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THE ISSUES 2014

Upcoming legal topics in the Czech Republic

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Welcome to THE ISSUES 2014

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I am delighted to present the third edition of *The Issues*, an annual publication brought to you by our team at CMS Prague. As is tradition, the articles will look at general legislative developments as well as new opportunities and legal issues that you will be facing in the year ahead. We also look at sector specific topics from across industries such as **consumer products, energy, financial services, hotels & leisure, lifesciences, real estate and technology, media & telecoms.**

Over the past year, we have seen companies getting ready for the new Czech legislation which came into force on 1 January 2014. The New Civil Code, the Act on Corporations and the International Private Law represent the most substantial change in Czech law in over two decades and bring important new rules for your business. Whilst increasing business freedom, the new regulations also increase personal liability of managers and decision makers and generally strengthen the position of consumers and weaker parties in contractual relationships. In addition, there are important developments in insolvency and employment law, public registers and EU market regulation that affect companies in the Czech Republic.

Unsurprisingly, many of the articles in *The Issues* look at these changes, which are likely to keep law firms and in-house practitioners busy for the year to come.

My team and I wish you a successful 2014!

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General Legal Trends and Developments

Cautious optimism for the Czech M&A market

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Since the summer, M&A practitioners across Europe have been talking about their '*cautiously optimistic*' forecast for the markets. The first two quarters of 2013 were symptomatic of the previous financial year - with no shortage of deals in the pipeline, but sellers and buyers struggling to reach agreement either on price or the assumption of risks arising from conservative buy side due diligence. However, the summer months delivered a new sense of momentum to the market and a healthy set of term sheets marked with a year end close date. As a result, many are now asking '*is the worst behind us*'?

The Czech M&A market is no exception. Together with Poland, the M&A deal flow in the Czech Republic, both in value and volume, is healthier than any other jurisdiction in Central and Eastern Europe. This is undoubtedly buoyed by close links with the German market as well as a strong profile; the Czech market is generally seen to deliver a good return on investment in a well regulated and relatively steady environment.

Domestic investment

In 2013, a couple of high value deals - each in excess of Euro 1 billion - snatched the Czech headlines; namely, the sale by Telefonica of O2 Czech Republic to Petr Kellner's PPF and the sale of the Czech gas network, Net4Gas, by RWE to a consortium of Allianz and Borealis. Investment groups such as Penta, PPF, EPH, the Agrofert group and KKCG continue to have a strong influence on the domestic M&A market and are also increasingly seen to participate in auction processes for foreign assets in other CEE jurisdictions, Austria and Germany. Alongside these, we have seen a steady flow of domestic deals in the mid-market, and particularly the energy and TMT sectors.

Foreign investment

Whilst a number of foreign investors have looked to sell their Czech assets – for example Spanish FCC, Swiss Alpiq and German EON - we have also seen new foreign investment in the utilities & infrastructure (Borealis/Allianz, Mitsui) and consumer products (Amazon) sectors.

CEE has also seen an increased level of interest from BRIC investors such as China and Russia. In the Czech Republic this has yet to transpire into many concrete investments (with the exception of Sberbank's acquisition of Volksbank). However, the level of interest from such investors is not only set to continue but increase throughout 2014 and we can therefore expect to see a new profile of foreign investor in the Czech market in the future.

Japan has been an active investor in CEE for many years now and continues to see Europe and CEE as an attractive investment prospect – for example, in July 2013, Mitsui acquired a 49% stake in the Czech water supplier SmVaK.

Market standards in M&A transactions

The recent CMS European M&A Outlook research and the CMS M&A Study also support this 'cautious optimism', with some of the most notable findings as follows:

— over time, the 'Czech market standard' levels of seller liability in M&A transactions have gradually reduced and normalised towards western European market standards. This mirrors the change in profile of the Czech market from an emerging to developed market

— foreign buyers still try to negotiate a 'material adverse change' clause and require disputes to be resolved in an arbitration forum outside the Czech Republic

— warranty and indemnity insurance has become a trusted and accessible tool for sellers and buyers alike and is regularly being used to bridge any gaps in warranty coverage in M&A deals

— due diligence processes remain protracted and buyers are insistent on a new level of granularity of the information to be disclosed. Sensitive information is more often being disclosed by way of a 'red data room' with limited access rights

— private equity continues to have a strong influence on the outcome of sales processes and the pricing mechanics of M&A transactions. We can expect to see increased interest from large US private equity houses in certain sectors, such as TMT and real estate, across CEE.

The first quarter of 2014 shall be more telling than ever; a reflection of how many term sheets materialised into a signed or closed deal and whether the caution around the recent optimism was in fact warranted.

The Commercial Register - important points to remember

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The re-codification of private law has led to a new act on public registers of legal entities and individuals (the 'Register Act') which includes a separate section on the Commercial Register. Although there has been a lot of focus surrounding the introduction of the New Civil Code and the Act on Corporations, it is important for companies to be aware of the Register Act as it introduces new rules for your business and includes stricter sanctions for non-compliance.

General developments

The Register Act contains general provisions common to all types of public registers and sets out rules specific to particular types of public records. It has extended the definition of 'public register' to include (in addition to the Commercial Register), the Register of Associations, the Register of Foundations, the Register of Institutions, the Register of Homeowner Associations and the Register of Charitable Organizations.

Notably, Register Courts now also register associations which were previously registered by the Ministry of the Interior. In addition, the Register Courts also include the Register of Institutions - an institution has been introduced by the New Civil Code as a new form of legal entity.

What has been newly introduced by the Register Act?

— One of the Act's significant developments is the option of having a notary process your registration. The notary concluding your registration record will also directly process the entry in a public register. This allows for a more time effective procedure given the fact that applicants are otherwise required to use a template form for such registration.

— Entries for associations are now processed by the Register Courts and no longer by the Ministry of the Interior.

— If statutory bodies fail to meet their obligations in relation to public registers, the Register Act will consider it a breach of due managerial care. If obligations are not met repeatedly or if the situation proves to have severe consequences for third parties and if there is a particular legal interest, the Register Court will be entitled to initiate proceedings to terminate the registered entity with liquidation, subject to a prior notice and a reasonable period for remedy of deficiencies.

— The Register Court is now authorised to provide information on criminal prosecution and any legal proceedings against a legal entity pursuant to the Act on Criminal Liability. The information can only be provided to an individual with legal interest.

— Under the Act, an electronic signature is not required to make a registration application filed through a data box.

— The Act further regulates the relevant documentation that needs to be filed in the collection of deeds of a public register. For example, agreements on the transfer of an ownership interest in limited liability companies no longer need to be filed in the collection of deeds. This is reassuring for those companies who find disclosing sensitive information, such as the purchase price of a transaction, uncomfortable.

— The Act provides an easier process of registration entry by the court. It recognises more occasions when an entry can be processed by the court directly, eliminating the time spent on the delivery of procedures and waivers of the right to appeal.

Stricter rules when not complying

The Act introduces stricter rules and sanctions when not complying with or breaching the law. Such rules are as follows:

— A disciplinary sanction of up to CZK 100.000 can be imposed if the company does not comply with a request by a Register Court to submit information or documentation relevant for proceedings initiated without an application or to submit documents for filing in the collection of deeds.

— A sanction of up to CZK 100.000 can be imposed if an entity registered with a public register fails to regularly update mandatory information in its corporate documents or on its website. It is important to note that all joint-stock companies are under the obligation to have a company website.

— Entities registered with public registers are under the obligation to update its records by 1 July 2014 to comply with the new Act. Associations are under the obligation to update its records by 1 January 2017 at the latest. If these deadlines are not met, the record of the entity, association or individual can be removed from the register.

New mandatory entries in public registers

— As it is now generally acceptable for a legal entity to become a member of a statutory body of a company (with some exceptions), it is now necessary to include in the registration entry, the identity of an individual authorised to act on its behalf.

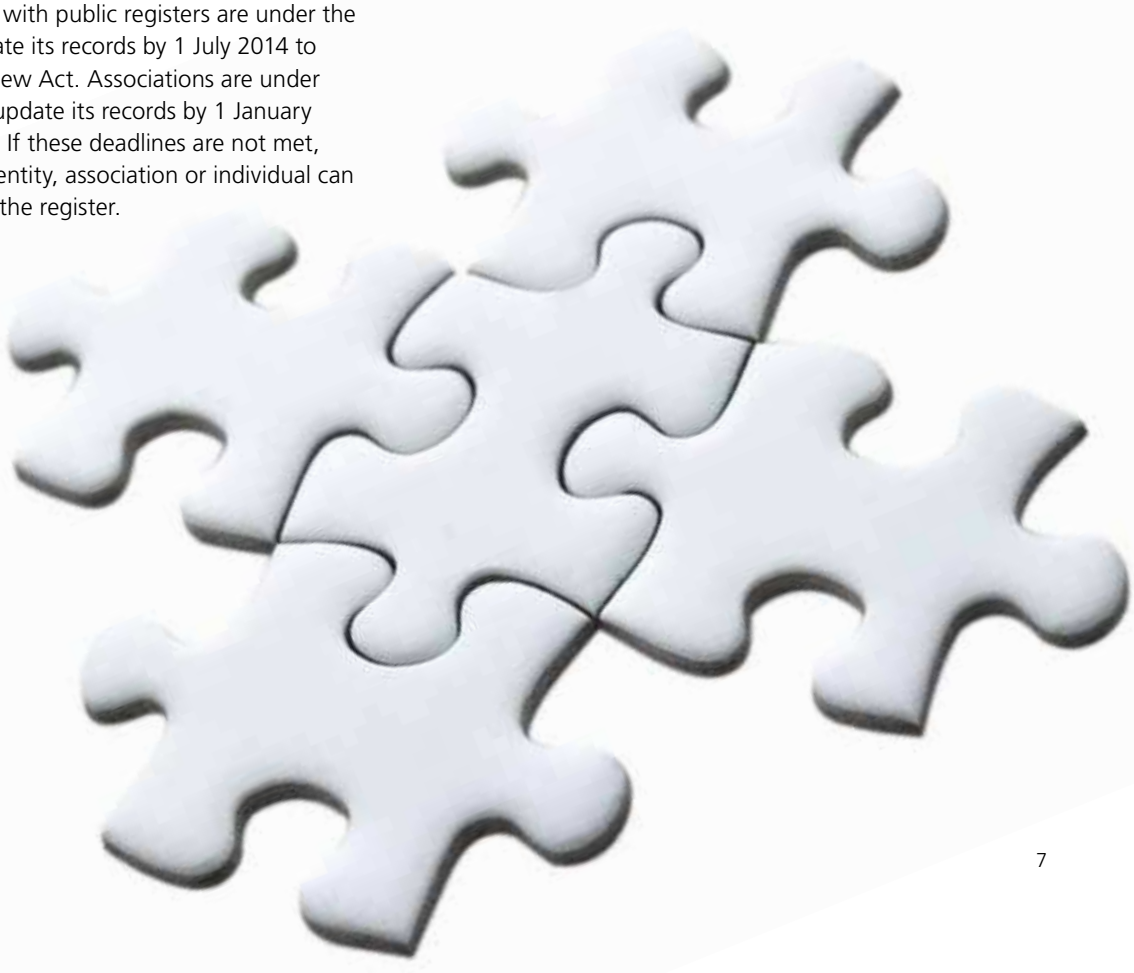
— There is an obligation for proxies to specify which branch or office of a company their powers of attorney relate to, as well as whether they are authorised to dispose of or to encumber immovable property of the company.

— The record must identify whether the company has decided to subordinate to the Act on Business Corporations.

— The company must also update the company records whenever a board member or proxy leaves the firm and hence no longer represents the company.

— A limited liability company is now able to issue different types of shares. For the purposes of public registers, the company must record the type of the shareholder's share along with the rights and duties related to their share.

— If a joint-stock company issues more types of shares, the company must record the rights and duties associated with these shares.



Changes to insolvency law - strengthening of creditors' rights

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On 1 January 2014, an amendment (the 'Amendment') to Act No. 182/2006 Coll., insolvency act (the 'Act') came into force. The Amendment was introduced to remedy deficiencies in the application of the Act since its enactment in 2008 and to reflect changes to Czech law introduced by, amongst other, the New Civil Code and the Act on Business Corporations. The primary aims of the Amendment are to improve the quality and standard of Czech insolvency law, to shorten the duration and increase the transparency of insolvency proceedings and to strengthen the creditors' rights.

Transparent appointment of insolvency trustees

The transparency and predictability of insolvency law are amongst the key features for entrepreneurs when deciding whether to invest abroad.

Prior to the Amendment, the Act did not contain clear guidelines for Czech courts on how to select an insolvency trustee in proceedings. As a result, the Czech courts each adopted their own practice. This could have raised concerns as to the fair appointment of insolvency trustees.

As of 1 January 2014 a list of insolvency trustees is maintained by the district and regional courts and insolvency trustees are chosen on a rotational basis from this list. It is hoped that this will ensure that insolvency trustees are equally spread amongst insolvency cases and that the appointment process of selecting an insolvency trustee will become more transparent.

The priority of insolvency law over the recovery of assets in enforcement proceedings

Both the rules on insolvency proceedings and the recovery of assets in enforcement proceedings aim to satisfy creditors' interests. One difference however is that insolvency proceedings seek to satisfy creditors' claims collectively and respect the *in pari passu* principle (i.e. the proportionate satisfaction of claims) whilst the recovery of assets in enforcement proceedings seeks to satisfy individual claims.

Prior to the Amendment, it was unclear which of the above proceedings had priority. Whilst the Act acknowledged that a court could order the recovery of assets in enforcement proceedings, such recovery was not permitted whilst insolvency proceedings were ongoing involving the same assets.

The Amendment clarifies this scenario and attempts to provide better protection of insolvency creditors by confirming that, if insolvency proceedings are ongoing and the court declares a company bankrupt, no enforcement can be ordered in respect of the same assets. As a result, insolvency proceedings, rather than enforcement proceedings, rank highest.

Creditors' participation in proceedings

Creditors have a right to participate in insolvency proceedings by means of creditors' bodies. However, market analysis has shown that, in insolvency proceedings where the creditors have little prospect of recovering their interest, the creditors have little desire to actively participate in the proceedings. This disinterest hinders the effective functioning of the proceedings.

The Amendment modifies the rules for appointing creditor committee members and expands the situations whereby the creditors' committee's powers can be executed by the insolvency court instead. This should allow the insolvency court to proceed in situations where creditors are passive or uninterested in participating in proceedings. The Amendment also confirms that the appointment of a committee is not required if the debtor's insolvency is resolved in a negligible bankruptcy or by a discharge of debt.

Reorganisation

Reorganisations aim to stabilise and recover a debtor's insolvent business in accordance with certain conditions. Although this may be a preferable solution in attempting to avoid the closure of a debtor's business, market analysis has shown that reorganisation is rarely used in insolvency cases.

The Amendment reduced the conditions debtors must comply with in order to request a company's reorganisation. In particular, these are as follows:

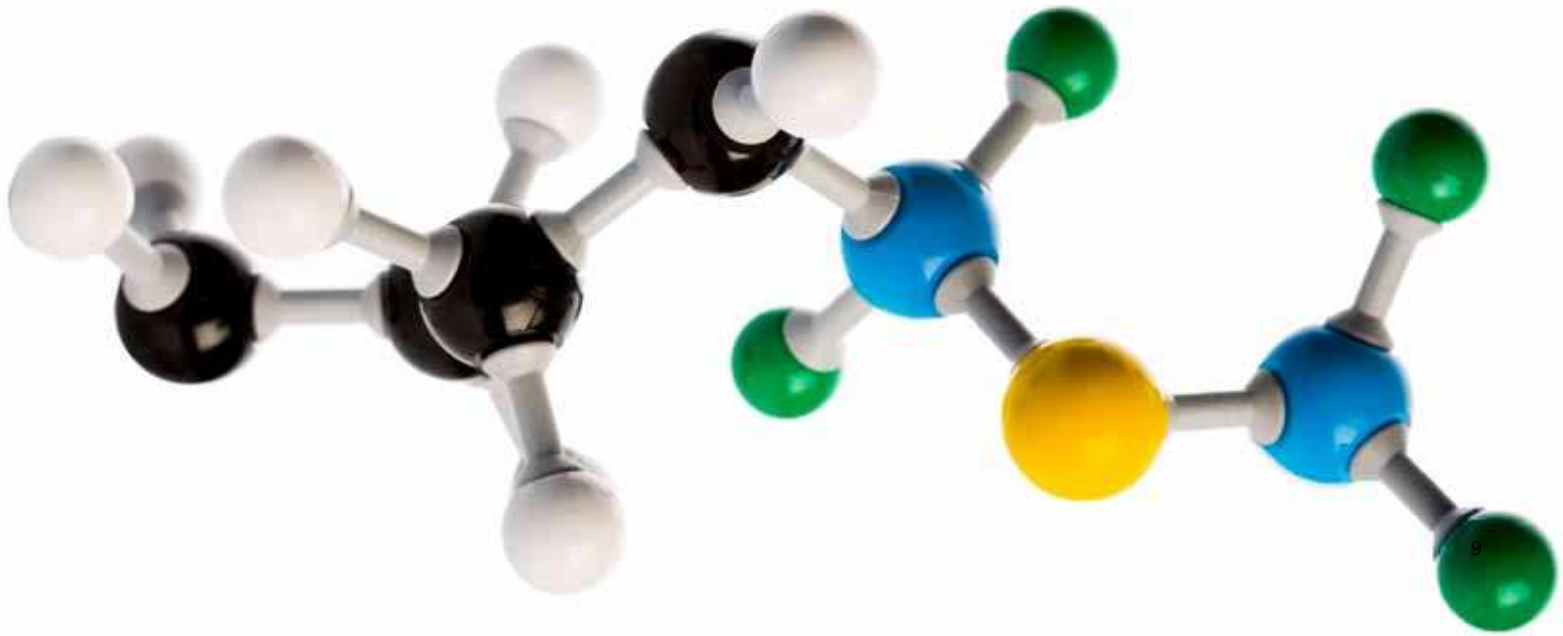
— an entrepreneur must have an annual net turnover of more than CZK 50.000.000; or

— an entrepreneur must have at least 50 employees; or

— the reorganisation plan has been adopted by at least a half of a company's secured creditors and half of the non-secured creditors.

Impact of the Act on Business Corporations

On 1 January 2014, the new Act on Business Corporations came into effect and provided insolvency courts with statutory powers to prohibit directors of a bankrupt company from acting as a member of the company's statutory body (or similar body) as well as at another corporation for a period of up to three years. This power also applies to all historic members of a company's statutory body if the member acted in a manner which is likely to have contributed to the company's insolvency. All such members may be suspended ex officio, i.e. without a formal petition being filed or suspended following the filing of a petition by the company itself, an insolvency trustee, a creditor or any other person with a material interest on the matter.



More flexibility for joint-stock companies

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1 January 2014 was a significant milestone in terms of changes to civil and corporate laws in the Czech Republic. The newly created Act on Business Corporations ('the Act') brings a number of changes to joint-stock companies, allowing for more transactional flexibility and protection for their businesses.

Joint-stock companies in 2014

The main characteristics of a joint stock company have not been affected and will remain the same in 2014. This means, amongst other, that the shareholders are not held personally liable for any obligation of the company, the registered capital of a joint-stock company remains at CZK 2.000.000 and the general meeting of shareholders remains the main and the highest body of the company.

The above features of joint-stock companies will be applicable regardless of whether the company was established before or after 1 January 2014.

It is important to note that from 1 January 2014 onwards, an existing joint-stock company can decide whether it will fully subordinate to the Act on Business Corporations or not. If a joint-stock company chooses to opt-in to the new legislation, only the Act will apply to its business.

If a joint-stock company does not opt-in, such a company will be regulated by the Act as well as the Commercial Code (provided that its mandatory rules do not contradict the rules in the Act).

What are the three most significant changes relevant for joint-stock companies from 1 January 2014?

1. Bearer shares in certified form

Since 1 January 2014, bearer shares in certified forms (*in Czech: listinné akcie na majitele*) are no longer an option for joint-stock companies. Bearer shares have generally been referred to as 'anonymous shares' because shareholders were not required to register in the Commercial Register or with other authorities. In many cases this led to uncertainties in respect of the shareholder structure of joint-stock companies.

Pursuant to the new Act on Transparency of Joint-Stock Companies, which came into force on 1 January 2014, joint-stock companies with bearer shares in certified form should transform its shares to either (i) name-registered shares, (ii) immobilized shares or (iii) book-listed shares.

The easiest and most cost-effective way is to transform the bearer shares to **name-registered shares**. The board of directors of a joint-stock company should request its shareholders to return the existing shares under their ownership and to exchange these for new shares as part of the share transformation process to name-registered shares. New shares must remain in the shareholder's name and should be evidenced in the list of shareholders retained by the company.

Bearer shares in certified form must be transformed by 30 June 2014. If this deadline is not met, the rights of the shareholders (holders of bearer shares) will be suspended.

2. One-tier and two-tier structures of a joint-stock company

Joint-stock companies that have chosen to opt-in to the Act after 1 January 2014 will generally have more flexibility in the running of its business. An example is that a joint-stock company can decide upon its corporate structure; the company can choose either a one-tier or a two-tier structure.

The Commercial Code does not recognise a one-tier structure. Therefore a joint-stock company that has decided not to opt-in to the Act can only govern its company within a two-tier structure.

Prior to 1 January 2014, it was compulsory for a joint-stock company to appoint both a board of directors and a supervisory board. The new Act now allows the company to choose whether to appoint both boards (the two-tier structure) or, instead, an administrative committee and a statutory director (the one-tier structure). The statutory director can (and in practice often will) also be a member of the administrative committee. In both tier structures, a general meeting is always the highest corporate body.

In a one-tier structure, the administrative committee (*in Czech: správní rada*) is responsible for the main strategy of the company. The administrative committee may consist of a sole member. The administrative committee will appoint a statutory director (*in Czech: statutární ředitel*) who is responsible for managing the company. This means that one sole member of a joint-stock company is permitted to carry out the management of the company.

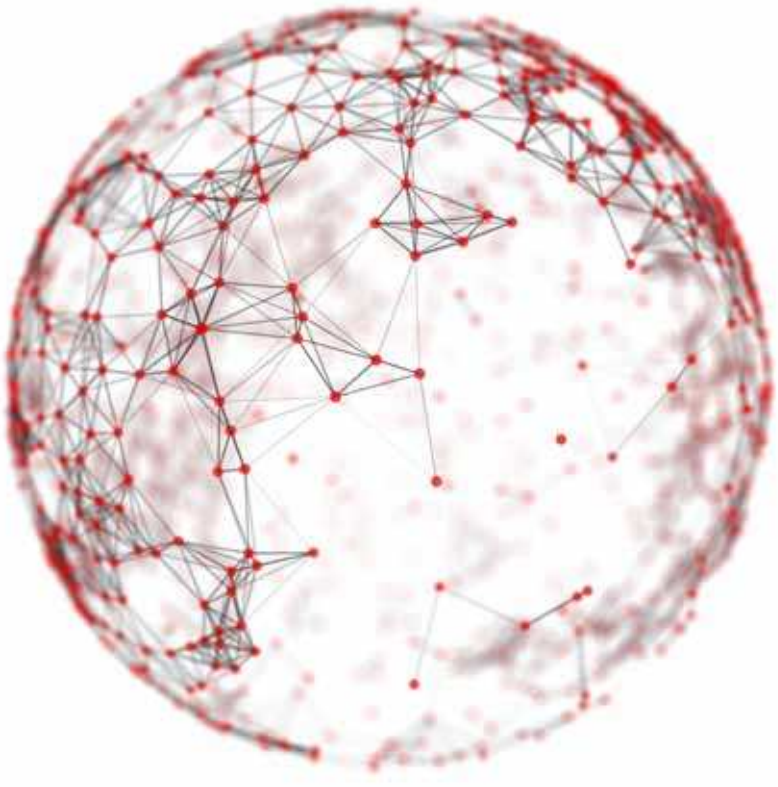
In a two-tier structure, at least two members must be appointed to manage the company's business; one as a member of the board of directors and one as a member of the supervisory board. These roles must not be combined.

3. More transactional flexibility

Under the existing Commercial Code, a joint-stock company acquiring or transferring assets from a related entity (founder, shareholder or another member of the same concern) must have these assets valued by a court appointed expert. If such a transaction is carried out within three years after the establishment of the company, an approval of the general meeting is also required.

The new Act has brought more transactional flexibility for joint-stock companies. In practice this means that if a joint-stock company acquires an asset from its founder or a shareholder within two years after it was established, the value of the acquired assets must be determined by an expert report and must also be approved by a general meeting. The expert does not need to be appointed by a court. Also, the valuation requirement shall not apply to situations where the company is selling its assets to its founders or a shareholder. However, it is not entirely clear at this stage whether the more flexible approach will also apply to joint-stock companies which have not opted-in to the Act.

Outlined above are only a few of the most important changes the Act provides for joint-stock companies. As a result of the increased business freedom, it is not surprising that the majority of companies tend to opt-in to the Act.



What's new in employment law?

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Because of the attention surrounding the introduction of the New Civil Code and the focus on what changes it will bring, there has been little attention on employment law and its recent developments. There have been some significant developments over the past year which will continue to be relevant in 2014. Below is a brief summary of the most interesting points.

February 2013 – Court rules on the set-off of employment claims

The Czech Supreme Court has ruled that an employer is able to unilaterally reduce an employee's salary by the amount of any debt the employee owes the employer. The employer is able to do so without having to enter into a salary deduction agreement with the employee.

It is important to note that the employee should always have the right to receive at least the amount which is protected against being deducted within court execution proceedings.

Prior to the Supreme Court's judgement, a grey area existed in relation to whether employers were able to 'set-off' their claims against an employee's claim to receive a salary, without the employee's consent. It was generally believed that this was not possible due to the specific nature of employee remuneration. The court has now produced a clearer judgement in this respect.

The New Civil Code which is effective as of 1 Jan 2014 introduces further amendments. Under the new legislation, an employer can only 'set-off' a claim against an employee up to the limit of one half of the employee's gross salary.

As a result of these changes, the rules surrounding 'set-off' should be much clearer, therefore easier to adhere to.

August 2013 – Flexible rules for fixed-term employment

Parliament has approved an amendment to the Czech Labour Code which provides greater flexibility for fixed term employees. Currently Czech law allows restrictive conditions in relation to concluding fixed term contracts, however, the amendment provides employers with the opportunity to deviate from the law provided that they have justified reasons to do so. As an example, an employer can renew an employee's employment agreement on more than two consecutive occasions if the employer requires the employee to work during the summer season only.

If the employer does decide to deviate from the law, the new rules that the employer wants to enforce must be outlined in the employer's internal policy. Furthermore, if some of the employees are represented by trade unions, the rules must also be incorporated in any agreements with trade unions.

Employers who will benefit the most from the greater flexibility the legislation brings are those who work in agriculture and construction industries. This is because, in these industries, there is a high demand for seasonal workers due to the nature of the work involved. However, it must be noted that such flexibility is envisaged to have a broad scope and promote greater flexibility in all industries.

September 2013 – Civil Code harmonization

A bill to amend the Labour Code so that it complies with the New Civil Code has been approved. The majority of the changes which are envisaged by the bill are technical in nature.

One of the changes it introduces is providing parents with the option to withdraw from the employment agreement of their child (as an employee minor) provided they have justified reasons and the court has granted its consent.

The bill also proposes a change to the rules surrounding the concept of invalidity of legal documents in employment law. The New Civil Code provides the principle that a legal document will be deemed invalid only if one of the parties has challenged its validity. On the other hand, in employment law, there will be a large number of cases where legal documents will be deemed invalid regardless of whether one of the parties decides to challenge.

October 2013 – Kurzarbeit

The Czech Ministry of Labour and Social Affairs has announced that there is a lack of interest in a partly state funded project called 'Education for Stability'. This project helps to support employers who are struggling to provide work for their employees temporarily. During quiet periods, where no work can be allocated to employees, the project provides employers with the resources to arrange training sessions or other educational sessions for employees. Due to the lack of companies who have signed up to this project, there is a strong likelihood of being granted the support should a company wish to apply.

January 2014 – Employment of executives?

In January 2014, the New Civil Code and the Act on Business Corporations came into force, and its implementation brings many changes to Czech civil and corporate law. An issue of interest which the legislation does not specifically address is whether members of a statutory body of a company (e.g. an executive director) are able to perform their duties under an employment agreement with the company.

For commercial reasons, this structure is very common in the Czech Republic, but now it is perhaps safer to conclude agreements under commercial law rather than employment law. This is because there is a risk that such employment agreements could be declared invalid and/or ineffective. To overcome this, companies should consider replacing any existing employment agreements with performance agreements which are governed by the Act of Business Corporations.

Consumer Products

European Commission harmonises regulation of cosmetics

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Implementation of the Cosmetics Regulation in the Czech Republic

On 11 July 2013, Regulation (EC) No. 1223/2009 on Cosmetic Products ('Cosmetics Regulation') became directly applicable in all EU member states including the Czech Republic. The Cosmetics Regulation introduces novelties such as a centralised notification system, the concept of 'responsible person' and the use of hourglass symbol to indicate the 'best before' date.

The Cosmetics Regulation replaced Directive 76/768/EEC on the approximation of the laws of Member States relating to cosmetic products ('**Cosmetics Directive**'). In contrast to the former Cosmetics Directive, the Cosmetics Regulation does not require transposition at a national level. However, the Cosmetics Regulation brought about an amendment to Act No. 258/2000 Coll., on Protection of Public Health (Amendment), which came into force on 1 August 2013. The Amendment cancelled many provisions of the Act on Protection of Public Health, which were deemed superfluous in light of the integrated and detailed regulatory framework provided by the Cosmetics Regulation at an EU level.

Cosmetic Products Notification Portal (CPNP)

The Cosmetics Regulation has centralised the notification and reporting systems. Before a cosmetic product may be placed on the EU market, it must be notified via the centralised European portal CPNP. This centralized notification portal replaced the Czech Register of Cosmetics Products as of 11 July 2013.

The new portal simplifies the previous situation in which products needed to be notified at national level for each relevant market. Under the new Regulation, when a product has been notified in the CPNP, there is no need for any further notification at national level within the European Union.

Responsible person

The Cosmetics Regulation also introduced into the sector a new concept of 'responsible persons'. As a result, cosmetic products may now only be placed on the EU market if a responsible person has been designated in accordance with the Cosmetics Regulation. A responsible person shall be one of the following:

- The manufacturer - in case of cosmetic products manufactured within the EU;
- The importer - in case of imported products; or
- The distributor - in case of products placed on the market under the distributor's own name or trademark, or in case of products modified by the distributor where compliance with the requirements of the Cosmetics Regulation is affected.

Where the manufacturer or importer is not established within the EU, they shall designate another person, established within the EU, as the responsible person (legal or natural). Such person must accept their designation in writing.

The role of the responsible person is to ensure products' compliance with the relevant obligations under the Cosmetics Regulation. Duties of the responsible person include:

— Preparation of a product safety report and notification via CPNP before a product is placed on the market;

— Keeping a product information file accessible for the authorities in electronic or other easily accessible form;

— Keeping records on the supply of products to distributors to ensure product traceability;

— Withdrawing or recalling a product from market in case of non-compliance; and

— Immediately notifying the competent national authorities of any serious undesirable effects of a product (in the Czech Republic the competent authorities are regional hygienic stations).

Labelling requirements

The Cosmetics Regulation also introduced new labelling requirements, which came into effect as of 1 August 2013. Labels of cosmetic products must now include the name and address of the responsible person, and country of origin in case of imported products.

Another change is that a new symbol of an hourglass may be now used to indicate the date of a product's minimum durability instead of the traditional declaration 'best before'. Use of this symbol is likely to facilitate cross border distribution of cosmetic products, as the 'best before' declaration required the translation of information into all relevant languages.

In the Czech Republic, the labelling requirements for cosmetic products are set out only in the Cosmetics Regulation. However, it is important to keep in mind the additional requirements imposed by the Act on Protection of Public Health, which require the following:

— Information on nominal content, date of minimum durability, possible precautions to be observed in use, and the function of a cosmetic product, which is provided on a label pursuant to the Cosmetic Regulation, shall be expressed in Czech language; and

— In respect of cosmetic products that are (a) not pre-packaged, (b) packaged at the point of sale at the purchaser's request, or (c) pre-packaged for immediate sale, the mandatory information on labels pursuant to the Cosmetic Regulation shall be provided by the vendor on the packaging of cosmetic products or on an enclosed or attached leaflet.

Four years of significant market power regulation - has anything changed?

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Regulation of the contractual relationships between food suppliers and supermarkets has been a frequent topic of discussion since the adoption of the Act on Significant Market Power (ASMP) in 2009. A recent decision by the Czech Competition Office has refreshed this turbulent debate on how significant market power affects the contractual relationships between retailers and distributors and whether the ASMP should be extended to all industries.

The Czech Competition Office imposed a fine of CZK 22 million onto a supermarket chain for abusing its market power. The supermarket chain was fined for demanding payment terms for delivery of food products that exceeded the regulated period of 30 days from the delivery date and for imposing a fee on any assignment of suppliers' receivables towards the supermarket chain. What does the decision mean for future practice? Does it affect B2B supply chains in any way?

Over the last few decades, we have seen a growing number of new retailers and distributors appear across the EU. In addition to that, a number of retailers have introduced their own home brands. Increase in the number and strength of market players has introduced new industry practices in the relationships between suppliers and retailers. Notably, some retailers have gained stronger bargaining power and have, on occasion, exploited this through the use of unfair trading practices (**UTPs**). Traditionally, UTPs have always been most notable along the B2B food supply chain; however, they have now become common practice in other sectors as well.

Vertical trading relationships and UTPs have been heavily discussed at both the European and national level in recent years. National legislations put emphasis on identifying and investigating UTPs that are taking place. In May 2012, the European Competition Network (ECN) published a report on competition law enforcement and market monitoring activities by European competition authorities in the food sector. The analysis identified that UTPs have become a frequent issue in most EU countries. It was further noted that between 2004 and 2012, national competition authorities investigated up to 180 market abuse cases in the food sector alone.

As a result, there have been different initiatives to prevent this sort of abusive behaviour in the food sector. These have included, amongst others, the 'Supply Chain Initiative launched by 7 EU level trade associations and the 'Green Paper' initiative which was launched by the European Commission. The Green Paper initiative is the best known of all initiatives launched. It primarily focuses on evaluating the extent to which the UTPs can be dealt with on both national and EU levels.

By looking at a variety of UTPs identified across the EU to date and analysing local legal frameworks across all EU Members States, the Green Paper serves as a starting point for discussions on future practice.

Unfair practices in distribution, particularly in the food sector, are increasingly becoming a political issue and have therefore led to a variation of legal measures against UTPs across EU Member States.

In the Czech Republic, a separate legal framework has been implemented. The Czech authorities have been keen on some of the main points of the Green Paper such as regulating UTPs by a separate law relevant to all industries rather then introducing sector-related partial provisions which would not deal with UTPs in a complex way. However, no new complex regulation may be expected to come into force before the final results of the Green Paper are published and the European Commission adopts a final standpoint.

Nevertheless, it is considered that these initiatives will significantly affect the B2B supply chain with stricter rules for retailers across the EU.

Energy & Utilities

Changes to support for renewable facilities

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There have been some significant developments over the past year in the energy sector especially regarding changes to support for renewable facilities. On 2 October 2013 the amendment to Act No. 165/2012 Coll., on supported energy sources (the 'Amendment') came into force. Below is a brief summary of the major changes introduced by the Amendment:

Reduction to solar tax rates

Under the Amendment, solar tax will continue to be payable on electricity produced after 31 December 2013 in photovoltaic power plants which commenced operation between 1 January 2010 and 31 December 2010.

However, as of 1 January 2014, solar tax rates were reduced from 26% to 10% in case of support received through feed in tariffs and from 28% to 11% in case of support received through green bonuses. The solar tax will apply throughout the entire period during which entitlement to support for renewable facilities is granted to photovoltaic power plant operators.

In addition, from 1 January 2014 solar tax no longer applies to photovoltaic power plants that commenced operation in 2009.

Obligation to have dematerialised shares

As of 1 July 2014, joint stock companies (in Czech '*akciová společnost*') which produce electricity from renewable sources, secondary sources or from the combined production of electricity and heat, and which issued dematerialised shares (in Czech '*zaknihované akcie*') are entitled to support for renewable facilities. Therefore, relevant producers of electricity with physical share certificates (in Czech '*akcie v listinné podobě*') must change the form of their shares to dematerialised shares by 1 July 2014 at the latest - alternatively, these producers can change the form of the company to e.g. a limited liability company in order to be entitled to the support.

It is important to note that the Amendment does not require the producers to inform the public authorities of the ultimate beneficiaries of the support nor does it include any restriction relating to the shareholder structure for limited liability companies.

End to support for new renewable facilities

With the exception of small water power plants (with a maximum capacity of 10 MW) and power plants where electricity is produced from the combined production of electricity and heat, new renewable facilities that commence operation after 31 December 2013 will no longer be supported. This includes small roof solar panels with a maximum capacity of 30 kWp. New renewable facilities producing electricity from wind energy, geothermal energy, water energy (with a maximum capacity of 10 MW) or biomass energy will continue to be supported only if (i) before 2 October 2013 they have authorisation to construct the power plant or a building permit (for power plants with a maximum capacity of 100 kW) and (ii) they commence operation by 31 December 2015.

Changes to the financing of support

The Amendment also introduces the maximum amount of subsidy of CZK 495 per MWh which is charged to end customers as a regulated component of the price. The aim of the change is to contribute to the stability of the business environment and to balance the contribution to renewable energy support by individuals and households. The remaining portion of support will be paid directly from the state budget.

Financial Institutions & Services

New legal framework for collective investment in the Czech Republic

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In August 2013, the Act on Investment Companies and Investment Funds (so called 'ZISIF') came into force, replacing the Act on Collective Investments. ZISIF introduces rules for the management and administration of local and foreign investment funds and regulates the investment in such funds. ZISIF aims to establish a solid and modern regulatory framework to enhance collective investment in the Czech Republic.

ZISIF includes the implementation of the Directive of the European Parliament and of the Council on alternative investment fund managers (AIFMD). It prepares the ground for the implementation of the directive relating to undertakings for collective investment in transferable securities (UCITS IV).

New classification of investment funds

Under ZISIF, an investment fund is a general category for all types of funds irrespective of their legal form. Unlike the previous fund classification, ZISIF applies in more ocassions; it will apply e.g. when there are two or more investors with capital and the return on investment depends on the value or profit gained from the asset which the capital was originally invested in.

Investment funds are classified by public offering criteria to funds for collective investment (which can be publicly traded) and to funds of qualified investor (which are not publicly traded).

New legal forms of investment funds

ZISIF allows for new legal forms inspired by the developed capital markets of European countries such as Luxembourg and Germany.

Funds of collective investment may be established as:

— a mutual fund; or

— a joint-stock company.

Funds of qualified investors may be established as:

— a mutual fund;

— a trust (*in Czech: svěřenský fond*);

— a limited liability partnership company;

— a limited liability company;

— a joint-stock company;

— a European Public Company; or

— a cooperative.

Not limiting itself to the traditional legal forms, ZISIF introduces new forms under which an investment fund can be established. These are (i) a joint stock company with variable registered capital (SICAV) and (ii) a limited liability partnership company issuing investment certificates (SICAR).

Separating the roles and duties of fund managers and administrators

The internal organisation of an investment fund recognises both managerial and administrative roles. Main responsibilities comprising the managerial role are asset administration as well as conducting investment activities and managing investment risks. The administrative role comprises, in particular, responsibility for bookkeeping of the fund and ensuring legal and tax compliance.

The managerial role can be performed either by **a third party** (i.e. an investment company that has created the fund or that has entered into a management agreement with the investment fund or a foreign administrator) or by **a self-governing investment fund** that manages its own property.

The administrative role can be performed by one of the following:

— a legal entity authorised to act solely as administrator of an investment fund;

— an investment company authorised to act as both manager and administrator of an investment fund;

— a similar foreign entity managing the fund.

Supervision by the Czech National Bank

The level of supervision by the Czech National Bank will differ depending on the opportunities for the wider public to invest in investment funds and the risk sources affecting stability of the financial market in the Czech Republic.

In practice, the variable nature of the Czech National Bank's supervisory powers will mean that any investment fund managing assets of up to EUR 100 million will not be subject to supervision by the Czech National Bank. Such funds are under a registration duty only. On the opposite side, investment funds managing assets over EUR 100 million will be fully supervised by the Czech National Bank and a licence will be required for their activities (i.e. notification will no longer be sufficient).

Time will tell if the new legislation will attract more collective investments in the Czech market. A successful implementation of ZISIF will largely depend on the related amendment to the Income Taxes Act as well as how the various principles of ZISIF will be utilised in practice by businesses', and interpreted by the courts.

Insurance contracts under the New Civil Code

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The New Civil Code brings change to the existing regulation of insurance contracts. It repealed Act No. 37/2004 Coll., on Insurance Contract, as amended ('Act on Insurance Contract') and introduced a new complex regulation of insurance contracts within the New Civil Code. Although the changes cannot be considered revolutionary, there are some new concepts and practices that insurance companies and insurance brokers need to be aware of.

Insurable interest

The concept of insurable interest as the fundamental pre-condition for the rise and duration of insurance is one of the most important changes in the regulation of insurance contracts. The definition of insurable interest as a justified need to be protected against consequences of an insured event remains the same as in the former Act on Insurance Contract. The New Civil Code now sets out the legal consequences for the non-existence of the insurable interest when entering into an insurance contract and for its termination during the term of the insurance. The New Civil Code also now defines legal presumptions based on which the insurable interest is determined.

The existence of insurable interest must be determined objectively. The New Civil Code stipulates that a policy holder has an insurable interest in their own life and health and their own property. In other situations, the New Civil Code provides rebuttable legal presumptions that the consent of the insured constitutes so-called fictitious evidence that the policy holder has an insurable interest.

There is a legal presumption that a policy holder is deemed to have an insurable interest in the life and health of another person provided that they can demonstrate that they have a relationship with that person, whether by affinity or based on a benefit or advantage resulting from the continuance of the person's life. The policy holder is deemed to have an insurable interest in the property of another person provided that they demonstrate that the non-existence of and failure to preserve this property may result in the direct loss of their own property.

If an insurable interest does not exist and the insurer knew or must have known of this when concluding an insurance contract, the contract will be invalid under the New Civil Code. In the event that the policy holder was aware of the non-existent insurable interest when entering into an insurance contract, but the insurer did not (and could not) be aware of such situation, the insurance contract will also be deemed invalid; however, the insurer will be entitled to a remuneration payment equal to the insurance premium up to the moment that the insurer learned of the invalidity.

In respect of property insurance, future insurable interest may be subject to insurance provided that such insurable interest is likely to arise in future. If the anticipated insurable interest does not arise, the policy holder will not be obliged to pay the insurance premium. The insurer may be entitled to a reasonable remuneration if agreed in the insurance contract.

In the event that the insurable interest terminates after the insurance contract has been concluded, the insurance will cease to exist upon the termination of the insurable interest; however, the insurer will be entitled to the insurance premium up until the moment they learned about the termination of the insurable interest.

Insurance of the third party insurance risk

Another important change is the regulation of the terms and conditions of insuring third party insurance risk.

As under the former legislation, the policy holder can acquire the insurance benefit only if they provide evidence that the insured, as a third person, has been acquainted with the contents of the contract and that the insured agrees that the policy holder will be entitled to the insurance benefit. If the insured is a policy holder's descendant, such consent is not required provided that the policy holder is the legal guardian of the insured. The consent of the insured will always be required in respect of property insurance.

The New Civil Code stipulates that if the policy holder fails to provide the insurer with such consent within the agreed period, however no later than three months after the conclusion of the contract, the insurance will cease to exist. If an insured event occurs during the period before consent was provided, the insured will be entitled to the insurance benefit. Furthermore, the consent of the insured is a pre-condition for the assignment of the insurance contract.

Change of the insured risk

According to the New Civil Code, circumstances increasing the insured risk can only be those that were included in the insurance contract or those referred to by the insurer in writing upon the conclusion of the insurance contract. This can only occur if these circumstances are changed to such an extent that the probability of the insured event has increased.

It is the duty of the policy holder and the insured (provided that the insurance covers third party insurance risk) to refrain from anything that would increase the insured risk or to allow a third person to do so, unless the insurer has provided its consent.

Should the policy holder (or the insured) find out subsequently that they allowed (without the insurer's consent) the insured risk to increase; the policy holder must notify the insurer without undue delay. If the insured risk increased independently from the policy holder's will, such a duty will arise without undue delay after the policy holder has learned of the increased risk. Contrary to the previous regulation, the insurer may now terminate the insurance with immediate effect (i.e. no longer within an eight day notice period) because of a breach of the obligation to inform the insurer of the increased insured risk.

The new exceptions from the rules regarding changes to the insured risk include cases of increase due to averting of or minimising the amount of damage, cases of increase due to the insured event and also consequences of the so-called 'acts on behalf of humanity', i.e. typically acts undertaken in attempt to save a human life etc.

Other important changes relating to insurance contracts

The insurer is now allowed to deduct any payable receivables arising out of the insurance premium or other receivables arising out of the insurance from the insurance benefit (with the exception of mandatory insurance). This not only includes a set-off as was the case previously, but also situations where entitlement to the insurance benefit arises to a person other than the debtor having underpayments on the insurance premium or other debts arising from the insurance.

Furthermore, the range of persons that can notify the insurer of damage, as a result of which the insurer will be obliged to commence investigations, has broadened. In addition to the policy holder, the insured or the beneficiary, the insured event may be notified by anyone who has a legal interest in the insurance benefit (e.g. a pledgee).

Also, the ownership title to any found property affected by the insured event will not automatically pass to the insurer. The insurer will be entitled to be refunded for the insurance benefit, but the beneficiary will be able to deduct any costs reasonably incurred for the removal of defects arising at the time during which the person was deprived of the possibility to dispose of the property.

Insurance of large insurance risks in non-life insurance

Under the New Civil Code, when entering into insurance contracts to insure large insurance risks (as defined in Section 131 of Act No. 277/2009 Coll., on Insurance, as amended) the parties may derogate from any provision of the part of the New Civil Code regulating relative and proprietary rights, in favour of any of the parties, if necessary, with regard to the purpose and nature of such insurance.

The reason for this exception is that large insurance risks as well as the nature and the purpose of insurance of such risks, exclude that these insurance contracts should be subject to limitations resulting from mandatory provisions of the contract law. It is important to note that these derogations must be justified by the purpose and nature of insurance.

Hotels & Leisure

Lottery Act puts poker on trial

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Poker has become increasingly popular in the Czech Republic in recent years. A considerable amount of money has been circulated in the game to date which has attracted the attention of financial authorities in the country. Since 2012, when the amendment to the Lottery Act came into effect, authorities have been putting increasing pressure on poker club operators and poker associations by imposing fines for non-compliance with the Lottery Act. The situation has stimulated discussions on the duties that they are subject to and the increasing number of fines and court proceedings that they are facing.

A gambling game?

It is important to note that the amendment has introduced a new form of classification of poker. Since 2012, poker has been considered as a gambling game which has resulted in stricter rules for poker club operators and poker associations. Poker tournaments must be organised in casinos with licences issued by the relevant authorities. By deciding that poker should be on the same level with other gambling games, poker proceeds have become subject to a 20% tax. The aim of regulating the game more thoroughly was, as presented by the Ministry of Finance of the Czech Republic, to prevent young people from engaging in dubious activities as well as to increase the fiscal income derived from gambling businesses.

Organisers of poker tournaments are under an obligation to establish their business in the form of a joint-stock company. The company must have a registered capital of at least CZK 100.000.000 and provide a security deposit of CZK 20.000.000. Harsh penalties of up to CZK 10.000.000 can be imposed for non-compliance and organisers can be held criminally liable for an offence of an unauthorized operation of lottery and similar game.

Opposing views on poker

The Association of Czech Poker (the '**ACP**') which is the most influential self-governing association of poker clubs in the country strongly disagrees with the new classification of poker. Soon after the amendment became effective, the ACP has been trying to argue that the classification should be re-considered. It has pointed out that poker is a skill-based game where luck is an element but the outcome of the game still heavily depends on the skills of poker players to calculate the probability and to assess the risks involved. Major tournaments are held each year and generally the same group of players are top ranked. According to the ACP, this would not be possible if the game depended simply on the players' luck which is the case in the traditional gambling games.

In June 2012, the ACP organised a non-casino based poker tournament with a prize-pool of only CZK 8.200. As it ignored the amended Lottery Act, the financial authority imposed a fine of CZK 20.000. ACP submitted an appeal against the fine which was subsequently rejected and therefore the ACP brought its case to court. The case which is small in value is important in determining the future of poker.

In November 2013, a decision of the regional administrative court was issued. It ruled against the ACP, confirming the fine imposed by the financial authority. Nevertheless, it remains unclear whether poker should be regarded as a skill based game given that the court based its decision on formalistic grounds only. According to the court, the level of skills cannot play any role in assessing the nature of the game.

ACP's struggle continues and it intends to file an appeal against the decision of the regional administrative court. The dispute is very likely to be decided by the Supreme Administrative Court and possibly by the Constitutional Court in the coming months. Until then tournaments outside casinos will not be tolerated.

More fines for non-compliance - the pressure is on

Financial authorities are indeed mounting the pressure by imposing an increasing number of fines. Most recently, a fine of CZK 400.000 was imposed on the ACP with an additional pending court proceeding relating to a fine of CZK 40.000 for organising two poker tournaments outside casinos. Moreover, ACP is currently facing three criminal complaints filed by casino operators which are currently under investigation.

The online poker issue

The Lottery Act also looks at online poker operators and players. It tries to prevent the players from playing the game on websites that are run by operators who are registered outside the Czech Republic and have not been granted the relevant licence to run poker games online. However, it is impossible for the Czech financial authorities to ensure that the law is adhered to. Players usually register with foreign portals under nicknames and ignore the law. Furthermore, the operators of such portals have no motivation to disclose the identity of players.

The fate of poker in the Czech Republic will be decided by judges. Until a final verdict is obtained, poker continues to be treated as a gambling game. The ACP continues in its struggle, however, it is not clear whether the poker story will reach its happy ending.

Lifesciences

Improving workplace safety for healthcare professionals

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Directive 32/2010/EU (the 'Directive') has resulted in several new regulations to promote safety in the workplace for healthcare professionals, through prevention of injuries caused by sharp objects used in the workplace. New measures include a ban of recapping used devices, risk assessment duties, needle registry and repeated training programmes for healthcare professionals. However, the implementation of the Directive into the Czech legislation was not as clear as is in some other member states and leaves much to be desired.

EU member states were under an obligation to implement the Directive and all new regulations by 11 May 2013. In the Czech Republic, instead of introducing new and specific legislation into the healthcare sector, the Directive has been implemented by way of amendment to existing legislation.

The existing legislation primarily affected the Public Health Protection Act (258/2000 Coll.) (the '**Act**') and to a lesser degree the relevant decrees of the Ministry of Social Affairs and Labour and the Ministry of Health. There are several further existing acts which could have been amended to enable the successful implementation of the Directive (including the Labour Code and the Health and Safety Act). However, only the Act has seen changes due to the direct implementation, referring to the Directive.

As a result, the Directive has been integrated into the Czech law in a rather vague and fragmented manner. The changes to the current legislation are relatively minor and it is not entirely clear whether specific regulations imposed by the Directive have been properly implemented.

Other EU member states have implemented the Directive with greater clarity and certainty. For example, in Hungary the vast majority of the measures imposed by the Directive is now fully and effectively embedded in the Hungarian Decree of the Minister of Human Resources No 51/2013 (the '**Decree**'). The Decree imposes specific obligations on healthcare providers, and it expressly regulates the protection of employees' within the healthcare sector. Slovakia and Poland have also successfully included many of the regulations into their legal frameworks.

The Czech Republic should perhaps review its current implementation of the Directive in light of this. The intention of the Directive is to have greater regard for the rights and protection of healthcare professionals. To enable this, there needs to be a more forcible and precise implementation of the Directive into the Czech law.


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Real Estate & Construction

An introduction to 'building right'

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Although the New Civil Code principally avoids separate ownership of land and buildings situated on such land, it simultaneously re-introduces the legal instrument of the 'building right' which preserves the option to use another party's land for construction purposes. The principle of the building right is the right of an investor to erect a building on or under the surface of the land owned by another party. The right raises many questions and future court rulings will show how it will function in practice.

The building right

— The building right is a right *in rem* in respect of property of another which is explicitly declared by the law as immovable property (immovable property in this case is the building right, and not the building itself). Throughout the period of duration of the right, the building affected by the building right will not become a part of the land on which it is situated but will be owned by the investor as a part of such right.

— The right can be established both in respect of already existing buildings (e.g. for the purposes of their reconstruction or modernisation) and in respect of new buildings.

— The building right can be transferred, encumbered, acquired by prescription and will be subject to inheritance. One of the advantages when compared to the current regulation is that the right can be encumbered (e.g. by mortgage) as early as the right is established, i.e. even before the commencement of construction works.

— The building right is a temporary right *in rem* which may be established for not more than 99 years. The right may be extended, even repeatedly, however for a period of not more than 99 years. It may be acquired by contract, prescription or decision issued by a public authority (only if so provided by the law).

— The contract establishing the building right must be in writing. The right established by a contract will arise upon the registration of the same in the real estate register.

— The building right may be established for consideration or free of charge. In the event that the consideration is agreed in several recurrent payments, it will be called 'construction payment' (in Czech: stavební plat) and will encumber the building right as the so called real burden (in Czech: reálné břemeno). The amount of the construction payment may however not be dependent from any contingent future event (e.g. development of prices of real estate), but the amount may be bound to the inflation or deflation rate, as applicable.

— The owner of the land will have a pre-emption right to the building right and the investor will have a pre-emption right to the land (the pre-emption right may be excluded or restricted by agreement).

— At the moment the building right ceases to exist, the building will become a part of the land and will thus be under the ownership of the owner of the land.

Under the law, the investor will be entitled to compensation for the building in the amount of one half of the value of the building as at the moment the right has ceased to exist (the parties may, however, agree otherwise).

Questions left unanswered

In general, the New Civil Code stresses the autonomy of the will of contracting parties and the option to agree otherwise than as stipulated by the law. Despite the freedom related to the negotiations of contracts regarding the building right, this legal instrument raises a number of questions, in particular:

— How will the situation be resolved in case of a building erected on several lands of other persons (the New Civil Code regulates the building right encumbering one land only)?

— Will it be possible to contractually agree the option to withdraw from the building right? Will statutory reasons of termination apply to this right?

— Will it be possible to establish more building right in respect of one land?

— Will it be possible to erect an apartment house constituting of units as part of the building right?

Answers to these questions will ensue from the practice and the case law. With regard to the rather spare regulation of rights and obligations of the parties in the New Civil Code, we recommend, in addition to the specification of the will of the parties to establish the building right, specification of the encumbered land, duration of the right and provision whether the right is established for consideration or free of charge, also specifying the content of the right (in particular specification of the building to be erected, how the building will be modernised etc.), rights and obligations of the investor and owner of the land throughout the period of duration of the right, security of the right and specification of what will happen with the building after the right ceases to exist.

When can the building right be used?

If a land of another is to be used for construction purposes.

In case of a reconstruction of an existing building, for better use of the building or because the owner does not want to care about the building;

Primarily for buildings for temporary use (warehouses, smaller business centres) or for buildings the lifetime of which is limited (e.g. due to the technology used).

In case of a need to obtain financing for the construction (reconstruction) as the building right may be encumbered as early as the right is established, i.e. even before the commencement of construction works.

Technology, Media & Telecommunications

Consumer rights directive and e-shop operators

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Internet shopping is continuing to gain in popularity in the Czech Republic with increased sales from online shops exceeding tens of billions of Czech crowns of combined annual turnover. Recognising certain caveats in the protection of consumer rights in so-called 'distance contracts', the European Directive on Consumer Rights (the 'Directive') offers greater protection for online shoppers.

All EU Member States, including the Czech Republic, were under an obligation to implement the Directive by 13 December 2013. In the Czech Republic, the Directive was partially incorporated in line with the New Civil Code which came into force on 1 January 2014. The aim of the Directive is to increase the regulation on distance contracts and contracts which are concluded outside business premises (typically online). As a result, it has been necessary for e-shop operators to revise their business terms and conditions, websites and relevant contracts in order to comply with the new regulation which will influence contractual relationships with customers.

Informing the customer about all costs incurred

Prior to entering into a contract, businesses must inform their customers about the total price of the product or service that is being purchased, including taxes, additional transport and delivery costs or post office costs.

Furthermore, businesses are under an obligation to ensure their customers are aware of any costs that are incurred in relation to withdrawing from a contract. If businesses fail to inform the customer of such costs in advance, it falls on the company to bear the contract withdrawal costs rather than the customer.

Businesses can make selected information on contract withdrawal available through general information the terms of which are stated in the implementing regulation.

Pre-ticked boxes removed from online order forms

It is now prohibited to use pre-ticked boxes which lead to an automatic order of additional products or services if the customer does not un-tick the boxes when contemplating an order. Consumers must always grant consent to all payments. If this rule is violated, the Czech Trade Inspection is entitled to grant a fine.

Contract withdrawal period

Both the New Civil Code and the Directive recognise a period of 14 days which allows the customer to withdraw from a sales contract without being required to specify the reason behind the contract withdrawal. The 14-day period does not present a change for Czech businesses, as it was already in existence before the implementation of the Directive. Businesses are still required to inform consumers about their right to withdraw from a contract without any further obligation within the 14-day period.

If a business fails to inform consumers both about their right to withdraw from a contract and the withdrawal period of 14-days, the period to withdraw from a contract (without needing to specify a reason) will be extended to twelve months and fourteen days, starting from the first day of the 14-day period.

General process for contract withdrawal

The Directive has introduced a template withdrawal form which customers can complete if they wish to withdraw from a sales contract. The form must be made available to customers; however they are not obliged to use it. The template withdrawal form has not been embedded directly in the New Civil Code, but it has been incorporated into an implementing regulation.

Product delivery date

The New Civil Code further strengthens the consumers' position in relation to the rules on product delivery date. If the customer and the company agree on an exact delivery date, and the product is not delivered by the agreed date, the contract between the two parties will automatically expire on the day the product failed to arrive.

If the customer is not willing to receive the product after the agreed delivery date or if he wants to withdraw from the contract, the customer is no longer under an obligation to inform the company. In this instance, the contract expires the day after the agreed delivery date. Alternatively, if the customer is interested in still receiving the product after the agreed delivery date, he will need to inform the company and request that the shipment is processed.

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