



## **CZECH REPUBLIC DEVELOPMENTS 2009/2010**

From the international perspective 2009 was important for the Czech Republic mainly due to completion of the European integration process. On November 3<sup>rd</sup> 2009 the Czech president, as the last remaining holdout, signed the Lisbon Treaty.

In general, the legislative agenda in 2009/2010 was primarily focused on harmonization of domestic law with that of the EU. However, due to a governmental crisis, fall of the government during the Czech EU presidency and a subsequent Constitutional Court decision which delayed new elections for 9 months, many of legislative proposals were postponed.

The most significant changes were the new Criminal Code, Anti-discrimination Act and amendments to the Attorney Act, Public Tenders Act, Commercial Code and Notary Act.

### **Act on Legal Profession (Attorney Act)**

The 2009 novelization of the Attorney Act (Act No.219/2009 Coll.) provides the following new elements;

- The new legislation provides for a new form of cooperation among attorneys in the form of a “permanent cooperation contract”. This preserves the status of the parties as independent contractors and is intended to remove the practice of „hidden labor contracts“ that were frequently used by law firms and associates.
- New detailed definitions of pre-requisites and conditions for Bar membership are provided. As a result of these, a lack of required university education can no longer be replaced by practical experience of any kind.
- A new panel of the Bar Association has been created in order to handle appeals in disciplinary cases of attorneys. The appellate system in disciplinary proceedings will hopefully guarantee more transparency in procedure and decision making in these cases.

- The new legislation provides for an exemption from the general ban of restricted activities for members of the Bar in case of scientific, pedagogic and artistic activity. Labor contracts with Bar members are now allowed in those areas.
- Attorneys are entitled to provide „Authorized Conversions,, (conversion of hardcopy documents to electronic versions). This is part of the ongoing “E-justice“ project which has implemented compulsory electronic communications with state organs using electronic Data Boxes instead of written post.
- Compulsory use of gowns was introduced for Bar members in all criminal court proceedings and for proceedings before the Supreme Court, Supreme Administrative Court and Constitutional Court.

### **Antidiscrimination Act**

The Parliament of Czech Republic has overturned a Presidential veto and approved the Anti-Discrimination Act. The Czech Republic was the last European Union country to implement this legislation.

The new legislation expressly sets forth the principle of equal treatment for men and women in law and for the first time introduces restrictions against age discrimination. A ban on discrimination on the basis of disability in the areas of health care, labor and education had also been missing from the Czech legal order until now.

Antidiscrimination Act harmonizes domestic legislation with that of the EU by implementation of the Racial Equality Directive 2000/43/EC and the Employment Equality Directive 2000/78/EC.

### **Notary Act**

A 2010 amendment of the Notarial Act (Act Nr. 358/1992 Coll) provides new tools for enforcement of debts. Under the new legislation a one-sided confirmation by a debtor in the form of a Notarial deed can be used as the basis for direct enforcement of a debt (execution).

Previously, only entire contracts concluded in the form of Notarial deeds with an explicit clause allowing direct enforcement were acceptable.

The amendment of the Notary Act also provides for use of court confirmed Notarial deeds as an instrument of direct enforcement of debts and as a basis for direct execution within the EU.

### **Public Tenders Act**

Public tenders in Czech Republic have frequently been criticized by the European Commission for lack of transparency and unclear regulation which allows avoidance of tender rules and corruption. The amendment to the Public Tenders Act (Act. No 137/2006 Coll.) is therefore a long awaited piece of legislation.

In order to provide more transparency to the system of tenders, the role of publicly accessible electronic registers was emphasized. The new legislation introduces a Public Tender Blacklist. Firms and individuals will be listed in the register in case of submitting incorrect or false documentation or information in their public tender application. Blacklisted firms or individuals are eliminated from public tender participation for three years from the date of listing. The blacklist register will be accessible to the general public in electronic form. Contracting authorities are now obliged to periodically list all ongoing public tenders in the electronic register.

The new legislation provides for more detailed regulation of the tender procedure, including the form of communication during the process of submitting tender documentation, electronic communication between applicants and state organs, procedural remedies and introduces the Office for the Economic Competition Protection as a supreme regulatory body which can levy sanctions and fines.

## **Commercial Code**

The 2009 Amendment of Commercial Code (Act.No.215/2009 Coll.) adopts European legislation as regards the formation of public limited liability companies and the maintenance and alteration of their capital.

Czech limited liability and joint stock companies are no longer obliged to obtain expert opinions on valuation of non-monetary investments when increasing their share capital in cases where the value of the non-monetary investment can be identified by other transparent methods.

The amendment further provides for new rules concerning financial assistance in limited liability and joint stock companies. It replaces old provisions which prohibited companies from providing financial assistance in order to acquire a share in the company. The new regulations enable companies to provide an advance payment, loan, credit or other monetary assistance or to provide security when acquiring a share in the company.

The amendment of the Commercial Code introduces European legislation on the exercise of certain rights of shareholders in listed companies and provides shareholders with the possibility to exercise their rights abroad via the electronic devices on condition that their identity can be verified.

## **New Criminal Code**

A significant achievement in Czech legislation is the approval of the new Criminal Code (Act.No.40/2009 Coll.) after more than 15 years of legislative effort. The new Criminal Code which came into effect on 1<sup>st</sup> January 2010, replaces a 30 year old Code originally based on the communist legal concept.

The new Criminal Code is based on a conceptual background stipulating protection of the human life, individual rights, democratic freedoms, private property and other values of modern democratic society. This priority affects the whole concept and definition of crime and introduces many important new elements such as a clear distinction between crimes and minor

offences, more than 60 new crimes and electronically controlled house arrest as a new form of criminal detention.

Important for the business environment is the new definition of the crime of bribery, which is no longer restricted only to the public sector. This new definition has already had some impact by changing business habits and practices in certain areas, such as pharmaceutical firms.

The new Criminal Code also provides a more precise definition of types and quantities of narcotic and psychotropic substances that are illegal for the purposes of the Criminal Code. This portion of the law corresponds with a recent verdict of the Czech Constitutional court, according to which merely growing cannabis is not a criminal act and does not necessarily result in production of drugs. According to this decision the former laws *“didn’t respond to the liberal nature of the Czech Republic “*

Under the new legislation, which is among the most liberal in Europe, a person may have for their personal use up to 15g of marijuana, 1g of cocaine, 1.5g of heroin, 4 ecstasy tablets, 5 LSD tablets or 2g of amphetamines. Possessing higher amounts is subject to criminal penalty.