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In this issue of **Business Bulletin**, we bring to you information on updates and changes in legislation which came into effect **at the turn of the year 2018 and 2019**. As far as newly passed legislation is concerned, we will be focusing in on the amendment to the **Trademark Act**, which significantly changes certain procedures of the Industrial Property Office, especially the automatic rejection of proposal of a trademark identical to an older, already registered trademark. Registered owners of trademarks are now responsible for monitoring any new trademarks and submitting objections, when necessary. In regards to new legislation that is currently being discussed, we will briefly inform you about the proposal of the amendment to the **Act on Banks**, as well as the current state of the Act on the Protection of Personal Data and related legislation. As for the case-law updates, we have selected a **decision of the Supreme Court regarding the consequences for companies where the function of one of the jointly-acting managing directors expires**. Finally, we will provide you with a practical summary regarding the **registration of the actual owner of a legal entity** into the registry.

APPROVED LEGISLATION

AMENDMENT TO THE TRADEMARK ACT (Act No. 441/2003 Coll.)

With effect as of 1 January 2019, a relatively extensive **amendment to the Trademark Act** was adopted on the basis of a European directive aimed at approximating trademark laws across individual Member States.

A key point of the amendment is the change in the registration of trademarks identical to already registered trademarks. Previously, the Industrial Property Office rejected to register a trademark identical to the already registered earlier trademark for the same product and services, unless the applicant submitted the consent of the owner of the earlier trademark. **Owners of registered trademarks are now thus responsible for monitoring newly proposed trademarks**. They have to file objections against the newly proposed trademark which is identical or similar to their trademark and prevent their registration by such procedure. If the owner of the earlier trademark fails to present his objection in time, the Office will register the newly proposed trademark, even if it is identical to the earlier registered trademark. All trademark owners are therefore advised to regularly monitor the Office bulletin where newly proposed trademarks are announced. Thankfully, the amendment to the Act does not mean that the owner of the earlier trademark, who skipped the period for submitting the objections, does not have any chance to fight the registration of identical trademark. However, it will be more difficult for him since he will need to file a motion for invalidation of such trademark, submit evidence and eventually prove that he is properly using his trademark in business.

Another important change is that it is now possible to register **speculative trademarks** registered for the purpose of future business. Under the previous wording of the Act, such registrations would have been in conflict with the good faith of the applicant, which constituted a reason for rejecting the trademark.

The amendment also changed the definition of a trademark and in this connection a possibility to register so called non-traditional trademarks is introduced. Under the new legislation, motion or sound trademarks, as well as audiovisual or 3D trademarks may be registered. It will, of course, remain possible to register traditionally-used written, image or combined trademarks, but the law no longer requires that it be possible to represent all trademarks graphically. A registered trademark can be expressed and captured by virtually any technological means available. The choice is left entirely to the applicant; however, it must be able to differentiate the products and services and it must be sufficiently specific.

PROPOSED LEGISLATION

ACT ON PERSONAL DATA PROCESSING AND THE AMENDING ACT ON THE ADOPTION OF THE ACT ON PERSONAL DATA PROCESSING (Senate Press No. 25 and 26)

In previous Bulletins, we have informed you about the preparation and approval of the Act on Personal Data Processing. The law takes advantage of **some possibilities for deviations from the GDPR** approved by the Chamber of Deputies, such as a reduction in fines for small municipalities. **On the contrary, the Chamber of Deputies did not approve the reduction of the age limit for a child's ability to grant consent to the processing of personal data to 13 years** in connection with the use of online services. For the time being, we cannot be sure of when the bill will be approved, as **the Senate proposed further amendments**. We will keep you posted on further developments in the legislative process.

AMENDMENT TO THE ACT ON BANKS AND RELATED REGULATIONS (material No. 1166/18 submitted to the Government for comments)

The Ministry of Finance prepared an **extensive amendment to the Act on Banks**, the Act on Credit Unions and other sectoral laws, and submitted these to the government for discussion. The amendment largely copies a proposal which was already discussed two years ago as Parliamentary Press No. 1061, though the legislative process was not completed. We will keep you posted on any developments.

CASE LAW NEWS

CONSEQUENCES OF THE EXPIRY OF THE FUCTION OF ONE OF THE JOINTLY-ACTING MANAGING DIRECTORS (Resolution of the Supreme Court of the Czech Republic dated 12 September 2018, File No. 29 Cdo 5605/2016)

In this decision, the Supreme Court was dealing for the first time with the question of what happens when **the number of managing directors in a company falls under the number needed for adopting a decision on the company's business management**. In the case discussed by the Supreme Court, the company had three managing directors; in the Articles of Association, it was explicitly stipulated that all managing directors shall make decisions regarding the business management of the company. A sole shareholder adopted a decision by which he dismissed all three managing directors, and pronounced only one person (himself) as the sole managing director. The number of managing directors in the Articles of Association, however, remained unchanged at three.

The Supreme Court therefore discussed the question of **whether dismissing three managing directors and naming only a single managing director is invalid due to a conflict with the Articles of Association which state that the company has three managing directors**, and further **whether the actual number of managing directors currently serving, or the number of managing directors in the Articles of Association is decisive for adopting decisions on the business management of the company**. The first question was already resolved by case law; the Supreme Court thus deduced that naming only a single managing director, despite the fact that the company should have three managing directors, is not in conflict with the Articles of Association or with the law.

Regarding the second question, which had not been addressed yet, the Supreme Court had stated that **should the Articles of Association state that all decisions on the business management of the company should be made with the consent of multiple managing directors, it is necessary to adhere to this.** If there is currently only a single managing director, he cannot make any decisions on the business management of the company, as he will not fulfill the requirement of having the agreement of at least two managing directors, as set by the Articles of Association. The Supreme Court therefore deduced that if the Articles of Association stipulate that the managing directors decide on the business management of the company (should there be a larger number of managing directors) by simple majority and, at the same time, it is not be possible to achieve this majority due to the dismissal of several managing directors, the company (managing director) **will not be able to make valid decisions in matters of the company's business management.** Paradoxically, however, the Court deduced that if managing directors can act individually on behalf of the company vis-à-vis third persons, these actions are not absolutely invalid as the managing director is acting in accordance with the entry in the Commercial Register.

If a managing director were to act independently and make decisions on the business management of the company despite the fact that he was not authorized to do so, the managing director would be liable for any damages thereby caused. From a practical standpoint, we thus recommend **changing the wording of the Articles of Association of companies so that they clearly state that if the number of managing directors were to decrease, the remaining managing directors or a single managing director is authorized to act in matters related to the business management of the company.**

BENEFICIAL OWNERS' REGISTRY

The obligation of legal entities registered in public registers to register their **beneficial owner** into a registry established by Act No. 304/2013 Coll., On Public Registers of Legal and Natural Persons, has been in effect for over a year. **Legal entities registered in the Commercial Register were obligated to comply by January 1, 2019.**

Who does this concern?

The obligation to enter data about the beneficial owner applies to **legal entities registered at least in one of the public registers** (e.g. in commercial register, register of foundations, register of associations, etc.), and **trusts** have to register their beneficial owners in the register of trusts.

Who is considered to be the beneficial owner?

In general, a natural person who has the ability to exercise direct or indirect control over a legal person is generally considered to be the beneficial owner. For individual legal entities, the law defines the specific conditions; for business corporations the beneficial owner is **a natural person who holds more than 25% of the voting rights or owns more than 25% of the registered capital or has a claim to at least 25% of the profit**. If there are no such persons in the company, the actual owner is deemed to be a **member of the company's statutory body or a person in a similar position**. In cases where there are multiple such individuals, all of them must be registered.

In practice, corporations may run into problems if they are unable to identify the beneficial owner, in which case it will be necessary to provide written information about the structure of the group, to track the last known company at the end of the chain and to explain why it is not possible to identify the beneficial owner; this information must be submitted to the registry court. In most cases, the managing director of the company will then be registered as the beneficial owner.

Which data is registered?

Data identifying the beneficial owner, such as his **name, address, date of birth or country of citizenship**, as well as data justifying the basis on which the position of the beneficial owner is based shall be registered. The registered data must reflect the truth.

How is the entry made?

The registration of the beneficial owner is performed either by **the appropriate registration court, or by a notary**. Unless you opt to submit the entry to a notary, you must electronically fill in the appropriate form, which is also available on the Ministry of Justice's website under the following link – https://issm.justice.cz/podani-navrhu/info. Subsequently, it is possible to send this completed form to the registry court either electronically, or to print it out and send a physical copy. Starting January 1, 2019, the registration fee for business corporations is CZK 1,000.

What are the sanctions for non-compliance?

In its current wording, the Registry Act does not provide for any direct sanctions (fines or even dissolution) for for failure to register, but indirect negative consequences associated with non-fulfillment of this obligation may follow from the of the Act on Selected Measures Against the Legalization of Proceeds from Crime (AML), the Act on Public Procurement, or from the Insolvency Act.

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