

In the third issue of **Rands Business Bulletin**, we introduce you the essential information about the new system of basic registers of public administration. This system is intended to transform the method of collecting and storing data related to individuals, business corporations, government bodies, as well as information related to their rights and duties and regarding all immovables located in the Czech Republic. **Rands Business Bulletin** also looks at **the most interesting decisions** of the Courts and of the Office for the Protection of Competition, issued in July and August 2010. We discuss the first decision regarding **"bid rigging", as it relates to public procurement. In the field of consumer law** we focus on a decision concerning **prohibition of an arbitration clause in consumer contracts**. Another pertinent issue concerns the repeal of a provision of the Insolvency Act, which is essential **for exercising creditors' rights**. We briefly mention a key **decision of the Supreme Administrative Court concerning penalties imposed by the Office for the Protection of Competition**. Finally, we point out some of the available services offered by Czech POINT offices.

ADOPTED ACTS

Act on Basic Registers (Act No. 111/2009 Coll.)

The Act on Basic Registers has been effective from 1 July 2010. Its basic objective is a transformation of the current system of collecting and storing the data now found in various indexes, registers and records. This Act establishes a new system, which enables the collection of all appropriate data which can be used throughout the entire public administration system. This system comprises four basic centralized registers – the Register of Inhabitants (ROB), the Register of Rights and Duties (RPP), Register of Persons (ROS) and the Register of Territorial Identification, Addresses and Real Estate (RUIAN). The basic registers will be operated by the Basic Registers Information System (ISZR) which will be administrated by a newly established government office: the Administration Office of Basic Registers.

However, following a decision of the Minister of Interior, the Administration Office will be set up as economically as possible due to its current incapacity to ensure all activities in compliance with the Act. This decision results from the fact that the project is still in its start-up phase. No supplier has even been chosen, although a public tender is underway. To imagine how long it will take to implement the whole system of new basic registers we should point out that the deadline for submission of bids in the first tender, for the creation and verification of the Register of Persons (ROS), is June 30, 2011.

Back to the Basic Registers System, its fundamental element will be known as "reference data" which is considered to be actual, warranted and valid. There is one fundamental advantage in this system – people will no longer have to visit each government office to register the necessary information or any changes. It will be enough to report the information to the appropriate register, which will disseminate the data.

Comprehensive information on the Basic Registers can be found at ISZR's website: <http://www.szrcr.cz/> or through our website: Links – Commercial Law.

Amendment to the Act on Public Benefit Organizations (Act No. 231/2010 Coll.)

Act No. 231/2010 extensively amends the system of Public Benefit Organizations (o.p.s.). Once in effect, the Administrative Board will no longer represent the Public Benefit Organization. The authorized representative will be the organization's director, who will be responsible for the management of the whole organization. The Director's personal data will be mentioned in the Public

Benefit Organizations Register, maintained by the Ministry of Interior. Public Benefit Organizations will be obliged to establish a Supervisory Board besides an existing Administrative Board. The Amendment will partly change their competence as well. This amendment comes into effect on January 1, 2011.

Notification of the Ministry of Finance – Central Securities Depository (Act No. 234/2010 Coll.)

On July 2, 2010, the Central Securities Depository (CDCP) completed the transfer of records of dematerialized and immobilized securities, which were previously held by the Czech Securities Centre. The Depository began its activities on July 7, 2010 in compliance with the Act on Capital Markets.

You can learn more about the latest developments about securities records and the benefits offered by Central Securities Depository on the new CDCP website at <http://www.centraldepository.cz> or through our website: Links – Commercial Law.

REGULATIONS UNDER DISCUSSION

Proposed new Act on Abolition of Bearer Shares in Physical Form (Parliamentary press No. 22/0)

We already informed you in our first release about an amendment to the Commercial Code aimed at abolishing bearer shares in order to promote transparency of ownership structures. Currently, there is a bill in its first reading on the same matter. The new bill does not abolish the entire category of bearer shares, only the shares in physical form, as the anonymity of the owner of registered share is, to some extent, breached anyway. If adopted, joint-stock companies with shares in physical form would have 24 months to convert them into bearer registered shares or registered shares in physical form.

Proposed new amendment to the Public Procurement Act (Parliamentary Press No. 45/0)

The objective of the bill, presented by deputies, is to change the "anticorruption" provision of the Amendment to Public Procurement Act No. 173/2010, which provides that suppliers – joint-stock companies with bearer shares – would be completely excluded from participating in public tenders. This includes companies like ČEZ, a.s., a number of banks and some major building companies. We can expect the bill to pass without problems, as the Czech Republic would risk penalties from the European Union if it fails to adopt this Amendment.

CASE LAW

Up-to-date case law concerning arbitration clauses in consumer adhesion contracts

The Regional Court in Ostrava decided on March 8, 2010 that arbitration clauses in consumer contracts are forbidden. The Court maintains that an adhesion contract, which cannot be modified by the consumer, has significant adverse effects on him. Consequently, the entrepreneur often abuses his stronger position if proposing such contract. However, this judgment is not yet effective as the proceedings are continuing before the High Court in Olomouc. The Municipal Court in Brno also decided on the matter this year, but this judgment has not become effective either. We can expect courts of appeal to confirm the previous decision, especially with respect to the latest European legislation and European Court of Justice's case law. At the same time, this currently common practice of arbitration clauses occurring in consumer contracts of certain entrepreneurs should be affected by an amendment to the Civil Code, which went into effect from August 1, 2010. It provides that all clauses contradictory to the principle of good faith and that are detrimental to consumers, are null and void.

Consumers will no longer be required to appeal the nullity of arbitration clauses: these provisions will be considered as never concluded.

Decision of the Office for the Protection of Competition regarding cartel agreements of public tender applicants for "bid rigging"

With regards to cause of corruption in the Ministry of Defence of the Czech Republic, the Office for the Protection of Competition decided to impose an unprecedented first fine in connection with "bid rigging", i.e. an illegal cartel agreement of applicants bidding in a public tender. In this case, the applicants had coordinated their offers to ensure that the offer the cartel wanted chosen would be selected. Instead of competing, they conclude secret agreements in order to reduce the offered price or quality of provided services. Bid rigging reduces real competition, where the lowest

prices or best quality and innovation is achieved.

The decision of the Office has not yet been published and remains ineffective. We will keep you informed about the progress of this decision and its effects on the concentration of competitors in upcoming releases.

Decision of the Constitutional Court (No. 241 / 2010 Coll.) concerning the motion to repeal some provisions of Insolvency Act

The Constitutional Court decided on July 1, 2010 to repeal Section 192(1) of the Insolvency Act. According to this provision, creditors are not entitled to contest another creditor's claim. Although lawmakers intended by the provision to speed up and streamline insolvency proceedings, the Constitutional Court decided that it was a disproportionate infringement of the right to judicial protection and Article 4 of the Constitution, which provides that fundamental rights and freedoms are protected by judicial power. The repeal of Section 192 will not go into effect until March 3, 2011 to give lawmakers time to prepare new regulations.

Decision of the Supreme Administrative Court on fines imposed by the Office for the Protection of Competition from July 21, 2010 (No. 1 Afs 38/2010-100)

The Supreme Administration Court has finally decided on a litigation between the Office and the petroleum company Shell on a refund of interest from a fine it imposed on Shell in 2004 and then repealed in 2006, based on a successful appeal. It rejected the cassation complaint of the Office for the Protection of Competition and confirmed the earlier decision, which ordered the Office to refund the interest on late payment resulting from the expiration of the 15-day period from the original due date to the moment of the fine refund.

The Court also emphasized that the Office's right to decide and impose fines for a distortion of competition is necessarily connected to its responsibility for the results of its own decision making.

NEWS AND TIPS

Czech POINT and Czech Post services – Czech POINT offices were first established several years ago as part of the digitalization of the public administration. Czech POINT offices allow for easy access to the public administration. By visiting any Czech POINT in the network, you can quickly and easily get certified extracts from a number of public and non-public registers of the public administration or forms required for obtaining or changing trade licenses.

The family of Czech POINT services has been growing fast. The following services are now available at any post office with a Czech POINT logo:

- Extract from the Commercial Register
- Extract from the Land Register
- Extract from the Trades Register
- Extract from the Insolvency Register
- Extract from the Criminal Register
- Extract from the Register of Drivers
- Extract from the Register of Qualified Contractors
- Services related to Data Boxes
- Authorised conversion of documents
- Legalisation of signatures (Česká pošta)
- Authentication of documents (Česká pošta)

More information on Czech POINT's services can be found at the website: <http://www.czechpoint.cz/web/index.php> and <http://www.cpost.cz/> or through our website: Links – Commercial Law.