisions of this Act on protection of creditors and settlement amounts shall also apply when a resolution (decision) to wind up a company was adopted before the effective day of this Act and was not yet entered in the Commercial Register at the effective day of this Act.

8. If a public offer for the purchase of shares was made before the effective day of this Act, the procedure under the hitherto operative statutory provisions shall be followed.

9. If prior to the effective day of this Act a decision under section 186a was made, the procedure under the hitherto operative provisions shall be followed.

10. If a notice of termination made under section 66(1) was delivered to the company (entity) before the effective day of this Act, the procedure under the hitherto operative statutory provisions shall be followed.

11. If before the effective day of this Act, a controlling contract or a contract on profit transfer, or a contract on lease of an enterprise or a part of such, was concluded, the contracting parties shall have to amend the contract in accordance with the requirements of this Act, file a petition for entry in the Commercial Register and deposit a copy of the contract in the registry of documents within one year of this Act taking effect. A controlling contract or a contract on lease of an enterprise or a part of such shall be approved by the general meeting under this Act within one year of this Act taking effect, otherwise such contract shall lapse.

12. The provisions of section 66a(14) and (15) on suretyship and responsibility shall apply to liabilities (obligations) incurred after the effective day of this Act.

13. If before the effective day of this Act proceedings were commenced for the winding-up of a company under section 69b, the court shall continue the proceedings under the provisions on nullification of a company.

14. The provisions of this Act on suretyship of members of a limited liability company shall not apply to obligations (liabilities) which arose before the effective day of this Act.

15. The provisions of this Act on the form of a deed of association (partnership agreement), founding deed (deed of formation), statutes and amendments to these shall not apply to deeds of association (partnership agreements), founding deeds (deeds of formation), statutes and their amendments which were agreed or on which resolutions were passed before the effective day of this Act. 16- As of the effective day of this Act, the provisions of section 120(2) and (3) shall also apply to business shares (holdings) acquired by the company or its controlling person (controlling undertaking) before the effective day of this Act.

17. If proceedings were initiated under sections 131, 183 or 242 before the effective day of this Act, they shall be continued by the court in accordance with this Act.

18. Limited liability companies and joint stock companies which were formed under the hitherto operative statutory provisions shall not have to raise their registered capital to the amount prescribed by this Act, but they may not decide to reduce their registered capital below the amount prescribed by this Act. Should these companies increase their registered capital after the effective day of this Act, they shall raise it to at least the amount required by this Act.

19. If one individual (natural person) is the only member (partner) of more than three limited liability

companies, or if a single-member company is the sole member of another company, it shall have to arrange for his legal status to comply with this Act within two years of this Act taking effect, otherwise the court may, even without a petition to that effect, wind up all such companies and order their liquidation.

20. Companies (entities) shall bring their deeds of association and statutes into compliance with the provisions of this Act within one year of its operative day, unless the provisions of this Act stipulate otherwise, or else the court may wind up the company concerned, even without a petition to that effect and order its liquidation. A member who misuses his position within a company and tie amendments to the deed of association or statutes to unjustified advantages, thereby frustrating the requirements for amendments to the deed of association or statutes under this Act, shall be liable to the other members for the damage caused by his misconduct.

21. Unless otherwise stipulated in this Act, the provisions of deeds of association (partnership agreements) and statutes regulating the rights and duties of members (partners) or a company (entity), contrary to the mandatory provisions of this Act, shall cease to be operative as of the effective day of this Act. This shall not apply to the rules for convening general meetings.

22. If registered shares were pledged before the effective day of this Act, the sale of such pledged shares shall be subject to the provisions of this Act.

23. If the holder of a registered share applies for the approval of the company's organ for the transfer of such share prior to the effective day of this Act and the competent company organ does not decide on such application within two months from the effective day of this Act, approval shall be deemed to have been granted.

24. If the right to have a registered share redeemed under section 156(4) of the Commercial Code arose to a shareholder prior to the effective day of this Act, the procedure under the hitherto operative statutory provisions shall be followed, unless the parties agree within one month of this Act's effectiveness to apply the provisions of this Act.

25. Hitherto employee (staff) shares shall cease to be a separate class of shares as of the day when the general meeting passes a resolution to convert employee shares into ordinary shares without any special rights under section 158, or when it passes a resolution on amendments to the statutes which will regulate the conditions for acquisition of ordinary shares by the company's employees under section 158 of this Act, but at the latest within two years of this Act taking effect. Until then, employee shares shall be subject to the hitherto operative statutory provisions.

26. If due to the application of this Act's provisions, a relationship of a controlling person (controlling undertaking) and a controlled person (controlled undertaking) arises between certain persons (parties), even though they were not such persons under the hitherto operative statutory provisions, these persons shall have to bring their mutual relations into compliance with this Act within six months of this Act taking effect, if they did not have such duty earlier. The controlled person shall dispose of (alienate) a business share or shares in the controlling person which the controlled person (entity) has in his (its) property within 18 months of this Act taking effect, otherwise the court may wind up such controlled person (entity), even without a petition to that effect, and order this person's (entity's) liquidation.

27. A controlled person (entity, undertaking) shall create a reserve fund required under this Act within 12 months of its effective day, if at the effective day of this Act the controlled person (entity, undertaking) has in its property a business share or shares of its controlling person (entity), even though this person did not have this . duty earlier, otherwise such person shall dispose of (alienate) such shares or business share without undue delay.

28. A person (party) who (which) at its effective day meets the conditions prescribed by this Act for the duty to make a tender offer, even though such person (party) did not have this duty under the hitherto statutory provisions, shall not be obliged to make such offer.

29. Persons who at the effective day of this Act meet the conditions which oblige them to report their percentage of voting rights shall have to fulfil such reporting duty under this Act within six months of the Act taking effect, unless such duty to report an increase or a reduction of voting rights arises before expiry of this time-limit.

30. If a general meeting was convened before the effective day of this Act for a day after this Act takes legal effect and the wording of the invitation to such general meeting can no longer be changed, such invitation to or notice of the holding of the general meeting shall be subject to the hitherto operative statutory provisions.

31. The provisions of this Act on agreements on the exercise of voting rights shall also apply to agreements (contracts) on the same which were concluded before the effective day of this Act.

32. The provisions on burden of proof (onus probandi) in relation to proving fulfilment of the duty to act with all due managerial care (due diligence) shall not apply to a transaction which took place before the effective day of this Act.

33. If members of the supervisory board of a joint stock company elected by employees do not meet the

requirements of this Act, their tenure shall terminate no later than one year after this Act takes effect.

34. If at the effective day of this Act persons not meeting the requirements of this Act are a legal entity's statutory organ, a member of such or a member of another organ of such entity, their tenure shall terminate three months after this Act takes effect at the latest,

35. The validity of contracts on commercial representation concluded before the effective day of this Act shall be considered under the hitherto operative statutory provisions. The rights and duties of contracting parties arising from such contracts shall be subject to this Act, unless the contracting parties have agreed otherwise.

36. The provisions of this Act which specify who may be a partner of a general commercial partnership and a general partner shall not apply to persons who are such partners at the effective day of this Act, except when they lose the capacity to be such partner after the effective day of this Act.

37. Trades licensing permits or other business authorizations issued at the effective day of this Act and other authorizations, approvals, or similar documents made out in the commercial names of individuals shall not lose their validity and need not be brought into compliance with section 8 et seq of the Commercial Code.

38. Provisions of silent partnership agreements which are contrary to the mandatory provisions of this Act shall cease to apply as of the effective day of this Act.

39. The provisions of section 369(1) on interest in the case of default shall also apply to relations which arose before the effectiveness of this Act if such default occurred at any time after the effective day of this Act.

Note:

Note 1: section 44(l)(b) and (d) of the Bankruptcy and Composition Act