



## News No. 2/2011

### Re-codification of Czech private law

On 18<sup>th</sup> May 2011 the Czech government passed three bills that will probably bring one of the biggest legislative changes in the past 20 years. These are the draft Civil Code, draft Commercial Corporation Act and draft Private International Law Act, named jointly as the re-codification of Czech private law. If these bills are passed, which appears highly probable considering the political support expressed so far, they shall repeal and replace the present Civil Code (Act No 40/1964 Sb. as amended), the Commercial Code (Act No 513/1991 Sb. as amended) and the Private International Law Act (Act No 97/1963 Sb. as amended) as well as more than 200 further regulations. For the sake of completeness, it should be mentioned that these are – with slight differences – the same bills submitted to the Chamber of Deputies at the beginning of 2009; however, the debate on them was put off in view of the political situation at that time.

Removing the current duality of the civil and commercial law in commercial obligations ranks among the absolute principal changes the new regulation of private law should bring. The regulation of commercial obligations, especially contractual regulations, which is now included both in the Civil Code as well as in the Commercial Code for business entities, shall be comprehensively regulated by the new Civil Code only according to the bills. In addition to that, the Civil Code shall also regulate family law, inheritance law, so-called rights in rem (in particular proprietary rights) and shall, of course, include quite general provisions on persons, things, legal conduct with the definition of most basic terms.

The area of commercial law includes, besides the above-mentioned law of obligation, the other part termed corporate law, which should be contained in the Act on Business Corporations. This law should regulate particular types of trade companies, their structure, bodies and acting. The bill is closely tied up to the draft Civil Code which – contrary to the current dual legislation – shall not replace the Commercial Code but supplement it with the aim of reacting to different characteristics of entrepreneurial environment. At the same time, however, the new bill strives for interconnection with the new Insolvency Act and other legislation regulating entrepreneurship. We can expect that amendments of related laws will follow relatively soon after enactment of the above-mentioned bill, especially in the area of taxes and accounting.



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The authors and submitters of the bill often emphasize liberalization of company law as one of the achievements of the new regulation. That should be demonstrated in an easier procedure for establishing trade companies. For instance, the possibility of establishing a limited liability company with a registered capital amounting to a mere 1 CZK is often mentioned in this connection, as in practice the current regulation of the minimum amount of registered capital does not improve the position of third persons against the company but only encumbers entrepreneurs administratively.

Furthermore, the possibility of issuing so-called participation certificates, in which the business share of a member of a limited liability company would be incorporated, should contribute to the liberalization of trade companies as well. This would make transferring a business share easier. Moreover, founders of a joint stock company shall be free to choose whether to preserve the present company's organisation structure consisting of a board of directors and a supervisory board or if the company will be governed by a so-called board of governors. This should particularly simplify the functioning of smaller joint stock companies and thereby make this company type more attractive for founders.

However, apart from these liberalization efforts, it must be mentioned that in some matters the law – in the case of its passage – will also considerably tighten legal regulations against subjects acting in trade companies, both against members of company bodies as well as partners of the company. One example is the qualitative change of liability of the statutory bodies or their members for activity pursued in company management, especially regarding exercise of powers in compliance with the requirement of due care and diligence of a prudent businessman. Further on, these persons could be liable for the company's obligations against creditors with their own property in case of an insolvency proceedings if the court decides so. This would mean a major breakthrough in liability of statutory bodies. Furthermore, it should fall within the competence of the courts to forbid completely the performance of activities of a statutory body to a person who has breached his or her duties or has even caused the company bankruptcy.



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As for a change in the position of company members or shareholders of trade companies, the Act on Business Corporations would institute a so-called affiliated person (person of influence) and a person under influence within the regulation of holdings companies. The affiliated person may be liable for all decisions in which he or she has participated and which have caused damage to the person under influence. Thus, not only members of company executive bodies but also company members, including minority members could be considered to be affiliated persons. In view of the far too general definition of the affiliated person it remains questionable how this institute will be usable in practice.

Although the results of legislative activity can never be anticipated with full certainty we can expect with high probability that those principal bills will be adopted in a certain form. On the 8<sup>th</sup> June 2011 they easily passed their first reading in the session of the Chamber of Deputies. The bills shall be considered by the individual committees, headed by the constitutional committee, in next three months. The bill's submitters headed by the Minister of Justice Jiří Pospíšil have repeatedly expressed the conviction that the bills will have gone through the entire legislative process by the end of this year, including their promulgation in the Collection of Laws. For the time being, 1<sup>st</sup> January 2013 already is laid down as the expected date on which the laws shall take effect.

Various amendments as well as increasing interest in the new legal regulation can be expected within the legislative process. We will keep you informed on how the respective bills will go through the legislative process as well as on individual changes the laws will undoubtedly bring and not only for entrepreneurial practice.