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LEGAL FRAMEWORK FOR ESTABLISHING AND FUNCTIONING OF START–UPS IN THE CONDITIONS OF SLOVAK LEGISLATION

PRÁVNY RÁMEC PRE ZAKLADANIE A FUNGOVANIE STARTUPOV V PODMIENKACH PRÁVNEJ ÚPRAVY SR

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I. Introduction

Small and medium–sized enterprises play an irreplaceable role in the field of job creation, balancing the regional disparities and introducing innovations into the economic practice, as it results from the Report on the State of Small and Medium Enterprises in the Slovak Republic, which is produced annually and submitted to the Government of the Slovak Republic by the Ministry of Economy of the Slovak Republic as a part of the report on the state of the business environment in the Slovak Republic (obligation imposed by the Act No. 290/2016 Coll.). The legal status of small and medium enterprises is regulated by the Small Business Act (2008), adopted by the European Commission in 2008, which documents the importance of small and medium–sized enterprises (hereinafter referred to as SMEs) and the Commercial Code, which regulates, inter alia, legal forms of commercial companies. The business environment in Slovakia is primarily formed by

Abstract (EN)

The existing legal regulation of the Slovak Republic allowed small and medium–sized enterprises, which form a basis for the business environment, not only in Slovakia but also in economically advanced countries, to have a legal form of any of the four types of commercial companies or cooperatives. According to the Concept for Supporting Start–ups and Start–up Ecosystem in the Slovak Republic, for the optimal engagement of investors and start–up development in the Slovak Republic, it is most effective to introduce a new form of capital commercial company that will allow for a flexible set–up of property relationships, investors' entry and exit from the investment. The paper deals with the issue of special regulation of private law, company law. It points out some of the changes introduced to the regulation of commercial companies by introducing a new type of capital company, a simple joint–stock company and highlights possible problems in application. The new form of a capital commercial company was established by an amendment to the Commercial Code, Act no. 389/2015 Coll., which entered into force on January 1st, 2017. The purpose of the new form of a commercial company, as stated in the explanatory memorandum, is to ensure the legal form of a legal entity, which would be a complex and, at the same time, simple solution for risky investment in the form of commercial companies, especially investments to start–ups. To what extent the new form of a commercial company will meet the expectations of investors, will only be proved after its practical implementation and after the expression of the investors´ interest in engaging in such form of company.

Keywords (EN)

simple joint–stock company, common shares, shares with special rights, shareholder agreements

Abstrakt (SK)

Platná právna úprava umožňovala, aby malé a stredné podniky, ktoré tvoria určitý základ podnikateľského prostredia, nielen na Slovensku ale aj v ekonomicky vyspelých štátoch, mali v podmienkach SR právnu formu ktorejkoľvek zo štyroch typov obchodných spoločností, alebo družstva. Podľa koncepcie Vlády SR na podporu startupov, pre optimálnu súčinnosť investorov v startupoch a rozvoj startupov v SR je najefektívnejšie zaviesť novú formu kapitálovej obchodnej spoločnosti, ktorá umožní flexibilné nastavenie majetkový vzťahov, možnosti vstupu investora a jeho výstupu z investície. Príspevok sa zaoberá problematikou spadajúcou do špeciálnej úpravy súkromného práva, práva obchodných spoločností, a poukazuje na niektoré zmeny vnesené do úpravy obchodných spoločností zavedením nového typu kapitálovej obchodnej spoločnosti a to jednoduchej spoločnosti na akcie a upozorňuje na možné aplikačné problémy. Novú formu kapitálovej obchodnej spoločnosti ustanovila novela Obchodného zákonníka, zákon č. 389/2015 Z.z., ktorý nadobudol účinnosť 1. januára 2017. Zmyslom novej formy obchodnej spoločnosti, ako to vyplýva z dôvodovej správy je zabezpečiť právnu formu právnickej osoby, ktorá by bola komplexným a zároveň jednoduchým riešením pre rizikové investovanie formou obchodných spoločností najmä investícií do startupov. Nakoľko splní očakávania investorov nová forma obchodnej spoločnosti preukáže až jej praktická realizácia a záujem investor o zapojenie sa do takejto formy podnikania.

Kľúčové slová (SK)

jednoduchá spoločnosť na akcie (easy company to action alebo easy company for the shares), kmeňové akcie, akcie s osobitnými právami, akcionárske zmluvy

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a range of small and medium-sized entrepreneurs, including start-ups[1].

II. Material and method

The paper deals with issues covered by a special regulation of private law, the law of commercial companies. Small and medium-sized enterprises, which form a basis of the business environment, not only in Slovakia but also in economically advanced countries, can have any form of commercial company established by legislation, which is in our legal environment, the second part of the Commercial Code establishing the status of commercial companies and cooperatives. The aim of the paper is to highlight some changes introduced to the regulation of commercial companies by introducing a new type of capital commercial company, namely the simple joint-stock company (abbreviation in Slovak language j.s.a.) and point out possible problems related to its application. The new form of the capital commercial company was established as an amendment to the Commercial Code, by the Act No. 389/2015 Coll., which entered into force on January 1st, 2017. Its adoption, based on the explanatory memorandum, is based on the Concept for Supporting Start-ups and Start-up Ecosystem in the Slovak Republic, which points out the issue of the lack of legal framework for the correct functioning of start-ups and provides a solution by introducing a new form of capital commercial company.

The paper is based on the available literary sources on this matter, on the legal norms laying down the rules for the establishment and operation of a simple joint-stock company. Based on doctrinal legal research, the content of the relevant legal norms is examined and elucidated for the purpose of their application in practice. The basic methods of legal science such as legal analysis and comparison were used in the paper.

III. Results and Discussion

The categorization of small and medium-sized enterprises is in line with the Recommendation of the European Commission No. 2003/361 / EC, which distinguishes following categories of SMEs:

- a micro-enterprise employing 0-9 employees, whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million,
- a small enterprise employing 10-49 employees, whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million,
- a medium-sized enterprise employing 50-249 employees, whose annual turnover does not exceed EUR 50 million and/or the annual balance sheet total does not exceed EUR 43 million.

Support for small and medium-sized enterprises forms an important part of the economic strategy of the EU as well as other advanced economies. The reason is not only their quantitative dimension (99% of the total number of enterprises in the EU), but also qualitative characteristics such as efficiency, flexibility and progressivity.

According to statistical data, in 2015, 99,9% of the total number of active business entities were registered in the category of small and medium-sized enterprises[2]. Micro-enterprises formed the largest share in this category (96,9%), followed by small enterprises (2,4%) and medium-sized enterprises (0,5%). Nearly two-thirds (63,7%) of the total number of active SMEs in Slovakia are natural persons – entrepreneurs.

The high share of small and medium-sized enterprises on the total number of businesses in developed countries, as well as their multiple strengths and characteristics, is the reason why several states adopt measures for their development. The significant advantages of the small and medium-sized enterprises include the fact that they have the prerequisites for tackling innovation, application of innovative ideas and unique ideas. According to the methodological framework of the European Commission´s research oriented on public support for commercialization of innovations (European Commission 2014), new or significantly improved services, goods, marketing strategies, organizational structures and processes can be considered as general types of innovation. The results of science, research and innovation significantly affect economic growth and development of a country.

The existing legislation of the SR allowed small and medium-sized enterprises to have the legal form of any of the four types of commercial companies or cooperatives. According to the Concept for Supporting Start-ups and Start-up Ecosystem in the Slovak Republic, for the optimal engagement of investors in start-up and start-up development in the SR, it is effective to introduce a new form of capital commercial company, which will allow for a flexible setting of property relations, investor's entry and exit from the investment.

Act No. 389/2015 Coll., amending Act No. 513/1991 Coll. Commercial Code, as amended, and amending certain acts with effect from 1st January, 2017 established a new type of commercial company, a simple joint-stock company. The legal regulation of this commercial company in the Commercial Code (Section 220h-220zl) does not have a complex character. It is aimed at modifying the specific features of this new type of company. The same or similar institutions of a simple joint-stock company and a joint stock company are governed by the relevant provisions of the Commercial Code for the joint stock company. On a simple joint-stock company, it is not possible to apply the provisions of the Commercial Code governing the public joint stock company, it is also not possible to apply the regulations that are exhaustively listed in Section 220h (4). Similarly, on a simple joint-stock company, it is not allowed to apply the regulations not stated in the list of paragraphs in Section 220h (4), because they are inconsistent with its particular regulation, or the company itself excludes the regulations by the specific regulations in its articles of association.

The basic features of this company are the same as for a joint stock company. A simple joint-stock company is a com-

[1] Concept for Supporting Startups and Startup Ecosystem in the Slovak Republic.

[2] SBA (2016)

pany whose registered capital is distributed into a certain number of shares with a certain nominal value. The company is liable for breaches of its obligations with its entire property. A shareholder is not liable for the company's liabilities.

An obligatory part of the company´s name is an addendum expressing the type of company, "simple joint-stock company " or abbreviation in Slovak language "j.s.a". Unlike a joint stock company, this capital company may be established only for the purpose of doing business (Section 56 (1)). The special regulation of the company is related to the company's registered capital and shares. The minimum value of the registered capital is set at 1 euro. We believe that such a low minimum registered capital will cease to be a guarantee for the settlement of the company's liabilities and the initial source of financing the business activities of the newly established company.

The registered capital must be divided into shares, whose nominal value must be expressed in eurocents or in combination of euros and eurocents. One of the flexible features linked to the foundation of a simple joint-stock company is the fact, that this company may be founded by one or more persons, which means that the company can be founded by only one person.

A simple joint-stock company may be set up by one-off foundation without a call to subscribe shares, the founders must agree in the agreement of association on the proportion of paying the company's registered capital. If a company is established by one person, the founder must subscribe all the registered capital. The process of creating j.s.a. differs from a joint stock company in the fact that all shares representing the company's registered capital must be paid before the company's establishment, their subscription is not enough. Founding documents, in particular agreement of association or deed of association are subjects to stricter formal requirements. They must have a form of a notarial deed and it must contain the articles of association. Such a strict formality in establishing a simple joint-stock company makes it administratively difficult to establish such a legal entity compared to, for example, a limited liability company, in case of which it is necessary to negotiate and write agreement of association and to verify the signatures of the founders and, in the case of one founder, to write a deed of association. At the same time this formality of the founding documents of j.s.a. increases the cost of its founding because the founders have to pay notary fees related to the notarial acts (Decree No. 31/1993 Coll.). Formalized legal procedure to establish j.s.a. makes establishment of the company very complicated, while the administrative difficulty of this process is also compounded by the fact that it is a company whose registered capital is formed by shares. A simple joint-stock company, after its foundation, must comply with following requirements for the share issue registration: the issue of the shares must be assigned an ISIN, the shareholders of the simple joint-stock company must have an account of the owner, the issuer of the shares must enclose a contract for keeping records on book-entered securities with the National Securities Depository (established based on the Act No. 566/2001 Coll. on Securities) and to issue an order for the issuance of shares of j.s.a. as a basis for the depository to perform registrations in favour of shareholder accounts.

Property rights such as profit share, share on liquidation balance after the winding-up of a company are linked to the shares of the simple joint-stock company same as to the shares of a joint stock company. The listed subjective rights belong to the shareholders based on the law, by registering the company into the Commercial Register, regardless their issuing.

The Commercial Code provides shareholders with other rights that have the character of **non-property rights**, such as the right of a shareholder to participate in the company's management, control of the company and the right to information, which also applies to the shareholders of the simple joint-stock. The right to participate in management is the right of a shareholder to participate and vote at a general meeting, and to submit proposals, comments that are the subject of a meeting of the general meeting.

Compared to a joint stock company in this company pursuant to Section 220i (5), shares with non-voting rights may be issued if the sum of their nominal values does not exceed 90% of its registered capital (at least one share must be linked to voting rights) if a company does not meet this condition, the court will wind up the company and order its liquidation. The right to control shall be exercised by the shareholder directly during the General Meeting, in which he or she has the right to request explanations about the company's activities and to make proposals, or indirectly, through a Supervisory Board, which overlooks the performance of the Board of Directors and the conduct of the company's business activities. During the General Meeting, the Supervisory Body is obliged to make shareholders familiar with the controlled matters. The Supervisory Board in a simple joint-stock company is not an obligatory body, the company may establish it, the members are elected by the General Meeting, the number of members and its scope need to be regulated in the articles of association. Another non-property shareholder's right is the right to information, which is governed by Section 180 (1) of the Commercial Code and equally applies to the shareholders of a simple joint-stock company. The right to information consists in particular of the right to participate in the General Meeting and to request information and explanations concerning matters of the company or matters of persons controlled by the company that are related to the subject discussed during the General Meeting.

Legislation raises the right to information for a simple joint-stock company that does not have a Supervisory Board (the Supervisory Board is a facultative body), by stipulating that shareholders have the right over the framework of fundamental rights to request information and explanations, as well as the right to request in writing information on matters of the company from the Board of Directors. If the Board of Directors refuses to provide information, the court shall decide on the proposal of the shareholder about this obligation. We believe that the legal regulation defining the special right to information of the shareholder of a j.s.a beyond the fundamental rights is unsatisfactory and these needs to be specified in the articles of association.

Mandatory regulation states the form of shares issued by a j.s.a. Those can only be book-entered shares issued on

name. The legislation allows that the nominal value of the shares may be in agreement of association or in deed of association expressed in eurocents. Therefore, the simple joint-stock company may issue more than one share. The company may issue common shares and shares with special rights. The special rights consist of:

a) the extent of the share on profit or the liquidation balance other than the ratio of the nominal value of the shares to the nominal value of the shares of all shareholders; the scope of claim may be determined in particular as a fixed, preferred, subordinate,
b) the number of votes of the shareholder other than the ratio of the nominal value of the shares to the amount of the registered capital,
c) the extent of the right to provide information about the company.

The special rights attached to the shares must be stated in details in the articles of association of the joint stock company, and the shares with which the same special rights are attached form one type of shares. The current legislation does not restrict the special rights attached to the shares, it only includes their demonstrative calculation, which can be classified as a major advantage of a simple joint-stock company. At the same time, for strengthening the legal certainty, specific rights need to be defined and their content concretized in the articled of association, which creates increased requirements on the creation of this basic internal regulation.

Compared to a joint stock company that can only limit the transferability of its shares, a simple joint-stock company can limit or totally exclude the transfer. The conditions for the limitation of the transferability and the exclusion of transferability shall be detailed in the articles of association of a j.s.a. In order to protect shareholders owning such shares, the relevant provisions of the articles of association may be amended only with the consent of a two-thirds majority of the votes of those (concerned) shareholders. Transfer of shares, in conflict with the conditions of limitation or exclusion of transferability, is qualified as an absolute void legal act.

Legal regulation of exclusion of shares´ transferability of j.s.a. eliminates (excludes) one of the basic functions of a share as a security, a circular function that allows the circulation of a security and ensures a simple and rapid change of the eligible person (shareholder) . In case of the exclusion of shares´ transferability, the owner is entitled to claim the repurchase of those shares by the company after four years (the articles of association may also specify a shorter period) from the payment of their issue price, and this right shall not be barred. The imprescriptibility of the repurchase rights of shares whose transferability is excluded, significantly strengthens the position of the owners of those shares and, therefore, the regulation is particularly beneficial for the shareholders – investors who will not be interested in long-term investments in the company.

Restriction on transferability may be subject to approval by the company – approval is given by the Board of Directors unless the articles of association state that a different body, such as the General Meeting, makes such decision. The reasons for which a company may or must refuse to grant a consent to the transfer of shares and the time limit, within which the company is required to decide on the shareholder's request for consent are subject to the modification of the company's articles of association. If a company refuses to give consent in contradiction of law or articles of association, a shareholder may, within one month of being notified of the refusal, grant permission to transfer the shares, exercise the right to repurchase the shares in question, or claim within one year to replace the company consent about the share transfer by a court decision. The provision of a one-month pre-emption period for the exercise of a share repurchase by the company and a one-year pre-emption period for bringing an action before a court in order to obtain a replacement of the will of the company by a court decision to transfer shares confirms the expiry of those rights in the event of their non-application within the statutory time-limits. In the event that the company acquires the right to repurchase the shares and in case that the shareholder requests the company to repurchase, the company is required to purchase the shares at a reasonable price. Compared to the regulation of the joint stock company, for which the Commercial Code directly regulates the determination of the appropriate price pursuant to Section 218j, 4, if the joint stock company did not consent to the transfer of shares. In a simple joint - stock company, this issue has to be addressed directly by the company while detailed method of determining the appropriate price of the shares and the conditions for their reurchase should be stated in its articles of association.

In order to protect creditors' rights, the legal provision sets out the conditions for excluding the right to demand the repurchase of shares by a company if one of the following cases occurs:

- due to the shares' repurchase, the company's asset would be less than the value of the registered capital together with the reserve fund, or other funds created by the company, which may not be used by shareholders under the law or articles of association,
- the company is in a crisis, bankruptcy, or as a result of repurchase would come into crisis or bankruptcy,
- the company would not have at least one shareholder as a result of the repurchase of the shares.

Repurchase of shares by a company in breach of any of the three legitimate reasons gives rise to the same legal effects as a breach of the ban on the return of a company's investment of contribution in a crisis.

Compared to a joint stock company in which the Commercial Code expressly provides for a ban on the acquisition of own shares (Section 161) in a simple joint- stock company, a company directly may subscribe for shares, which make up its capital, subject to the cumulative fulfillment of the conditions:

- the subscription of shares shall be approved by the General Meeting, which shall at the same time determine the conditions under which the company may subscribe the shares representing its registered capital, in particular the maximum nominal value of the shares the company may subscribe and the period, for which the company

may subscribe the share and which may not exceed 18 months;
- shares are intended for transfer to company employees and other natural persons doing business under a trade license or other than a trade license whose performance results are subject to intellectual property rights for the company, the shares subscribed by the company must be transferred within five years of their subscription by the company,
- by subscription of shares, the company's own asset will not fall below the value of the registered capital together with the reserve fund or other funds necessarily formed by the company, decreased by the value of the unpaid registered capital if such value is not yet included in the assets shown in the balance sheet,
- the sum of their nominal values shall not exceed 20% of the registered capital.

This regulation documents the specificity of a simple joint-stock company that can subscribe own shares forming its registered capital in compliance with legal conditions and transfer it to employees, natural persons – tradesmen or natural persons trading under special law, who are holders of intellectual property rights and which are directly related to the subject matter of the business. The purpose of such regulation is to encourage the development of startups, by transferring own shares to attract investors or developers of innovations to take part in the realization of the company's business, and in the event of a successful transformation of new creative activities and their commercialization a higher value of company's shares may be reached. Shares subscribed by the company may be transferred to persons other than employees or natural persons – businessmen only at the purchase price of their nominal value, together with a issueing premium, subject to the reservation of ownership of shares in favor of the company, otherwise the transfer shall be void.

The particularity of a simple joint-stock company regulation is the regulation of the sub-contracting to the shareholder's agreement, specifying the subject of the agreements between the shareholders. Agreements between shareholders, by which the parties to the agreement regulate their mutual rights and obligations arising from their participation in companies with effect from 1 January 2017 may also negotiate in accordance with §66c also in other commercial companies. Such agreements between business partners are normally concluded and have the character of incomprehensible contracts, their codification, as amended by the general provisions on commercial companies (§66c), offer greater legal certainty to the parties that the agreed rights and obligations of the parties will be accepted by the courts in case of dispute resolution. New types of contracts – Shareholders' Agreements – modified exclusively for a simple joint-stock company, shareholders have the opportunity to flexibly set up the mutual rights and obligations arising from their participation in the company. Shareholders may agree the following new contractual institutions in shareholder agreement:
- to join a transfer of shares (tag – along),
- to request transfer of shares (drag- along),
- to request the acquisition of shares (shootout).

Shareholders' agreement are formal agreements, the signatures of the parties must be officially certified, the agreement shall enter into force on the date of the official certification of the signatures of the contracting parties.

Two of these rights, namely the right to transfer shares and the right to request the transfer of shares, may be agreed as registered rights under the Securities Act (Act No. 566/2001 Coll. On Securities and Investment Services as Amended in the wording of later transcripts), in particular those, which relate to specific shares of the company. In this case, a notarial record is required for their establishment. Registered rights, registered in special registers kept by the Central Securities Depository, are of a similar nature to real rights, so they can only be handled together with shares, these rights cannot be barred. When transferring them to a third party, they pass to the acquirer and, if their creditor fails to do so, they remain with the legal successor of the owner of the shares, with which an obligation corresponding to those rights is attached.

In order to prevent disputes that might arise from the conflict of multiple rights associated with the action, the Commercial Code permits that one share of a simple joint – stock company may be subject to one repurchase right, one right to join a transfer of shares, one right to request the transfer of shares and one right to require the acquisition of shares.

Right to join a transfer of shares entitles the shareholder (the entitled party) to transfer own shares together with the shares of another shareholder (obligated). The right to join a transfer of shares is associated with the party's obligation to transfer the share of the shareholder, based on the agreement, entitled to the third party on the same terms. Obligated must inform the third person, prior to the transfer of his shares, about the existence and conditions of the right to join the transfer of shares. In practice, this right could be applied in particular by the minority shareholders, who thus gain the opportunity to sell their shares under the same conditions as the majority ones, which are often more advantageous than the minority shareholder could reach himself. This right in a shareholder agreement can be understood as a registered or unregistered right. In the event of a violation of the registered right to join the transfer of shares under the Securities Act, the creditor may request:
- against a third party who has acquired shares of the obligated party to also acquire, under the same conditions, the shares of the entitled party,
- against the obligated party to acquire the shares from the entitled person under the same conditions, under which he transferred his shares to a third party.

If the entitled shareholder does not exercise the right to join the transfer of shares against a third party or against a liable shareholder, the right remains unchanged.

The unregistered right to join the transfer of shares regulated in the shareholder agreement entitles the entitled shareholder a right against the obligated party to acquire the shares under the conditions under which he transferred his shares to a third party.

These rights of a third party or an obligated party, given by the provisions of the Commercial Code, expire if their rights are not exercised within one year after the transfer of the shares to a third party.

Right to request a transfer of shares entitles the shareholder (the entitled party) to require from another shareholder (obligated) to transfer his shares to the third party at the same time as he transfer the shares of the entitled party. The right to demand the transfer of shares corresponds to the obligation of the obligated, who commited to transfer his shares to a third party at the same time as he transfers shares authorized under the contract. In practice, enitled shareholders will in principle be majority shareholders who transfer the rights, under the right to request transfer of shares, to the third person together with the shares of the minority shareholders. The right to request a transfer of shares may be agreed as a registered right under the Securities Act or unregistered right as provided for in a particular shareholder agreement.

In order to protect the obligated party, the Commercial Code provides for registered right to require a transfer of shares, that the entitled person can execute them only if the conditions for their performance have been fulfilled and the purchase price for the shares for the obligated has been deposited in the notarial custody or there is in favor of the obligated party open irrevocable letter of credit and compliance with the conditions has been certified by a notary. On the basis of fulfilling all the conditions certified by a notary, the entitled may sell the shares of the obligated party, acting under his name and on his account. This statutory empowerment to exercise the registered right to request the transfer of shares protects the third person of the acquirer, who acquires the shares as if he had acquired them directly from the obligated one. In the case of an unregistered right to request the transfer of shares, the entitled person does not have a legal mandate to obtain a forced transfer of shares.

The Commercial Code regulates only the violation of an unregistered right to request the transfer of shares, in which case the acquirer of shares (third party) may apply to the obligated shareholder to transfer the shares concerned to him under the conditions, under which he has acquired the shares of the entitled person. The acquirer may exercise this right against the obligated within one year from the transfer of shares of the entitled one, otherwise that right shall cease.

Right to request the acquisition of shares entitles the shareholder (the entitled) to determine the price of one share and to ask another shareholder (the obligated) to transfer the shares at that price. An entitled shareholder is that shareholder, who is the first one to deliver his / her price offer for one share to another shareholder. If the obligated shareholder does not accept the proposal of the entitled one, in accordance with the terms of the shareholder's agreement, he will have to repurchase the shares of the entitled shareholder under the same conditions. The right to request the acquisition of shares, as opposed to the right to join a transfer of shares and the right to request a transfer of shares, can only be negotiated as an unregistered right. For this reason, there are increased demands on the parties in negotiating the content of the shareholder contract, which must adjust the time limit and manner of accepting the proposal, but also the conditions under which the entitled person may request the acquisition of shares. It is the responsibility of the person entitled to determine the price of the shares he is interested in acquiring. The share price should be proportionate to motivate the obligated to consent to the exercise of this right, the low price of the shares with the right to request the acquisition of shares would incite the obligated to disagree with the exercise of this right and to acquire the shares of the entitled one under the conditions proposed by the entitled persons.

From the point of view of the organizational structure, a simple joint - stock company is created by the same bodies as the classic joint stock company. Mandatory authorities are the General Meeting and the Board of Directors, the Supervisory Board may set up on its own decision and with a more detailed adjustment of its competencies in the articles of association.

The legal regulation of the scope of the general meeting of a simple joint-stock company, as a supreme body of the company, in which the shareholders exercise their right to participate in the management and control of the company, is not complex; therefore, the provisions of the Commercial Code governing the general meeting of a classical joint stock company regulates the conveding, course and decision-making.

Compared to a joint stock company, the Commercial Code permits and explicitly regulates that the shareholders of j.s.a. take decisions outside the general meeting (per rollam), on the basis of a proposal sent to all shareholders by the Board of Directors, whereby the law sets out the elements of the draft decision. The statutory body of the company is the Board of Directors, which manages the company's activities and acts on its behalf. The Board of Directors' legislation is incomplete and it is, therefore, appropriate to apply the provision on the Board of Directors of the joint stock company. Compared to a joint stock company, for which the law provides for a maximum five-year term of participation of the members in the Board of Directors, a simple joint-stock company by the respective modification in its articles of association may establish an unlimited term of participation of the members in the Board of Directors. If a company does not establish a supervisory board, the law strengthens the rights of shareholders to obtain information and explanations about the company matters directly from the Board of Directors.

Apart from the grounds, on which the company may be wound up (§ 68), the Commercial Code allows for special reasons for the winding up of a simple joint - stock company in the agreement of associaton, deed of association or in the articles of association. There is an exemption from the general principle (§ 69 paragraph 2), according to which, in the event of a company being wound up without liquidation, that is merging, amalgamation or splitting up, the acquiring company and the successor company must have the same legal form. The exemption for j.s.a. is stipulated by the Commercial Code (§220c) and it states that it is permissible to merge a simple joint-stock company and a joint stock company, in which a simple joint-stock company is wound up and its capital is transferred to a joint stock company. The Commercial Code further restricted the change of the legal

form of a simple joint – stock company, which can only be changed to a joint stock company. Other commercial companies or cooperatives can not change their legal form into a simple joint – stock company.

IV. Conclusions

The intent of a new form of trading company, as stated in the explanatory report, is to secure the legal form of a legal entity, which would be a comprehensive solution for risky capital investment, in particular startup investments. A flexible solution for the entry, existence and exit of an investor to and from the company, provides a simple way to invest in innovative but at the same time risky business. To what extent the new form of a commercial company will meet the expectations of investors, will only be proved after its practical implementation and after the expression of the investors' interest in engaging in such form of company.

The legal regulation of a simple joint – stock company allows issueing of shares with special rights and resolves the position of investors through shareholders' agreements. On the basis of these legal instruments, simple and quick entry and, where appropriate, the exit of investors into and from innovative business can be considered as an advantage of this legal form of company. The disadvantage is the very low value of the company's registered capital and a very complex, formalized legal process of establishment of the company, including the registration of issueing the shares and the public registration of shareholders. We believe that there are also other suitable forms of commercial companies for the start up businesses, e.g. a limited liability company, which is easier to establish and the mutual rights and obligations between partners, such as transfer of participation in a company, can be adjusted by an agreement between the partners under the Section 66c of the Commercial Code.

References

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