

The first issue of Rands Business Bulletin is a regulate update of legal news chosen by the Randl Partners law firm related to **doing business, business law and real estate law**. We will generally issue Rands Business Bulletin every 3 months, always **focusing on current news from legislation and case law**.

This issue covers legal news between 1 January and 31 March 2010; in particular we look at two amendments to acts affecting **unfair competition and consumer law**. We also discuss an amendment to the **Act on Banks** and a related increase in the amount of guaranteed compensation for deposits in banks which cannot fulfill their duties to the depositor. Another pertinent issue concerns the **proposed acts on lobbying and on business corporations**, which has yet to be passed. In the real estate sector we call your attention to an amendment to the Foreign Exchange Act and how it affects the possibility for foreigners to own real estate in the Czech Republic. Finally we look at a key **decision of the Supreme Court of the Czech Republic**, from the first quarter of 2010 which highlights the importance of **registering in the Commercial Register all changes of persons acting on behalf of the company**.

ADOPTED ACTS

BUSINESS LAW

Amendment to the Commercial Code (152/2010 Coll.)

Act No. 152/2010 Coll., which amends the Commercial Code provision protecting against unfair competition, was adopted after increasing the types of victims of "directory fraud". Directory or listings companies use deceptive sales practices on businesses leading to an unintentional settlement of a contract by the businessman and unjustified enrichment of the directory/listings company. In the Czech Republic these companies generally offer to list the businessman in various dubious directories for a price that exceeds the generally accepted price for services of a similar character.

The Amendment was adopted to prevent another wrongful situation which has until now been difficult to protect against; it changes the definition of forbidden unfair competition, and from 1 July 2010 it **extends the list of subjects protected from unfair competition to include the general term – the customer**. This would include persons not considered business entities, as well as businesses entities; what is key is that a competitive relationship does not have to exist between the directory company and the subject.

The Amendment further stipulates that a **contract in violation of prohibited unfair competition is void from the beginning of an act (ex tunc)**.

Act No. 155/2010 Coll. on changes of some regulations to improve the quality of their application and to decrease administrative pressure imposed on businessmen

Act No. 155/2010 Coll., which goes into effect from 1 August 2010, should ensure Czech law compliance with acts of the European Union in connection with doing business. This new act is intended to decrease administrative pressure on businessmen.

This act above all **narrows the definition of the consumer**, which Czech law defined as an individual person or legal entity that does not act within the framework of his/her business activity. The amendment changes this to relate only to **an individual person**.

In the sphere of the Civil Code the Act brings a fundamental change to "consumer contracts". **All engagements under consumer contracts which are against the law or are detrimental to the consumer will now be considered as void ex tunc**. That means

that an injured party will no longer have to appeal to court in order for protection, and the contract will be considered as never concluded.

The Act also changes the Trade Licensing Act. It relaxes the requirements on providing evidence of good character of trade license applicants and cancels the duty to notify the Trade License Office of changes in basic registers and the register of citizens or information system for foreigners. Moreover, the Act also changes the professional qualification requirements for certain trades as well as administrative proceedings regarding offences of businessmen.

The Amendment also includes changes to the Act on Czech Commercial Inspectorate and Act on Technical Requirements of Products.

Amendment to the Act on Banks (156/2010 Coll.)

The change to the Act on Banks was intended to ensure transposition of European regulations regarding systems of deposit insurance.

Effective from 5 June 2010, the amendment to the Act on Banks **doubles the current maximum amount of compensation** to be paid by the Deposit Insurance Fund for receivables deposited in banks if the bank cannot fulfill its duties to depositors. The Deposit Insurance Fund will pay, at the depositor's request, 100 percent of the deposit, up to a maximum equivalent of EUR 100,000.

The Amendment also shortens from 5 years to 3 years the limitation period after which it will not be possible to require the Deposit Insurance Fund to fulfill requests.

MISCELLANEOUS

Amendment to the Act on Electronic Signature (101/2010 Coll.)

With effect from 15 April 2010 electronic signature users will be able to use the services of guaranteed electronic signature providers from any EU member state. This amendment thus significantly **extends the number of guaranteed electronic signature providers which can provide a qualified certificate** – there are currently only 3 such providers in the Czech Republic. The Ministry of Interior of the Czech Republic will maintain a database of acceptable certification service providers.

REGULATIONS UNDER DISCUSSION

BUSINESS LAW

Proposed new amendment to the Commercial Code (Parliamentary press No. 987/0)

Parliament is attempting to bring changes to the types of shares possible in public limited companies. If this parliamentary proposal – which is currently in its first reading in the Chamber of Deputies – is adopted, shares will no longer be able to be made out as a bearer shares but only as registered shares.

The main aim of this proposal is to ensure transparency of ownership structures of public limited liability companies. Under the current legal status the possibility of full anonymity of owners exists and is often misused.

Proposed new Act on Business Corporations (Parliamentary press No. 836/0)

The government proposal would bring a comprehensive regulation of business corporations and co-operatives that is separate from the Commercial Code. This new act is proposed following adoption of the new Civil Code.

REAL ESTATE

Proposed Act amending the Foreign Exchange Act (Parliamentary press No. 925/0)

An amendment to the Foreign Exchange Act, which changes the **restrictions on foreigners acquiring real estate in the Czech Republic** is now in its third reading in the Chamber of Deputies.

The Czech Republic negotiated 2 transitional periods when it entered to European Union. Those transitional periods enable the Czech Republic to maintain certain restrictions on the acquisition of domestic residential real estate by foreigners – **5 years (until 1 May 2009) for “residential real estate” (e.g. flats, houses and adjoining plots) and 7 years (until 1 May 2011) for agricultural land**, from the date of entry into the European Union.

Even though in practice, especially in Real Estate Registry procedures, the restrictions on foreigners

acquiring domestic residential real estate do not apply, it is still necessary to delete the respective provision from the Foreign Exchange Act.

MISCELLANEOUS

Proposed new Act on Lobbying (Parliamentary press No. 994/0)

A parliamentary proposal, which passed the Chamber of Deputies and was sent to the Senate, is an entirely new lobbying regulation and determines lobbying as an activity which aims to influence decisions of other subjects. The proposed act regulates the rights and duties of lobbyists as well as sets out sanctions if they are violated. The purpose of this regulation is to increase transparency of the legislative process. If passed, the Act on Conflict of Interest and the Rules of Procedure of the Chamber of Deputies will be amended as well.

CASE LAW

BUSINESS LAW

Decision of the Supreme Court of the Czech Republic – Case No. 30 Cdo 3172/2007 concerning effectiveness of the record in the Commercial Register

By this decision the Supreme Court pointed out the importance of timely deletion of persons acting on behalf of a company after being recalled, i.e. managing directors, members of the board of directors or proxies. Records in the Commercial Register are effective against third parties who act in reliance with such records, as long as they are registered, regardless of the actual situation.

In the case at hand a contract was signed on behalf of the company by a recalled managing director. However, the Supreme Court ruled that the contract was valid and binding on the company due to the fact that the managing director was still registered in the Commercial Register.

NEWS AND TIPS

European small and medium-sized enterprises week 2010

The European small and medium-sized enterprises week 2010 (The European SME Week), declared by the European Commission, will run from 25 May to 1 June 2010. The aim of the SME Week is to provide today's and tomorrow's entrepreneurs with information about existing support available at European, national and regional levels and to encourage more people to become entrepreneurs.

New website of the Supreme Court

A new website offering options for advanced searches of Supreme Court decisions was launched on 26 April 2010. You can access the new website at http://novyweb.nsoud.cz/judikaturaNS_new/ns_web.nsf or through our website - Links Commercial Law. Since the website's launch new decisions of the Supreme Court can only be found here.

Randl Partners
advokátní kancelář attorneys at law

City Tower
Hvězdova 1716/2b
140 78 Praha 4
Tel.: +420 222 755 311
Fax: +420 239 017 574
E-mail: office@randls.com
Internet: www.randls.com

The issue of Randls Business Bulletin was prepared for you by:
Pavel Randl, Irena Lišková, Tomáš Sum

© Randl Partners – all rights reserved

The information included in this material is for informational purposes only and is not intended to and does not constitute legal advice. Before applying this information to a specific case, we recommend seeking an independent lawyer.