

PREFACE

I found the inspiration for this book in problems that the Montenegrin society faced during the process of corporate ownership transformation and the introduction of the shareholding concept, especially after the mass voucher privatisation which led to the dispersion of shareholders, as well as problems it is facing in the current wave of privatisations leading to ownership concentration. These processes have raised the issue of protection of shareholders, as one of the most sensitive segments in the shareholding concept in general, which is the key subject of analysis in the book viewed through the description and analysis of the legislative framework in the domestic and comparative laws, as well as through the illustration of practical examples. As a matter of fact, I try to revive one of the perennial topics by putting it into the local environment and also to identify the problems immanent in shareholding by comparing the corresponding regulatory frameworks in order to evaluate certain forms and mechanisms of minority shareholder protection covered in our law.

The book gives a history of shareholding and points to the necessity of a parallel development of an adequate legal framework and solutions regulating the rights and obligations arising from specific requirement of an undertaking and activities of shareholding companies. A special focus is put on the relationship between majority and minority shareholders by giving practical examples of countries in transition such as Russia, the Czech Republic and the former Soviet republics in order to illustrate the observation that the treatment of minority shareholders as a “dead tissue” of a company, which is not only characteristic for countries in transition but even for some economies with longstanding shareholding traditions, makes the creation of a clear and quality legislative framework a sine qua non in the prevention of potential misuses and jeopardizing of their position. The book further on gives an illustrative overview of minority shareholder protection via certain mechanisms and institutes of their protection, as regulated in the comparative Anglo-American and Continental laws, pointing to some differences in the treatment of numerous issues and solutions of importance for the status of minority shareholders.

The central part of the book is dedicated to the overview and analysis of protection of shareholders in Montenegro. Here I have tried to illustrate specific examples which actualize the issue of minority shareholders protection in Montenegro and to show solutions indicated in the Montenegrin legislation created in the interest of minority shareholders and aiming at the protection of their rights, endeavouring to present the instruments and mechanisms of minority shareholder protection in various aspects of prejudicing their rights and status in a shareholding undertaking, especially in the process of fundamental decision-making by a shareholders assembly in respect of the legal and property status of the undertaking and its shareholders, their right to control the undertaking's business activities and access the pertinent information. Special attention is dedicated to legislative solutions prescribing judicial protection of minority shareholders to be ordered by competent courts in case of disputes arising from conflicts between majority and minority shareholders and discrimination or defrauding minority shareholders by majority shareholders. I also present an overview of cases of a shareholding restructuring through the process of merger, acquisition, split-up, increase and decrease of capital and company takeover by putting into perspective these fundamental changes through the prism of legislative framework and solutions providing the protection of a minority shareholder's status in these processes. In the concluding remarks, I try to give a critical overview of the national legislative framework and recent legislation novelties in contrast to the actual practice of minority shareholder protection in Montenegro, and also to make some suggestions for the improvement of the underlying normative framework and practice by accentuating the possibility of adopting the corresponding provisions on the protection mechanisms from other legal systems and applying good practices that are nowadays raised to the level of applicable standards in this field.

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The Author