



## **CZECH REPUBLIC DEVELOPMENTS 2004/2005**

On May 1 2005 the Czech Republic celebrated the 1<sup>st</sup> anniversary of European Union membership. The 2004/2005 legislative agenda was therefore still primarily focused on the finalization of harmonization of the domestic law with that of the EU. The most significant changes were achieved in areas of Civil Law, Civil Procedure, Business Law and Labor legislation.

### **Civil Procedure Act**

An important amendment of the Civil Procedure Code (Law No. 99/1963 Coll.) became effective on April 1, 2005. This amendment introduces major changes with respect to preliminary injunctions and to provisions relating to proceedings before courts of appeal.

### **Preliminary Injunctions**

The amendment introduces the duty of the plaintiff to deposit a security bond in the amount of CZK 50.000, - (app. EUR 1.500) in civil cases or CZK 100.000, - (app. EUR 3.000, -) in commercial cases upon filing of the request for the issuance of a preliminary injunction with the court. This security serves the purpose of securing compensation for damage or other harm to the defendant that would be caused if the issued preliminary injunction were later overturned on appeal or the case on the merits is unsuccessful.

The security does not need to be deposited in case of requests for issuance of preliminary injunctions that can be initiated *ex officio*, in alimony matters, in employment matters and in matters relating to compensation for health damage. The deposited security shall be returned to the plaintiff in case that the request for preliminary injunction is dismissed, rejected by a final decision of the first court or if the proceedings on this request have been terminated upon final judgment.

### **Reform of Appeal Proceedings**

Many court cases in the past were slowed down by the common practice of a court of appeal refusing to issue a decision on the merits in a subject case and simply returning the case to the

first instance court with instructions for a new hearing. As a result of the amendment of the Civil Procedure Code (Law No. 99/1963 Coll.), courts of appeal are now bound by the duty to decide a case even if hearing new evidence is necessary and if new proceedings concerning the state of the matter must be held. This principle, however, is modified by the new rules of appellate procedure under which introduction of new evidence is not allowed at the second instance appellate court hearing.

Another new element in the process of means of legal redress is the possibility of first instance courts to decide on an appeal themselves using the traditional “autoremedura”. This has been widely used in administrative proceedings, but in the area of the civil and business litigation is revolutionary.

Another new element that could make appellate proceedings more efficient is the possibility of courts of appeal to decide on a matter without the necessity of hearing the parties at a joint court session.

### **Amendment of Commercial Code**

The 2005 amendment of the Commercial Code (Act no. 513/1991 Coll.), significantly affected the procedure of liquidation of business entities. In connection to the new legislation in the area of the data protection and the Archive Act (Act.nr.499/2004 Coll.), companies in liquidation must now obtain a consent issued by the respective State Archive Office concerning the fulfillment of archival duties prescribed by the Archive Act. A rather strict and extensive duty to archive most corporate documents, documents related to labor issues, property inventories and other documents must be fulfilled by the depositing the mentioned documents in a State archive or another form of deposit that has been consented to by the State Archive Office. Some of these documents must be archived for perpetuity, so that the duty to store is even binding on heirs and legal successors of the liquidators or other responsible subjects. These new administrative duties are making the already burdensome system of company liquidation even more problematic.

Another important change to the Commercial Code are the new rules simplifying and accelerating registrations in the Register of Companies. The law requires the Courts to register changes in the Register of Companies within 5 days from the date of filing. Practical enforcement of this can be expected to be problematic because the law does not provide for sanctions for the breach of this duty. On the other hand, the registration process, especially in the case of setup of new companies, has improved substantially in the last year. The usual time frame this is now three to four weeks.

### **Societas Europaeae and European Economic Interest Grouping**

Implementation of EU Directive No. 2001/86/SE has resulted in the new Czech Act on Societas Europaeae which entered into force on 14 December 2004. This Act is in full compliance with the Directive and enables the establishment of Societas Europea in the Czech Republic or their moving from or to Czech Republic.

This legislation was followed by Act. Nr.360/2004 Coll of the European Economic Interest Grouping legislation implementing EC Regulation No. 2137/85.

### **Military Service Abolition**

After 140 years of conscription being exercised, the CR has abandoned this practice. From the beginning of 2005 a career soldier system has been in place. It is part of the reform of the Czech military that was launched in 2002, downsizing, organizational changes, modernization of equipment and reshaping the locations of garrisons and sites within the CR have been going on. The stabilization of forces and the achievement of initial operational capabilities are set for 2006, while full operational capabilities are to be reached in 2009-2012.

### **Changes to the Czech Labor Legislation - New Employment Act and amendment of the Labour Code**

On October 1, 2004 a new Employment Act (No. 435/2004 Coll.) came into effect. The new Employment Act contains detailed regulations of the allowed activity of the Ministry of Labour and Social Affairs and regulations for mediation of employment by employment agencies.

The new Act requires that foreigners who are shareholders or members of a statutory body of a commercial company obtain work permits if they carry out common tasks resulting from the scope of the activity of the company. This does not apply to citizens of the EU member states who do not need the work permits in the Czech Republic.

The new Labour Code contains a new system regulating employee leave that will prevent the transfer of the untaken leave to the next calendar year. Instead financial compensation will be called for. The new regulation also restricts the possibility of paying financial compensation for unused leave in cases of termination of the employment relationship.

### **Amendments to the Trade Act**

Recent amendments of the Trade Act (Acts No.119/2004 Coll. and 167/2004 Coll.) were adopted in order to introduce a duty of entrepreneurs trading in used goods or taking used goods in pawn to obtain identification of parties and the subject matter of the transaction and to keep records of this data. Fines of up to CZK 1 mil (app. EUR 32.000) may be imposed for breach of these duties.

Czech trade regulations have been harmonized with EU legislation with respect to guarantees of freedom of establishment of citizens of EU member states in the process of obtaining Trade Licenses in the Czech Republic. The Law on Recognition of Professional Qualification harmonizes requirements for professional competence with trades and simplifies proof of fulfillment of general conditions for practicing trades for citizens of member states of the EU.

## **Inheritance Administration**

Substantial changes of the Czech Inheritance Law have introduced a possibility of appointment of an Inheritance Administrator by a testator. Previously, the administrator could only be appointed by a court during the course of inheritance proceedings.

As for the scope of rights and duties to the property of the deceased, the Administrator is entitled to exercise rights and fulfill duties in the same extent as the testator, subject to the duty of usual and common management with due care. In cases of actions that exceed usual and common management, approval by successors and court must be obtained, otherwise such act would be invalid and the Administrator would be responsible for damages.

Both natural and juridical persons can serve as an Administrator. The Administrator must meet the requirements of full legal capacity and has to agree with his or her appointment. The appointment of an Administrator must be exercised in a form of a Notarial deed.

The Administrator is obliged to file a report on his activity at least two times a year if not ordered otherwise by the court and is obliged to submit a final report on all activity performed for the heirs to the court.

A new rule under which under certain circumstances a power of attorney granted by a testator can still maintain its effect even after the testator's death has been introduced. According to the new legal regulation, procuration, as a special kind of a power of attorney, will not terminate upon the death of an entrepreneur, unless there is an expressed limitation. After the death of an entrepreneur a procurator can only make acts in law within the scope of usual and common management and is obliged to file a motion to record such limitation of the procuration into the Commercial Register. Acts in law that fall outside the scope of usual and common management need to be approved by successors and courts. A similar set of conditions applies in connection with commercial powers of attorney. The law stipulates that a power of attorney for disposition of a bank account will not terminate upon the death of the principal, unless such termination is incorporated in its content.

## **Amendment of Copyright Act**

The new law (No. 81/2005 Coll., amending the Copyright Act) has clarified the definition of "use of a work". "Use of a work" shall not be considered as radio and television broadcasting on receivers in the same building or in a complex of buildings if not used commercially. Also accessing of a work by means of apparatus technically capable for reception of radio and television broadcasting by an accommodated person within the scope of providing services connected with accommodation (in hotels, etc.) shall not be considered as operating of radio or television broadcasting. The described changes release hotels from duty to pay authors' remunerations for the use of works.

**Act on Cash Registers with Fiscal Memory and Act on Cash Payment Restrictions**

Retailers and restaurants are required to have cash registers with fiscal memory as of January 2007. The purpose of the law, which was strongly opposed by small businesses, is to prevent tax evasion. The law will apply to 300,000 entrepreneurs and is expected to increase tax revenues by up to 1 billion CZK.

A new act on Cash Payment Restrictions (Act. Nr.524/2004 Coll.) that restricts cash payments in excess of EUR 15.000 has been introduced with hope of reducing the uncontrolled grey economy.

**Constitutional Court claims by apprentice judges**

The Constitutional Court recently received a complaint from seven of the 32 apprentice judges who President Vaclav Klaus refused to appoint as full judges because of their young age. In March, President Klaus decided that the 32 judges were too young to take the post of full judges because they had not yet reached the age of 30. He argued that naming a judge is a decision and not an automatic procedure. The age limit required for being a judge was raised to from 24 to 30 years of age in 2003. The core of the problem is that during the interim period, apprentice judges claimed the previous age limit of 24 should apply.