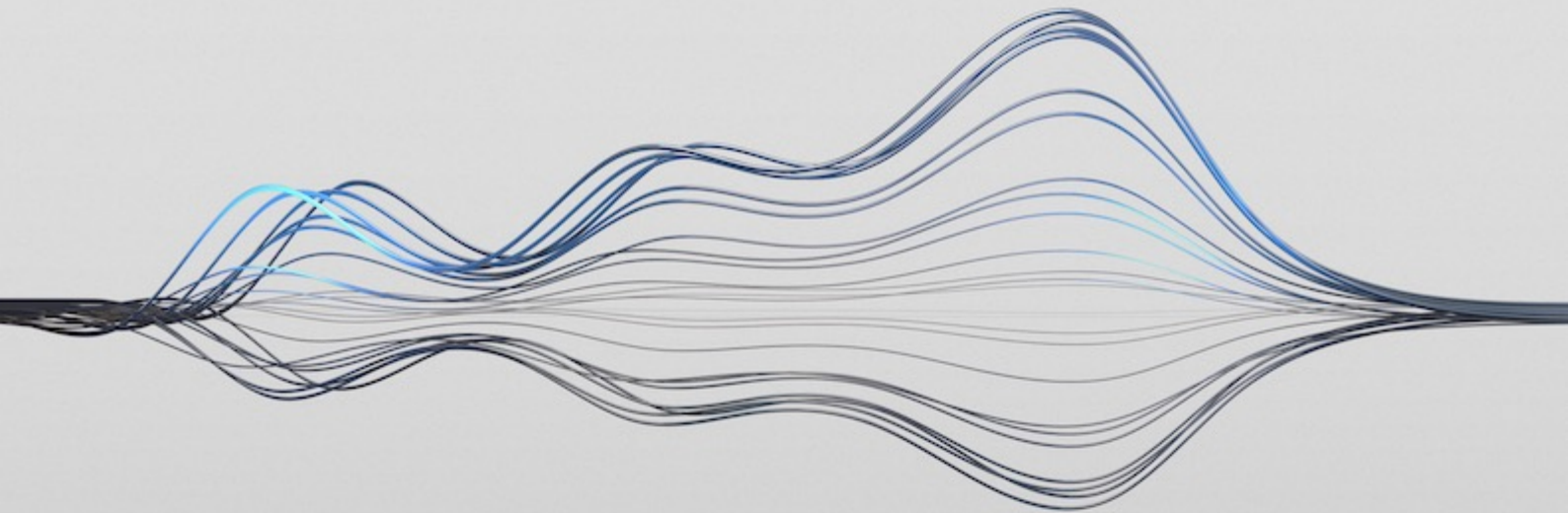
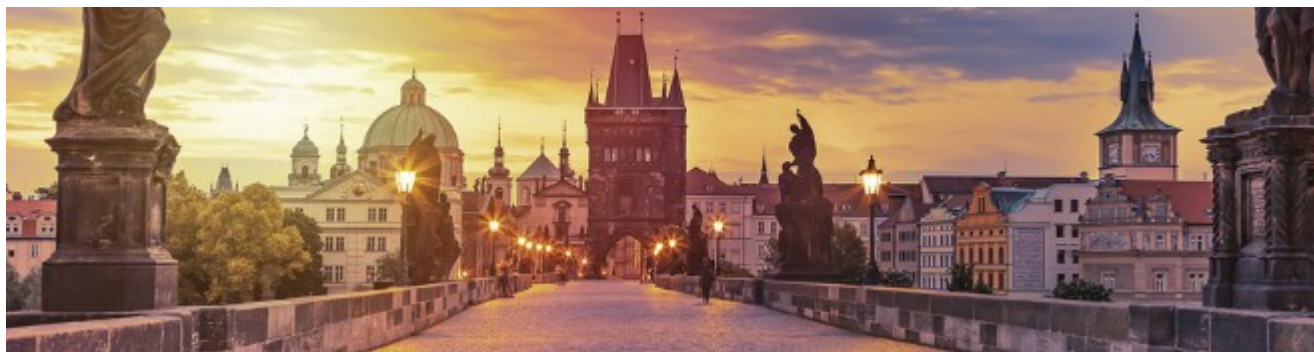


CZECH REPUBLIC

Global Guide to Directors' Duties





Czech Republic

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Corporate entities

What type of company is typically used in group structures?

Similar to most jurisdictions, the Czech form of a private limited company, "*společnost s ručením omezeným*" in Czech (s.r.o.) is the recommended type of corporate entity in group structures.

This guide therefore focuses on the management of a Czech private limited company.

Types of director

What is a "director"?

There is no specific definition of the term "director" in Czech company law. Basically, the law defines a director by setting out the criteria for how directors can be appointed and what their duties are. It can therefore generally be said that a director describes someone who is a "statutory body" of a company, manages the affairs of a company on behalf of its shareholders as a director and is registered as such in the Commercial Register. Managing affairs of the company includes both representing the company externally to third parties and business management within the company.

What are the different types of director?

There is only one type of director in an s.r.o. under Czech law. However, the managing directors may be elected either as an individual or collective statutory body. If the directors are elected as a collective body, they decide on the affairs of the company in a quorum and are only able to deliberate in the presence of a majority of the members and to decide by a majority of the votes of the members present. Individually appointed directors may represent the company each on their own.

However, for the sake of completeness, please note, that a fairly similar position to a director may be assumed by a proxy, who may be authorised by an s.r.o. to carry out juridical acts associated with the operation of a business enterprise or its branch, including those which otherwise require a special power of attorney. A proxy's scope of power is however limited compared to a director.

Eligibility

Who can be a director?

A director must either be a natural person with full legal capacity or a legal entity (such as a company). If a legal entity is appointed, it must authorise a natural person to represent it in the body (i.e. be the director); otherwise, the legal entity is represented by a member of its governing body. Any such authorised natural person must fulfil all the eligibility requirements applying to a natural person who wishes to become a director.

In the terms of personal capacity, the person to be appointed as a managing director (i) must be fully competent; (ii) must not be prohibited from holding office by a public authority; (iii) must not have a record of criminal convictions for selected economic offences; (iv) must not have been declared bankrupt. A relative novelty (2023) is the keeping of a register of excluded persons (i.e. persons who cannot be appointed as directors) maintained by the Ministry of Justice.

Minimum / maximum number of directors

An s.r.o. must have at least one director and no upper limit is set by Czech law. The company's articles of association may, however, specify a greater minimum number and/or specify a maximum.

Appointment and removal

How are directors appointed?

The election of the managing director is within the competence of the general meeting or the sole shareholder, only limited by the personal capacity requirements as described above. It is advisable that the decision to appoint the managing director be accompanied by the approval of their performance contract, including remuneration - the approval of the performance contract is (in addition to its actual conclusion by the relevant parties) a requirement for its effectiveness, without which the executive is not entitled to remuneration. The directors are subsequently registered as such in the Commercial Register - however, their authority to perform their duties is already established at the moment of their appointment. There are other ways of appointment to the office (e.g. co-option or appointment by the court), but these are used only in a very limited number of cases.

How are directors removed?

The termination of the office of the director occurs for several reasons: (1) expiry of the term for which the executive was appointed; (2) dismissal of the executive by the General Meeting; (3) resignation of the executive; or (4) if the executive ceases to meet the statutory conditions for the performance of the function.

1. If the term of office of the managing directors is limited by the articles of association (as is recommended), the managing directors must either be re-elected at the end of the term or their office is terminated.
2. As of the dismissal, the General Meeting may decide on such for any reason – there are no legal restrictions or reasons – and the office is terminated on the day of the relevant decision of the General Meeting, unless a later date is specified in the decision.
3. If a director does not want to continue in the performance of their office for any reason, they may resign from their position by making a notification to the General Meeting. Upon resigning, the office shall end on the date on which the resignation was or should have been considered by the General Meeting. If the resignation was announced at the General Meeting, the office shall terminate two months after such announcement, unless the General Meeting approved different time of termination.
4. If a director ceases to fulfil any of the statutory conditions for the performance of the function, the office ceases ex lege on the date on which the impediment occurred.

Board / management structure

Typical management structure

An s.r.o. is managed mainly by directors, whose duties are determined by the General Meeting. The powers in relation to the company are divided between the statutory body (directors) and the General Meeting in such a way that the directors ensure "business management" (*obchodní vedení* in Czech), which includes day-to-day business activities. The General Meeting on the other hand is responsible for strategic (conceptual) management, which includes extraordinary decisions that go beyond the normal organisation. The law prohibits the General Meeting from instructing or obliging directors concerning business management.

A supervisory board may be established if required by the articles of association, but it is not required by law. This however does not apply to a joint stock company (*akciová společnost* in Czech), where a supervisory board (or an administrative board, depending on the form of corporate governance) is required.

How are decisions made by directors?

Generally, the law does not specify a decision-making process in an s.r.o. and as such this is therefore determined by the articles of association. However, the law requires that every director must fulfil their duties with managerial care, i.e. with the necessary loyalty as well as with the necessary knowledge and care. The decision-making procedure (majority present, majority for approval, conduct of a meeting) is set out for the case where the executive directors form a collective body as described above. However, the appointment of managing directors as a collective body is a minority practice. If more than one managing director has been appointed, but each of them constitutes a separate statutory body, they shall decide by a majority of all. In this case, the law does not provide for any requirements for their meetings or decision-making.

Authority and powers

Every director has a so-called general executive power of attorney and may represent the company and make decisions individually in all matters, even if the company has a multi-member collective board of directors, unless the articles of association specify a different way of acting on behalf of the company (e.g. that two executives must act together). Where a company has multiple directors which do not constitute a collective body, decisions on the management of the company's business require the consent of the majority of them, unless stipulated otherwise in the memorandum of association. The rules for representing the company set out in the articles of association and stated in the Czech Commercial Register must be followed by all directors, as if a breach of such rules occurs, the director will be liable to the company, as directors are contractually bound by such rules.

Delegation

Directors are not entitled to delegate the full scope of their management powers to third parties via a power of attorney and may only delegate a specific task among themselves or to third parties via a power of attorney. A general power of attorney is also prohibited even among the directors.

For the sake of completeness, proxy in the form of "prokura" may be granted. The proxy is authorised by prokura to all legal actions that occur in the operation of the business or its branch but does not have the power to alienate immovable property and encumber it, unless expressly provided for. The proxy is also subject to the managerial care and, like the directors, is entered in the commercial register. The contract of representation is concluded between the proxy and the company, but the granting of a proxy must be approved by the General Meeting.

Duties and obligations of directors

What are the key general duties of directors?

A director is in charge of the company's day-to-day business. The company's business management must be distinguished from the company's representation. While the representation of the company is carried out in relation to third parties, business management is directed inside the company and involves the management of the company, including decisions on business plans. Business management does not include deciding on the long-term strategic plans of the company, as this decision must be taken by the General Meeting within strategic (conceptual) planning.

The general duties include:

- Obligations to the shareholders and the General Meeting, which include (i) the obligation to convene the General Meeting at least once a year; (ii) to inform the shareholders of material corporate governance issues; (iii) the obligation to maintain a list of shareholders.
- Obligations under accounting and tax regulations, which means (i) to ensure that the prescribed records and accounts are duly and properly kept; and (i) to ensure that taxes are paid and tax returns are filed properly.
- Obligation to file any changes to the articles of association to the Commercial Register, and to maintain up-to-date information in the Register of Beneficial Owners.

What are directors' other key obligations?

A whole range of other (follow up) obligations arise for managing directors in cases where the company is not doing well economically. Directors are obliged to file for insolvency without undue delay after learning or having reasonable cause to learn of the company's insolvency. If the executives do not file an insolvency petition in time, they are personally liable to the creditors for the damage or other harm caused by the breach of this obligation.

Directors must take all necessary measures in order to avert imminent insolvency. If they fail to meet this obligation, then in the event of a declaration of bankruptcy of the company, the court may decide, on the proposal of the insolvency administrator or creditor, that the director in question is personally liable for the fulfilment of the company's obligations.

Transactions with the company

Directors hold a **general representative authorisation**, i.e. they are entitled to represent the company in all matters, which also applies to any transactions that are being concluded with the company. If a company has more than one managing director, each of them may legally sign contracts, unless the articles of association stipulate that the managing directors must sign together. The General Meeting may determine other internal limitations on the representative's authority (e.g. limitations on the value of the contract), but these limitations do not apply to third parties, even if they are registered in the Commercial Register.

However, there are limitations based on the **conflict of interest** between the executive and the company. The director has an obligation to notify:

- any potential conflict of interest to the body of which he is a member (if applicable) and the General Meeting, whereby the General Meeting may suspend director's execution of the office for a specified period of time; and
- intended conclusion of a contract between the company and the director or a person related to him, if such a contract is to be concluded outside the ordinary course of business. The General Meeting may prohibit the conclusion of such a contract.

Liabilities of directors

Breach of general duties

Any director who has violated the duty of due managerial care must return to the business corporation any benefit obtained in connection with such behaviour. Where such return of the benefit is impossible, the obliged person shall pay an equivalent amount to the business corporation in cash.

Every shareholder is entitled to claim, on behalf of the company, compensation or damage against a director or the fulfilment of their obligations, and is entitled to represent the company in the following proceedings. The same rights apply to the subsequent enforcement of the ruling on the matter.

Liabilities on insolvency

See [What are directors' other key obligations?](#)

Other key risks

Although the company will be liable for any breach, a director is also personally liable for ensuring the company complies with all of the following requirements:

- Ensuring that there is no violation of contractual obligations. Such violation constitutes an objective liability, i.e. no negligent or intentional conduct is required. All obligations resulting from the Business Corporations Act have to be met.
- Ensuring that the company pays its taxes and advances in time and submits the respective tax declarations.
- Ensuring that the company makes payments in time, especially those regarding the company's employees' social security insurance, health insurance and contribution to the State Employment Policy.
- A director might be found personally liable for crimes defined by the Penal Code, especially economic crimes committed by them during the performance of their duties.

- Ensuring that all administrative law requirements are met fully and in a timely manner, especially those concerning business licences or other titles for executing business and environmental law requirements etc.
- Ensuring that the requirements of the Labour Code and any secondary legislation regarding employees' conditions are met.
- Ensuring that the company meets all the liability requirements specified in the Civil Code as "special liability" cases.

Protection against liability

How can directors be protected from liability?

Liability for damage to the company caused by the director violating managerial care is unlimited. It cannot be limited by the articles of association, management agreement or a contractual arrangement between the company and the director.

In practice, waivers of the company's claims against a member of the statutory body (so-called waiver letter used mainly in the termination of office) are widely used, but given the above inadmissibility of limitation of liability there is a risk of such statements being considered void. These statements may, however, be morally persuasive in preventing the company from enforcing claims against the statutory representative in the future.

Directors' and officers' (D&O) insurance is also common in the Czech Republic. It typically provides both cover for individual directors against claims made against them in their capacity as director, including defence costs (which applies when indemnification by the company is not available), and company reimbursement when it has indemnified its directors (subject to an excess/retention).

What practical steps can directors take to avoid liability?

Directors should:

- Become and stay informed about the affairs of the company, particularly its financial position. Directors should have access to up to date financial information, prepare thoroughly for and regularly attend any meetings of statutory bodies and familiarise themselves with key legislation affecting the business.
- Make full disclosures to the shareholders (General Meeting) or other bodies, if applicable, if they have outside positions or interests which may give rise to a conflict of interest and/or if they have a personal interest in any proposed or existing transaction or arrangement with the company.
- Keep records and take advice – directors should ensure that full written records of meetings of the statutory body and any decision processes are made reflecting the reasoning behind key decisions. This should include any alternative courses of action considered. Minutes should also record any disagreement amongst directors and the reasons for that. In addition, directors should ensure that returns and accounts are filed promptly and take professional advice for decisions based on areas outside their personal expertise, for example from legal professionals and accountants.
- Be aware of, and comply with, any group-wide governance policies. These may cover areas such as health and safety, ethics, bribery /anti-corruption, and human rights. Compliance with them is designed to help directors (and employees) fulfil their duties and obligations and minimise the risk of liability.
- Also in a group situation, keep in mind that directors must act in the best interest of their group company. Whilst group interests and that company's interests are usually aligned, this may not always be the case (e.g. when their group company's solvency is adversely impacted). It is important to keep communication and reporting lines as open and clear as possible between parent and subsidiary companies when issues may arise and seek appropriate advice.

Key contacts



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