



The fourth issue of the Business Bulletin in 2020 is primarily dedicated to measures concerning COVID-19, both new prohibitions and restrictions as well as support programs and reliefs for entrepreneurs. In our case-law section, we have analysed the decision of the Supreme Court of the Czech Republic dealing with replacement of a minutes from the general meeting in limited liability company (s.r.o.) by notarial deed and a new decision from Germany concerning a significant fine for processing personal data during the so-called "welcome back talks". As a practical tip, we refer to a summary of the possibilities for foreigners to travel to the Czech Republic and Czech citizens to travel abroad. Finally, we would like to invite you to the third Business Brunch of this year, which will be focused in particular on lease of business premises.

CURRENT INFORMATION CONCERNING COVID-19

BANS AND RESTRICTIONS

Following the repeated declaration of a state of emergency, the government introduced **new measures against the spread of coronavirus infection** effective from October 22, 2020, which are comparable to the "lockdown" in spring. These measures should last for the duration of the emergency state, i.e. **until November 3, 2020**, however, the government already announced that it **might be extended**, probably for **another 30 days**. It can therefore be assumed that these measures will remain in force during November. We summarize the most important for you below, along with relevant exceptions.

Prohibition of free movement of persons

With effect from October 28 to November 3, 2020, the **prohibition of free movement shall apply between 9:00 p.m. to 4:59 a.m.**, with exceptions for the trips to work and back, performance of activities to ensure safety or protection of health, life or property and walking dogs up to 500 m from the place of residence. At the time of the night curfew, people will have to prove why they left their home. Details are available [here](#) (Czech language only).

The movement of persons in publicly accessible places is limited to the time strictly necessary, while the obligation to wear masks in all indoor areas and also outside in the built-up areas of municipalities applies, unless a distance of at least 2 m from other persons is ensured. In addition, it is possible to stay in publicly accessible places in **groups of a maximum of two people**, with the exception for family members or performance of work / business / occupation. Stay anywhere outside the place of residence is allowed only for the listed exceptions – **trips to work and back**, trips to family or close relatives, trips to medical facilities, trips to ensure basic life needs (shopping, care for children or animals, waste disposal), weddings and funerals up to 10 people or volunteer work remain allowed. Moreover, it is also possible to travel for the purpose of stay in nature or to cottages and weekend houses, as well as for the **purpose of leaving the Czech Republic**.

Employers are also advised to limit as much as possible the performance of work that is not important for maintaining their activities, while they are also encouraged to provide the employees with remote work, taking holiday and paid leave.

All exceptions to the prohibition of free movement can be found in the government measure [here](#) (Czech language only).

Home office regulation

With respect to the nature of the work and operating conditions, the government orders employers to use home office if employees can perform work at the place of their residence.

Prohibition of retail sales and the sale and provision of services in establishments

With effect from October 28 to November 3, 2020, the government prohibits retail sales and sale and provision of services in establishments on Sundays throughout the entire day and from Mondays to

Saturdays between 8:00 p.m. and 4:59 a.m., provided that this prohibition does not apply to activities which are not trades under the Trade Licensing Act and to the operation of fuel stations, pharmacies, shops in places of increased passenger concentration at airports, railway stations and bus stations, shops in medical facilities and establishments with food services. Only fruit, vegetables, meat and pastry may be sold at the markets. The distance between the stalls must be 2 m and the maximum of 20 people per 400 m² may be present in the market.

The entire text of the measure is available [here](#) (Czech language only).

As in the spring, **retail sales have been prohibited** with some exceptions; however, wholesale remains unrestricted. Stores for which the exceptions apply, and in which it is therefore still possible to shop, can be collectively described as **stores of basic assortment and operation**. These include, for example, grocery stores, drugstores, opticians, pharmacies, fuel stations, pet supplies stores, florists and gardening stores, or haberdashery. **The general prohibition also applies to the provision of services in establishments**. Exceptions are set for laundries and dry cleaners, motor vehicle and household appliance services, real estate agencies, accounting consulting services, car washes, raw material collection and some others.

All exceptions to the prohibition can be found in the government measure [here](#) (Czech language only).

Hospital care

With the effect from October 28, 2020, hospitals must reduce non-acute health care in a similar way as in March 2020. Details on inpatient care can be found [here](#) (Czech language only).

Prohibition of providing accommodation services

Along with the prohibition of free movement, there is also a prohibition on accommodation of tourists. Hotels and other providers of accommodation services can thus provide accommodation only to persons on business trips, foreigners, persons in isolation or quarantine, persons with ordered work duties and patients who have been relocated due to the release of the capacity of medical facilities. However, guests accommodated before October 22, 2020 can complete their stay. All exceptions to the prohibition can be found in the government measure [here](#) (Czech language only).

Prohibition of the operation of cultural and sports facilities

Cinemas, theaters, museums, galleries, monuments and other cultural institutions are closed since October 12, 2020. Moreover, the prohibition also applies to zoos, game rooms and casinos. Sports facilities are also affected by this prohibition – fitness centers, gyms, swimming pools and aqua parks as well as wellness, massages, solariums, dance studios and bowling and billiard rooms are closed. All prohibited establishments can be found in the government measure [here](#) (Czech language only).

Restrictions of the operation of restaurants

The **presence of public in restaurants is generally prohibited**. As in the spring, it is possible to take food away using the take-away window from 6:00 a.m. to 8:00 p.m. Catering establishments in shopping centers over 5,000 m² are completely prohibited from selling – however, they can still cook and sell meals through delivery (on their own or via platforms like “Wolt”, “Dáme jídlo”, etc.). On the other hand, the prohibition **does not apply to restaurants for hotel guests and canteens for employees** – their opening hours are just shortened from 6:00 a.m. to 8:00 p.m. However, no more than 4 customers may sit at the table (except for the family members) and the distance of at least 1.5 m between the tables must be ensured. At the same time, the maximum number of guests equals to the number of seats in the restaurant. Wi-Fi connection and live music are also prohibited.

All exceptions to the prohibition of public presence in restaurants and operating conditions can be found in the government measure [here](#) (Czech language only).

Restrictions on the operation of offices and public authorities

The operation of all public authorities and administrative bodies is limited so that the operation of individual departments is ensured by a minimum number of employees, office hours are limited to two days a week (usually Monday and Wednesday), always for **five hours** and **all communication is made in electronic form**, if possible. All restrictions on the activities of authorities and exceptions can be found in the government measure [here](#) (Czech language only).

SUPPORT AND BENEFITS FOR ENTREPRENEURS

The European Commission has **extended the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak until June 30, 2021**. The Czech Republic (as well as

other EU member states) may thus continue to support entrepreneurs who are most affected by government restrictions in various ways. We bring you a brief summary of the most important ones together with the conditions for obtaining them.

Antivirus program

The regime Antivirus A (now called **Antivirus A Plus**) **has been extended until the end of this year**. Employers whose operations have been closed or restricted as a result of government measures are entitled to compensation for **100 % wage compensation including deductions, up to the amount of CZK 50,000**. In the case of quarantine of employees, compensation remains at 80 % of wage compensation. Support can be requested for the period from October 1, 2020.

On Monday, October 26, 2020, the government also approved **the continuation of the regime Antivirus B until the end of this year** (the period of eligibility of expenditures was extended to December 31, 2020), under the same conditions. The contribution will therefore continue to be provided to employers in the amount of 60 % of paid wage compensations, including mandatory deductions, up to a maximum of CZK 29,000 per monthly per employee.

COVID-Nájemné II

From October 21, 2020, it is possible to apply for support under the **second call of the “COVID-Nájemné” program**. Entrepreneurs whose operation has been prohibited or significantly restricted by government measures will receive a **contribution of 50 % of the rent for the third quarter of this year**, i.e. for the months of July, August and September. A significant simplification is that the **condition of a rent discount provided by the lessor is no longer set**, and thus all affected entrepreneurs in leased establishments can apply for support without the need to negotiate a discount with their lessor. The **maximum amount of support is CZK 10 million** for all establishments of one applicant, while the **support paid under the first call of the “COVID-Nájemné” program is not included in this limit**. However, further attention needs to be paid to the possible exceeding of the limit of Temporary Framework in the amount of EUR 800,000.

COVID III Guarantee program

With regard to the extension of the EU Temporary Framework, the **COVID III program is also to be extended**, the aim of which is to support entrepreneurs with up to 500 employees whose economic activities are limited by guarantee of ČMRZB (Czech-Moravian Guarantee and Development Bank) for operating bank loans. For the purposes of the extension, it will be necessary to amend Act No. 228/2020 Coll., which introduced the program into Czech law. The amendment was approved in the Senate on October 29, 2020 (the Chamber of Deputies has already approved it) and only needs to be signed by the President of the Czech Republic.

Tax reliefs, flat tax and planned reduction of income tax

Entrepreneurs, whose prevailing activity is included in one of the fields explicitly targeted by government prohibitions, have **all VAT, income tax and road tax payment, which were due in times of the state of emergency, deferred**. All they have to do is to **send** (sufficient via e-mail) **a notification to the Financial Administration** that they meet the conditions of the general pardon of the Minister of Finance.

From the previous relief's packages, the waiver of the administrative fee for submitting an application to the tax or customs office and the general waiver of VAT for free supply of protective equipment, raw materials for the production of disinfection and the supply of goods to medical staff and IRS staff remain in force.

Further information is available on the [website of the Ministry of Finance](#) and the wording of the new reliefs is available in the [Financial Bulletin of the Ministry of Finance](#) (Czech language only).

The situation around the **flat tax**, the bill on which has already been approved by the Chamber of Deputies, has also moved forward. However, some changes were made to the bill in the Chamber of Deputies, with a significant change being the **increase in the income limit** to which this flat-rate tax can be used to **CZK 1 million**. The bill was approved in the Senate on October 29, 2020 and only needs to be signed by the President of the Czech Republic.

Last but not least, the Prime Minister and the Minister of Finance confirmed their **intention to abolish the super-gross wage for the next two years and to reduce the income tax rate for employees to 15 %**. The **higher rate** should then be **23 %** for people with an income of over CZK 139,000 per month. This change should be submitted by the Prime Minister within the framework of amendments in the

Chamber of Deputies until Tuesday, October 27, 2020.

Postponement of EET

The Chamber of Deputies also approved the extension of the postponement of the electronic record of sales ("EET") until the end of 2022. The postponement will concern not only the sectors for which the obligation to record has already been introduced, but also its launch for other sectors of economy. The record of sales thus remains voluntary for all entrepreneurs. The amendment was approved in the Senate on October 29, 2020 (the Chamber of Deputies has already approved it) and only needs to be signed by the President of the Czech Republic. This postponement may also in fact mean the end of the EET, as the opposing parties in the Parliament have been criticizing it for a long time and the current postponement will expire only after the parliamentary elections (to be held in autumn of 2021).

Compensatory bonus

The Chamber of Deputies also approved **another Compensatory Bonus Act for self-employed persons and shareholders of small limited liability companies (s.r.o.)** A bonus of **CZK 500 for each day** of restriction or shutting-down of the business will be granted **for the period from October 5 to November 4, 2020**; in the event of an extension of the state of emergency (which has already been extended until November 20, 2020), the **next bonus period will be the period corresponding to the time of the extension of the emergency state**. Only the dominant source of livelihood will be examined, not the concurrence with employment.

Entrepreneurs who are significantly linked to explicitly closed sectors (for example, these sectors are the majority purchasers of their services) will also be able to apply for support. A key condition is the **reduction of this supply activity by at least 80 % for the decisive period** from June to September 2020. The Chamber of Deputies will discuss this bill in an expedited procedure.

Extension of Lex COVID

Among other things, the Chamber of Deputies approved also an amendment to Act No. 191/2020 Coll., the so-called "Lex COVID", which addresses in particular the protection of entrepreneurs against enforcement and insolvency proceedings. The amendment includes a postponement of the debtor's obligation to file an insolvency petition against himself, postponement or changes in the enforcement of a decision by selling movable or immovable property or obtaining a receivable by ordering it from an account, and other amendments to the Insolvency Act, in particular extending the possibility of an extraordinary moratorium until June 30, 2021. Following the return of the amendment by the Senate on October 29, 2020, the Chamber of Deputies has to decide on the amendment again.

LEGISLATION NEWS

Abolition of real estate transfer tax, changes to mortgage deduction limits, extension of the time test

The **real estate transfer tax was effectively abolished** already in September. It had been regulated by the Senate's statutory measure No. 340/2013 Coll. The tax from real estate transfer was paid by the buyer in the amount of 4 % of the purchase price of the real estate, always until the end of the third month following the month in which the right to a real estate was registered in the cadastral register.

The obligation to pay the tax expires retroactively from December 1, 2019. The abolition of the tax thus practically applies to all those who registered the transfer of the real estate in the cadastral register in December 2019 or the ownership of the real estate, which is not registered with the cadastral register, was acquired in December 2019 or later and the deadline for filing a tax return thus expired on March 31, 2020, and later.

Those who had a deadline for filing a tax return by March 31, 2020, and subsequently their tax payment was deferred until the end of August, are therefore no longer obliged to pay it. For those who have paid the tax in the above cases and who will thus incur a refundable **overpayment** in connection with the abolition of the tax, any refundable overpayment of real estate transfer tax will be refunded by the tax administrator in accordance with the Tax Code **only upon application by the taxpayer**. An application for a refund of the overpayment shall be submitted to the locally competent tax administrator. An application for a refund of the overpayment can also be submitted electronically [here](#).

Taxpayers affected by the abolition of the tax and who have not yet submitted a tax return or paid the tax have no longer any obligations towards the tax administrator.

Buyers can still **deduct interest from a housing loan** from the income tax base. However, the amount of the

interest deduction limit was amended. The current limit of CZK 300,000 applies only until January 1, 2022; from this day it will be possible to deduct interest only up to CZK 150,000. The limit of CZK 300,000 will continue to apply to loans concluded before this date, including later refinancing.

The act further **extends the so-called time test for income from the sale of real estate** that is not intended for own living – from 5 to 10 years. The extension of the time test **will apply to real estate acquired after January 1, 2021**. Real estate that is not intended for permanent housing falls within the five-year period. These are recreational facilities, non-residential premises or land. Residential properties are included in the five-year period if you did not have a permanent residence in such properties. **The five-year period also applies to shares in a housing cooperative. The time test for own housing remains 2 years.**

The income from the sale of real estate must, like any other, **be included in the tax return**, as an income generated by the sale of real estate with the tax rate of 15 %. For more expensive real estate, you can pay up to several hundred thousand in tax, which significantly reduces your income from the sale of real estate. There are cases where income is exempted from tax. One of them is passing a time test, i.e. the number of years during which you live or own the property. It is therefore the time between buying and selling the real estate.

CASE LAW

On the possibility of replacing a simple minutes of the general meeting by a notarial deed - the decision of the Supreme Court of the Czech Republic, case No. 27 Cdo 4108/2018

In this decision, the Supreme Court dealt with a dispute in which the shareholders of a limited liability company (s.r.o.) demanded the minutes clerk of the General Meeting to send them the minutes of the General Meeting despite the fact that a notarial deed about the course of the General Meeting had been drawn up and the shareholders obtained such notarial deed. The court of first instance stated that the minutes clerk had not fulfilled his obligation imposed on him by Sec. 188 (3) of BCA ("Business Corporations Act") and ordered him to prepare and send the minutes of the General Meeting to the shareholders. The court stated that the notarial deed about the course of the General Meeting made by a notary does not relieve the minutes clerk of this obligation, as the notarial deed does not contain all the requisites required by Sec. 188 (2) of BCA (signatures of the minutes clerk and the chairman of the General Meeting).

However, the appellate court changed the decision and explained that if a notarial deed concerning the General Meeting was made and sent to both shareholders, it is against the meaning of the law to require the minutes clerk to make notes and make another record copying the actual deed taken by the notary. This opinion was subsequently confirmed by the Supreme Court, which added that the purpose of the minutes of the General Meeting is to record in writing the course of the General Meeting, i.e. everything important for assessing whether the General Meeting was conducted properly (in accordance with the law and the Articles of Association), what resolutions the General Meeting adopted and whether these resolutions were adopted in accordance with the law and the Articles of Association. Unless required by law in specific cases, the company is not obliged to ensure that the proceedings of the General Meeting are certified by a notary. However, **if the company voluntarily (without being required to do so by law or the Articles of Association) certifies the course of the General Meeting by notarial deed pursuant to Sec. 77 of the Notarial Code and delivers this notarial deed to the shareholders in accordance with Sec. 188 (3) (eventually in accordance with different regulation in the Articles of Association), the purpose of the legal regulation concerning the minutes of the General Meeting is fulfilled. Subsequent preparation of extra minutes of the General Meeting would therefore be redundant.** The absence of the signatures of the minutes clerk and the chairman of the General Meeting on the notarial deed does not change anything.

Details can be found in the full wording of the decision, which is available on the [website of the Supreme Court of the Czech Republic](#).

Protection of personal data in the HR sector – fine for data processing within the "welcome back talks"

The H&M Service Center in Germany was fined EUR 35.3 million for breaching the GDPR. After the absences of employees, such as holidays, sick leave or other long-term and short-term absences, managers and employees of the HR department conducted so-called "welcome back talks" with their employees. In many cases, these interviews recorded not only specific information about employees

regarding their leave, but also symptoms of illness and diagnosis that made them absent from work. Such processing was considered to be a significant breach of the GDPR. More information on this decision is available [here](#).

Although the decision is issued by a German supervisory authority and is not formally binding for the Czech Office for Personal Data Protection, it can be assumed that the Czech Office will also consider similar processing to be in breach of the GDPR. It cannot be assumed that the Czech Office would impose a fine in similar amount, however even the same amount of fine in Czech crowns is a major risk for employers.

TIPS

Map of the traveler #COVID19, "Business trips" service and the possibility to travel to the Czech Republic for foreigners

The Ministry of Foreign Affairs has prepared a list of information for citizens of the Czech Republic regarding the conditions under which they can travel abroad, the so-called **traveler's map** - details can be found [here](#). The Ministry has also prepared a new **"Business trips"** service, which should help Czech companies for example with visas even for countries which do not currently issue the necessary documents, help with exceptions from mandatory quarantine during business trips abroad or, vice versa, with arrival of a key partner from country from which it not possible to come to the Czech Republic in the current situation. You may find the details [here](#).

Conditions for entry into the territory of the Czech Republic and quarantine measures are currently regulated by the [protective measure of the Ministry of Health dated of October 2, 2020](#). The list of countries with a low risk of infection can be found [here](#). Information on the conditions of entry into individual states is available at embassies in the respective countries and the Ministry of Foreign Affairs. More information for foreigners and information concerning foreigners' residence matters can be found [here](#). In case of specific questions, we will of course be happy to help you.

RANDLS BUSINESS BRUNCH

Third Business Brunch was originally planned to take place on October 20, 2020. We were really looking forward to it, especially to meet you and discuss practical legal information and current topics while consuming fine food. However, since the last BBrunch was online (thus without the possibility to eat and meet), we decided to postpone the third part of the BBrunch so that we could actually meet personally.

The third Business Brunch will thus take place on December 1, 2020 (9:30 – 12:30).

We have so far chosen **business lease** as the main topic, both from the point of view of lessee and lessor. We will focus on lease agreements (whether for offices, warehouses or operating premises), legal and contractual conditions of lease operation, price conditions and rent increases, services and their billing, deposits and bank guarantees, fit-outs and construction changes, consequences of breaches of lease conditions, the possibility of terminating leases, etc.

With regard to the impact of measures related to the COVID-19 on business, we will also focus on support programs for lessees and lessors, their risks, as well as the rights and obligations of lessees and lessors during operation and securing of their premises.

As part of the news, we will not forget to mention the **basic changes according to the amendment of BCA** effective from January 1, 2021, and other **legislative news and decisions of courts and state authorities**.

You can register at brunch@randls.com. Details about the organization and registration are [here](#).



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