

In this year's third issue of Business Bulletin we focused on the extensive **amendment to the Business Corporations Act**, with its main objective to eliminate the excessive legal obligations in the business environment. The amendment is finally ready to be submitted to the Chamber of Deputies. Also find about the current state of the proposed **Act on the Processing of Personal Data** and its ancillary act, which proposes changing many related laws, e.g. the Criminal Code or the Act on free Access to Information. You will also read about proposed **amendment to the VAT Act**, which **changes the opinion on how the statutory body will be perceived in the VAT system**. In the case law section, we summed up another of a series of **rulings** related to **concurrence of function** or the decision of the Office for Personal Data Protection, regarding a substantial fine for **breaching obligation to take steps to prevent personal data against leak**.

PROPOSED LEGISLATION

AMENDMENT TO THE BUSINESS CORPORATIONS ACT (Act No. 90/2012 Coll.) – Parliamentary Press No. 207

The amendment to the Business Corporations Act (the "BCA"), which the Ministry of Justice has had in the works for some time now, is finally ready to be submitted to the Chamber of Deputies for a first reading. The aim of the amendment to the BCA is to remove inaccuracies as well as supposedly redundant provisions, but also to make a number of factual changes.

The amendment also intends to **reduce unnecessary legal obstacles for entrepreneurs**. Currently, for example, it is not possible to transfer shares in unlimited partnerships. The only legal way to make another person member in place of a current member is by changing the articles of association.

Transfers of shares should, however, now be possible in unlimited partnerships, conditional on the agreement of all members.

Requirements for decisions made outside general meetings of limited liability companies and joint-stock companies should also be reduced. Currently, the **so-called per rollam ("by letter") decision-making** process requires that when decisions by notarial records are being made, each individual shareholder or member statement must be a part of the notarial record. In practice, this is unnecessarily administratively complicated. The amendment thus proposes that for any changes proposed in the future, **shareholders or members would only need to attach an officially authenticated signature to a copy of the notarial record**.

Paying a cash contribution when setting up companies would also be simplified. Currently, it is necessary to set up a special bank account for this purpose, even when the amount of the contribution is just 1 CZK. The amendment is thus proposing an exception, where **up to CZK 20,000 it could be paid in other ways, e.g. in a notarial custody**.

The procedure of removing information from the articles of association after a company is established is currently costly and lengthy. Whereas currently a notarial record is necessary, in the future, **this decision to delete certain information could be made by the managing directors**, without the need for a notarial record.

The proposal also considers the ban on competition in capital companies to be unnecessarily rigid. Under the new amendment, it will be possible to **derogate in some ways from the legal regulation of the ban on competition**, by modifying the articles of association. The articles of association could also identify the activities that the managing director is forbidden from performing. On the other hand, some or all of the prohibited activities could be excluded, and their performance would thereby be permitted. The amendment is also set to **increase the transparency of company organizational structures**. It proposes that legal entities that are members of elected bodies of other companies will be allowed to **select only a single person as**

their representative in these bodies. Unless this representative is registered, it will not be possible to enter the legal entity into the commercial register as a member of the elected body of the company.

Another proposed change is the **abolition of the position of the statutory director** as a body, the existence of which is currently obligatory, alongside with the administrative board, in a monistic system of joint-stock company management. This is because there is no consensus regarding whether the administrative board is a statutory body, or whether only the statutory director is. This leads to uncertainties in defining the scope of the activities of the administrative board and the statutory director. Under the amendment, the **business management** and oversight over the company's activities will only fall under the **administrative board**, the existence of which will remain obligatory.

So-called inactive companies, which are not economically active and exist only formally, were also addressed. According to the Ministry of Justice, these companies could potentially be exploited in various illegal purposes, particularly for tax fraud. The amendment proposes a procedure whereby a **company may be dissolved** if it (1) fails to submit financial statements into the collection of documents for two consecutive accounting periods, while (2) a notice for it to fulfil this obligation cannot be delivered.

The commercial register will also see changes. The amendment intends to **interconnect the Czech commercial register with similar foreign registers**. The aim is to introduce a system that will transfer some data between the foreign registers and the commercial register, ensuring access to up-to-date and credible information.

As according to current plans, the amendment should become effective on 1 January 2020. We will continue to monitor the approval process and keep you posted.

AMENDMENT TO THE INSOLVENCY ACT (Act No. 182/2006 Coll.) – parliamentary press No. 71

The aim of the last amendment to the Insolvency Act is making the institute of debt relief available to a wider range of debtors. The main change to the current state is that debtors can enter debt relief without proving their ability to pay at least 30% of the debt. If the debtor fails to pay 30% of his debt in 5 years, the court will decide whether he has accomplished the debt relief. In such a case, it would be considered whether or not the debtor made all the efforts to repay his debts. Under this amendment, a shorter three-year option will be added for debtors who are able to repay 60% of their debts. The proposal now goes to the Senate.

AMENDMENT TO THE ACT ON TRADEMARKS (Act No. 441/2003 Coll.) – parliamentary press No. 168

An amendment which would allow non-traditional trademarks such as sound, movement, or holography, is awaiting discussion in the Senate. Under the amendment, the Industrial Property Office would also start informing the owners of trademarks before their trademarks expire.

ACT ON THE PROCESSING OF PERSONAL DATA – parliamentary press No. 138

The new Act on the Processing of Personal Data (APPD) entered the third reading in the Chamber of Deputies. It is to replace Act No. 101/2000 Coll., on the Protection of Personal Data, and adapt GDPR into Czech legislation. The Constitutional Committee recommended approximately one half of the 22 amendment proposals for approval.

THE AMENDING LAW CONNECTED TO THE APPROVAL OF THE ACT ON THE PROCESSING OF PERSONAL DATA – parliamentary press No. 139

Along with the APPD, the Chamber of Deputies is also discussing the proposal of an ancillary act which, in connection with the APPD and the already effective GDPR, proposes changing many related laws, e.g. the procedural acts in civil, criminal and administration proceedings, the notarial code, or the Act on Free Access to Information. The changes should also affect the Energy Services Act or the Public Health Act. The amendment to the Criminal Code then changes the constituent elements of the offense of unauthorized handling of personal data. Like the APPD, this ancillary act will soon enter the third reading.

VAT ACT AMENDMENT - "TAX PACKAGE 2019" – parliamentary press no. 206

The parliament is currently discussing a so-called tax package, i.e. an amendment to tax legislation. **The amendment to the VAT Act will fundamentally change the functioning of companies and their bodies.** The amendment is proposing a change in how the performance of the office of a statutory body will be perceived in terms of economic activities and VAT. Any paid performance of the office of a member of the statutory body, and some other bodies, will now be perceived as economic activity regardless of whether the remuneration is taxed as income from a dependent activity. **The remuneration for serving as a member of the body of a company will no longer be exempt from VAT and the members of the company's bodies would therefore always be potential payers of VAT.** If the amendment is passed as planned, which is not yet certain, it will go into effect as of 1 January, 2019.

CASE LAW NEWS

COLLECTION OF COLLATERAL ACCORDING TO LEGISLATION IN EFFECT AS OF 1 JANUARY 2014 (ruling of the Supreme Court dated 27 March 2017, Case No. 21 Cdo 5983/2017)

This ruling assesses the validity of a provision on the performance of lien between the lien creditor and the lien debtor. In the event of default, the parties negotiated for the debt is to be repaid by the sale of the object of collateral (share in real estate) in a way other than by sale in a public auction or by courts. When the debt was due, the creditor sold the property on the basis of a purchase contract. The court confirmed that such a provision in a lien contract is not unlawful; unlike the old rules on lien, which was effective until 31 December 2013, the current legislation allows for lien creditors to agree with lien debtors on the collection of collateral in other ways than sale in public auction or by

courts. **This agreement must be concluded in writing, must exclude the discretion of the lien creditor,** and allow for the sale of the collateral at a price at which a comparable item could usually be sold for at the given place and at the given time.

PROHIBITION OF LIQUIDATION OF THE COMPANY BY PROTECTIVE ORDERS (ruling of Supreme Administrative Court dated 12 September 2018, Case No. 5 Afs 321/2017)

According to the decision of the Supreme Administrative Court (SAC), financial administration officials cannot **secure the property and financial resources to the company,** even if they have sufficient evidence that the company has been involved in fraud and will be subject to additional tax. Issuing protective orders is possible only if there is a **real risk of the company not paying the tax in the future.** According to the SAC, a protective order should only be used in extreme cases and is inappropriate for the economic liquidation of the company. If there is another option for how a company tax can be levied without the tax administrator substantially restricting the company's activity, the other option should be used first.

ADDITIONAL DECISION REGARDING CONCURRENCE OF FUNCTIONS

The finding of the Constitutional Court dated 21 August 2018, Case No. III ÚS 669/17, follows up on the previous decision of the court, according to which the **subordination of a managerial contract to the Labor Code does not automatically invalidate the entire contract.** The decision of the Supreme Court dated 11 April 2018, Case No. 31 Cdo 4831/2017, is also interesting; the Supreme Court concluded that although it is not possible to conclude an employment relationship between the statutory body and the company, a contract to perform the office may be subject to the provisions of the Labor Code. However, even in such cases, this contract needs to **be in accordance with the mandatory (i.e. binding) provisions of the Business Corporations Act.**

FAILING TO PROTECT PERSONAL DATA - Decision of the Office for the Protection of Personal Data (OPDP)

The OPDP fined Internet Mall, a.s. CZK 1.5 million because the company did not secure the personal data of its customers. According to the information released, **a portion of the customer records database was stolen,** and the company was unable to detect how the leak occurred, even after subsequent investigation. More specifically, Internet Mall, a.s. **did not secure the personal data of at least 735,956 customers. The company could not protect the names, surnames, e-mail addresses, user account passwords, and telephone numbers** from unauthorized access and did not prevent the disclosure of this personal data on the website Uložto.cz. The Company has breached its obligation to take steps to prevent unauthorized or accidental access to personal data. In connection with this case, the OPDP stated that such an event is, from their point of view, a typical example of the fact that, in accordance with the GDPR, the controller is obliged to **report personal data protection violations to the OPDD** without undue delay, 72 hours after the moment it finds about them at the latest.

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