

## WEEK II – MAY 5, 2008

### Corporate Codes Compared

In comparing the Delaware Corporate Code with the Czech Commercial Code, ask yourselves the following questions:

Must directors be elected on an annual basis?

Who has the power to remove directors? Is it the board of directors or the shareholders?

Can directors be removed without cause as well as with cause?

Who appoints the officers?

What role do the officers play?

Are the key officers also executive directors?

Do shareholders have an absolute right to vote for or against: a merger, a dissolution, a material amendment to the governing documents? for directors?

Does the Delaware or Czech Code stipulate who has the power to nominate directors for election?

Under the Codes, who has the power to manage the affairs of the corporation?

Is it the directors?

Is it executive directors only?

Is it the officers?

Must shareholder meetings be held within the state of incorporation?

Do shareholders have a right to vote by proxy?

Can shareholders vote electronically?

Do shareholders have a right to put an item on the meeting agenda?

Must the corporation set a record date to vote at meetings? Who sets the record date?

Are there limits on how soon after the record date or how late after the record date the meeting can be held?

Is there a requirement that the corporation give notice to shareholders of the record date and meeting date?

Is there a requirement that a minimum number of days notice be given?

Is there a requirement that shareholders receive information about the corporation or the shareholder proposals in written form or in any form prior to voting?

Does every share of a class have the same voting power? Or, can you provide that, for example, holders of more than 10% of the shares get only 1/10 of a vote for shares in excess of 10%?

Is there a fall back provision that provides that each share has one vote?



## **Practical Questions**

### **Delaware**

How would a small shareholder in a Delaware corporation who lives 3,000 miles away from the company's offices be able to vote at shareholder meetings?

Could she execute a proxy?

What information would she be entitled to have in order to vote if she cannot afford to travel to the meeting and to try to ask questions there?

What right would the small shareholder have to nominate persons to serve as directors? How would she do that?

If she thought a director should be removed for cause, how would she go about getting that proposal put to all other shareholders?

How would she know the names and addresses of other shareholders?

If she could get their names and addresses how useful would this be if many shares are held of record by financial intermediaries such as brokers?

If she thought that the president of the corporation was responsible for its bad performance, could she vote to remove him?

If she thought that the president's compensation was exorbitant, could she effectively register her discontent? How?

Would she just have to vote with her feet and sell her shares?

## **Czech Republic**

Same questions for a Czech corporation except that the small shareholder now lives 300 kilometers from the shareholder meeting place.



If U.S. public corporations are characterized as entities held by thousands of shareholders dispersed around the country and world, thereby giving exceptional control to a management team that may have no shareholding stake in the entity, is the public company dominated by a majority shareholder or shareholders the Czech model?

If so, is the concern that the enterprise is dominated by the majority shareholder (and not by management)? How is that reflected in the Czech Code?

What role does a perception that the welfare of the employees is of material concern in addition to the welfare of the shareholders?

Does Czech/EU law recognize a need to take the employees into account when acting to sell the company to a buyer?

Is that a factor at all in the U.S.?