

# Legal Alert

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## The decision on dividend payout within 6 months

A recent decision of the Supreme Court of the Czech Republic highlights an important turning point in present practice. The court decided that the decision about the distribution of profits in a joint stock company cannot be based on financial statements containing data that are older than 6 months. Moreover, it is not the moment when the financial statements were finalised but the date as of which the financial statement was compiled that is decisive.

The Supreme Court is of the opinion that the six month period from the end of the financial year for convening a general meeting as stated in the Commercial Code is the period that not only stipulates the deadline for the general meeting to approve the financial statements, but also the ultimate period in which the financial statements can be considered a real portrait of the book keeping of a joint stock company, based on which the shareholders can decide on the division and distribution of profits. This is also in conformity with the (theory of) capital maintenance requirement, which is supposed to provide certain guarantee for the company's creditors. The fulfilment of the statutory conditions for the division and distribution of profits has to be supported by financial statements in which the data cannot be older than 6 months.

Practically speaking, in a case where the financial year of the company is equal to the calendar year, then on the basis of the regular financial statement as of 31 December 2009 a decision about the distribution of profits and the resulting dividend payout must be made by 30 June 2010 at the latest. If the decision about the distribution of profits is made after 30 June 2010, the board of directors must not pay out the dividend even if approved by the general meeting. If the company paid the dividend out, the members of the board of directors would be responsible for the obligation to give the unlawfully paid dividend back to the company.

Based on this Supreme Court decision, its conclusions could be possibly applied to the payout of cumulated profits which were not distributed in previous years. In such case a financial statement not older than six months would be necessary as a basis for profits distribution. Some are of the opinion that this decision is also applicable to the payout of profit of a private limited liability company. We will see how the courts settle this issue.

*Decision of the Supreme Court of the Czech Republic file no. 29 Cdo 4284/2007, dated 30 September 2009*

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