

In this 1<sup>st</sup> Business Bulletin issue of 2011, we report on news in business and commercial law for the period January 1, 2011 to March 31, 2011. Regarding adopted acts, we draw your attention to the **new form** for the application for the electronic payment order and amendment to the Civil Code relating to so-called **time-sharing**. We also focus on the upcoming **amendments to the Commercial Code** relating to the Commercial Register and liquidation and an amendment proposed in connection with enabling the concurrence of function of a statutory body and employment relationship. Although the aim of the amendment is to allow the concurrence, the current case law considers it impossible. Thus, you can find a decision of the **Supreme Administrative Court** confirming the impossibility of the concurrence of functions, while the invalidity of the employment relationship now has consequences in the field of health insurance. Furthermore, we report on a new **decision of the Office for Protection of Competition** relating to so-called **Resale Price Maintenance**. Last but not least, we examine **public tenders**, particularly a decision relating to the **expected value of a tender**. Finally, we give useful tips concerning **eJustice**.

#### ADOPTED ACTS

##### Act No. 28/2011 Coll., amending the Civil Code and on amendment to several acts

The amendment to the Civil Code transposes a respective European directive and fully supersedes **previous regulation of consumer protection in the field of entering into an agreement on use of a building or its part for a definite time period (timeshare)**, which was previously provided in Sections 58-65 of the Civil Code. The aim of the amendment is to respond to developments in the field of time-sharing, as new forms of time-sharing have been developed since adoption of the previous regulation. The new regulation applies if an accommodation facility is to be leased for more than one period of time and the contract is concluded for a period longer than one year.

##### New form for issue of electronic order for payment

A new form for the issue of electronic order for payment was published in an amendment to decree of Ministry of Justice No. 197/2008 Coll., and is effective as of March 15, 2011. Except for minor graphic changes, data structure of the **new form** (again in .pdf) has been slightly adapted. The form has been shortened, some parts have been simplified or removed (e.g. buttons "Contractual fine", "Claim related to"), but some useful buttons were added (e.g. widened choice of accessories of the claim).

#### REGULATIONS UNDER DISCUSSION

##### Proposed amendment to the Commercial Code – concurrence of function of a statutory body and employment

The upcoming proposed amendment to the Commercial Code shall regulate concurrence of function of a statutory body and employment of the statutory body in the same company and **enable** it. The bill proposed by the Ministry of Justice has not yet been debated by the government; however, we already have its wording at our disposal. Unfortunately, the suggested amendment is not clear and it may not rule out argumentation by the Supreme Court, considering the concurrence illegal in certain cases. At the same time, changes to several related acts should be made together with an amendment to the Commercial Code, particularly an amendment to the Labor Code and social insurance acts; however, these changes have not been debated even by the competent ministries. As follows from

wording of the amendment, a person who is a statutory body of the same company in which he/she is employed and whose employment consists of business management, is obliged to **act with due diligence**, just like a statutory body and its liability is regulated by provisions on **liability and suretyship** of a statutory body. Thus, limits of an employee's liability for damages provided in the Labor Code shall not be applicable. The rise of the employment of the statutory body will be conditional upon consent of the statutory body. It is not clear from the proposed wording, whether the consent would be necessary only in case of the collective statutory body (i.e. consent of all members) or at each time. The salary will then have to be approved by the body which decides on the reward for carrying out the function of a statutory body (usually a general meeting). We will keep you informed about further progress.

##### Parliamentary print No. 310/0, Amendment to the Commercial Code

On March 2, 2011, the Government of the Czech Republic submitted a bill amending the Commercial Code, particularly in its provisions concerning the Commercial Register. If adopted, entrepreneurs will be required to have a **title to use the premises in which their registered office is placed, for the entire time of carrying out their entrepreneurial activity**. The purpose of this amendment is to avoid existence of so-called fictive seats of companies, when a company has only a mailbox on the address of its registered seat and does not actually reside there. The amendment shall relieve entrepreneurs who apply for registration of their offices with the Commercial Register, from the statutory requirement to submit an extract from the Land Register to prove the right to use the premises. Another important change, proposed with regards to personal data protection, is that **only date of birth** instead of birth identification number shall be published in the Commercial Register. According to the amendment, **specimen signatures** of statutory bodies of companies shall no longer be published in the Collection of Documents, as this has allegedly been misused. Finally, liquidation procedures, if ordered by the court, shall be simplified. The amendment should become effective as of July 1, 2011.

##### Parliamentary print No. 285/0, Act on criminal liability of corporations and proceedings against them

The new act provides **conditions of criminal liability** of corporations, **punishments** which can be imposed upon them and **proceedings** against corporations. The act should become effective as from September 1,

2011. Due to severe impacts of the new act on corporations and with regards to a fundamental change in the Czech legislation that will occur if adopted, we have decided to publish further information about the proposed bill and its consequences in a **special issue of Business Bulletin**, which will be available on our web pages in the second quarter of 2011.

## CASE LAW

### Decision of the Supreme Administrative Court from December 9, 2010, ref. No. 3 Ads 119/2010

In compliance with a more than 10-year-old consistent case law practice of the Supreme Court, the Supreme Administrative Court confirmed the **impossibility of concurrence of exercise of a function of a statutory body of a company** (Managing Director, Member of the Board of Directors) **and the employment relationship of such person in the same company**, if the agreed work is an activity corresponding to company management. In the case tried by the Supreme Administrative Court, **the forbidden concurrence had an impact in the field of health insurance**. The Czech Social Security Administration refused to reimburse sick pay to a statutory body, who was an employee on the position of the director as well, reasoning that his employment relationship never existed. After this judgment was issued, the concurrence of exercise of function and employment became a widely discussed issue in the media; as a result, the government very quickly drafted an amendment to the Commercial Code which is intended to solve this problem; for further information please see above.

### Decision of the Office for the Protection of Competition on Resale Price Maintenance

The Office imposed a fine on outdoor clothing producer HUSKY for anti-competitive conduct consisting in resale price maintenance, since the Office considers such conduct as an illegal vertical agreement between competitors. Resale price maintenance is a situation when a producer and a distributor, or distributor and a retail dealer enter into an agreement on price for which the goods shall be offered to consumers. Although it is

not forbidden to set a recommended sale price, it is illegal to compel the purchaser to sell goods for such a recommended price. The compulsion can be exercised through binding instructions motivating the purchaser to respect them or even through threat of sanction, including cutting-off supplies of goods.

### Decision of the Office for the Protection of Competition in connection with prohibition of discrimination

The Office has confirmed the imposition of a fine on the City of Liberec through its final decision for **violation of prohibition of discrimination in providing terms in tender documentation**. The subject of the tender was the supply of services in the area of waste disposal management for the price of CZK 1 billion. The City of Liberec provided a requirement in the tender documentation that all tender competitors shall possess an already awarded consent from the Region of Liberec with running a waste collection yard. It resulted in a **substantial limitation of the number of tender competitors** and, consequently, in the restriction of competition. The Office found the requirement discriminatory; it considers that the Office should have chosen a different way of laying down the requirement, such as that the selected competitor shall undertake to receive such consent.

### Judgment of the Regional Court in Brno, ref. No. 62 Ca 25/2009 – expected value of a tender

The Regional Court in Brno **expressed disapproval to practice of the Office for Protection of Competition** in calculating the expected value of a public tender. In this case, the Office imposed a fine on the contracting entity for not abiding by the Act on Public Contracts, as it did not start its award procedure, even though it should have, according to the Office's opinion. The Office included commissions paid to the supplier by its customers to the total value of the tender. The court reasoned that all performance coming to the supplier from public sources should be included in the value of the tender. **Commissions from customers are not provided from the state budget**; therefore they **cannot be included in the value of the public tender**.

## NEWS AND TIPS

**eJustice** is a system of electronic applications available at the Ministry of Justice website [www.justice.cz](http://www.justice.cz). The best-known elements of eJustice are the **Commercial and Insolvency Register**. Another three applications enable users to get information about judicial proceedings. The application **infoSoud**, upon choosing the competent court and entering the file number, provides information about the pending proceedings, including details of each key decision of the relevant court. The application **infoJednání** gives information whether a hearing has been ordered, and where and when the hearing will be held. The application **infoDeska** publishes the content of administrative boards of organizations subjected to the Ministry of Justice in electronic form, including shortened forms of decisions of courts or prosecutors. You can electronically communicate with courts and file lawsuits, orders for payment (**Eplatební rozkaz**) and others through the application **ePodatelna**. Other applications of **eJustice** are not yet fully functional, such as **infoData**, which shall provide statistic data collected by Czech courts. Project **eTrestní řízení** whose purpose is to introduce electronic maintenance of criminal proceedings' agenda, including electronic files from the stage of police investigation to release of the convict or cancellation of the supervision of the Probation and Mediation Service and subsequent delivery of data to the Criminal Register is not yet functional at all.