

In the second issue of Rands Business Bulletin we bring you an update of legal news related to doing business, business law and real estate law from the period between 1 April 2010 and 30 June 2010. In this issue we gather, in particular, information concerning an amendment to the **Act on Public Contracts** (Act on public procurement). This amendment is intended to eliminate insufficiencies in the Act's practical application and should ensure compliance with acts of European Union and case law. Due to changes in the Czech Parliament and the formation of a new government this issue does not include our regular section covering newly proposed laws. We only briefly mention proposals related to constitutional law. We discuss a **decision of the Supreme Court of the Czech Republic concerning rights of proxies (procurists)** and we also look at an interesting **decision of the Supreme Administrative Court of the Czech Republic concerning the prohibition on the awarding of liquidating fines for administrative offences of entrepreneurs**. Finally we would like to point out, particularly to small and medium-sized entrepreneurs, valuable information available on the European Union's various Internet portals, such as the European Small Business Portal, the Market Access Database and the Your Europe portal.

ADOPTED ACTS

BUSINESS LAW

Amendment to the Act on Public Contracts (179/2010 Coll.)

The extensive amendment to the Act on Public Contracts is intended to increase transparency in public procurement by better specifying some provisions and by eliminating insufficiencies in the Act's practical application. This Amendment should also ensure Czech law compliance with European law, case law of the Court of Justice of the European Union and case law of the Office for the Protection of Competition.

The following highlights those changes in the Amendment that may affect suppliers concerned in public tenders after the Amendment goes into effect.

- **Public supply contract** – In addition to defining “public supply contract” as the purchase of products, the Amendment adds under the term the provision of services or execution of building work consisting in location and installing equipment or rendering such equipment operational. This definition includes the assumption that these activities would be necessary for the performance of the public supply contract and it would not lead to the creation of any construction. It will be up to the contracting entity to make the distinction between a public supply contract and a public works contract.
- **Contracting entity profile** – under the Amendment the contracting entity will be obliged to publish all information concerning its public contracts only on its profile. The contracting entity would newly be obliged to publish its profile in the Public Procurement Information System (www.isvz.cz) and to publish all invitations to bid in simplified below-the-threshold procedures.
- **Time limits in award procedure** – The Amendment changes the start date for the time limit in an award process. Once the Amendment is in effect the time limit will start from the day following the initiation of the award procedure. The Amendment also prolongs accordingly the award period by the amount of time such period has been suspended due to lodged objections.
- **Demonstration of fulfillment of qualifications** – When a supplier demonstrates the fulfillment of certain parts of the qualification by means of a subcontractor, the supplier must submit to the contracting entity (1) the contract concluded with the subcontractor, which implies its obligation to render the performance intended for the performance of the public contract, specifically to the extent which is not less than that of fulfillment of qualifications demonstrated by the subcontractor, (2) an extract from the Commercial Register, (3) an affidavit of the subcontractor that it is not listed on the blacklist of economic operators banned from participating in the performance of public contracts. The Amendment removes the obligation of suppliers to submit all relevant documents in original or in verified copies. Furthermore the supplier won't be required to translate documents submitted in Slovak. The Amendment also changes the conditions for the supplier to demonstrate that it has not been involved in any kind of unfair competition practices in the form of bribery and that it is not nor has been subject to insolvency proceedings involving its assets. Previously suppliers could never have been connected with such acts, but recently this condition applies only to the last 3 years before submitting a tender. Moreover, the contracting entity will be obliged to draw up a report on the assessment procedure for qualification. This report will make obvious how and what kind of nonfulfillment of qualifications each candidate has. The supplier is entitled to inspect this report and make extracts and copies of it.
- **Options** – The right to be provided with supplementary supplies the award of which has been reserved by the contracting entity in tender conditions will be possible to practice only in a negotiated procedure without publication. However, new limits are set for optional supply (the price payable for optional performance cannot be more than 30% of the original award of the public contract and simultaneously cannot be more than 30% of the price originally set for optional performance in the tender conditions).
- **Checks on selection and evaluation** – The Amendment newly requires the contracting entity to indicate in writing, in the report on tender assessment and evaluation, all information on the evaluation of the tender within the framework of individual evaluation criteria. Such specification of the contracting entity's already existing obligations should provide the opportunity to properly examine the contracting entity's evaluation.

Besides the above changes the Amendment also includes changes to framework agreements, design contest, filing objections, how compliance with the Act on Public Contracts is supervised, corrective measures and to offences of suppliers and contracting entities.

REGULATIONS UNDER DISCUSSION

Because of the election campaign, leading to elections to the Chamber of Deputies and, following that, negotiations on the formation of a new government which began in the second quarter of this year, there have been no actual proposals of new acts or amendments of interest.

Therefore we merely note a few parliamentary proposals from June 2010 related to constitutional law concerning a direct vote for president (for elections in 2013), an amendment of the Act on nationwide referendum and proposed limits on the immunity of members of the Chamber of Deputies.

CASE LAW

BUSINESS LAW

Decision of the Supreme Court of the Czech Republic – Case No. 29 Cdo 2720/2009 concerning the right – of a proxy (procurist) to conclude contracts on transfers of business shares (ownership interests) on behalf of a company

According to Section 14 of the Commercial Code a proxy is entitled to perform all acts in law (transactions) which are involved in operating the enterprise on behalf of the company.

Case law has usually identified the scope of legal acts connected with operating the enterprise by the registered scope of business. Therefore courts had

considered those legal acts performed by a proxy in a context other than the registered scope of business as performed without due authorization and thus invalid.

However, on 28 April 2010 the Supreme Court ruled that the decision on which acts are part of operating the enterprise must always be dependent upon the **disposition of the enterprise and its particular operation, not upon its scope of business registered in the Commercial Register.**

On this basis the Supreme Court concluded that a proxy is entitled to realize a business plan for an entrepreneur, which consists of acquiring capital participation in other companies, also by concluding contracts on a transfer of business shares on behalf of the entrepreneur.

Contracts concluded by proxy in line with the above must be accepted by the respective court, and changes in the Commercial Register must then be registered by the court based on such contracts.

MISCELLANEOUS

Decision of the Supreme Administrative Court of the Czech Republic – Case No. 1 As 9/2008 concerning liquidating fines

In its decision the Supreme Administrative Court confirmed, in line with previous decisions of the Constitutional Court of the Czech Republic, on the prohibition on awarding liquidating fines, that administrative authorities must respect the personal and financial situation of offenders when they impose a fine on them. According to the Supreme Administrative Court's decision a liquidating fine can be considered an administrative fine which can result in insolvency of the offender (entrepreneur) or in forcing him/her to exit the business. For natural persons a liquidating fine is a fine which can give the offender and eventually his family existence problems.

NEWS AND TIPS

Informational websites for small and medium-sized enterprises in the EU

The European Commission has created quality multilingual internet portals to help stimulate business for small and medium-sized enterprises ("SME") in the EU. These portals offer entrepreneurs valuable information concerning the conditions for doing business in EU member states as well as in third countries. The Portals gathers together all information provided by the EU on and for entrepreneurs, including databases of tax tariffs, regulations, practical advice and guides for all phases of doing business, from starting up a business to exit strategies. Key portals include the European Small Business Portal, Market Access Database and the Your Europe portal.

European Small Business Portal: http://ec.europa.eu/small-business/index_cs.htm gathers together all the information provided by the EU on and for SMEs, ranging from practical advice to business policy issues, from local contact points to business networking links.

Market Access Database: gives support to EU entrepreneurs to enter into markets in third countries. This portal is a key part of the European Commission's work to create new opportunities for EU entrepreneurs in markets abroad – www.madb.europa.eu is of particular use to EU exporters.

Your Europe – Business – guides entrepreneurs in EU member states and offers factual data on particular states, including 26 points useful for all phases of doing business, from starting up a business to the decision to exit http://ec.europa.eu/youreurope/business/index_cs.htm.

You can access these and other interesting and useful portals related to doing business on our website – Links Commercial Law.