

## EDITORIAL

### Dear Clients and Business Partners,

It's now been more than eight months since the Corporations Act and New Civil Code were introduced. The country has thus gradually becoming accustomed to the changes that should move us a step closer to becoming a modern legal state.

Although we have heard a lot of discussions about an amendment to the new legislation and certain indications may give the impression that it may not necessarily be limited to a mere technical amendment, we believe it's necessary to be constructive in dealing with the recodification regulations and the changes they have brought. Our approach is thus to approach specific interpretations and practical problems head on and to seek the most effective and practical solutions.

In this issue, we look at those areas that are of key interest to you. Since being in the dark in this respect can only lead to problems, we will shed light on certain important issues, particularly in the areas of real estate, business corporations and taxes. More articles and commentary on current legal topics can also be found at [www.patria.cz/pravo](http://www.patria.cz/pravo).

Lastly, if there is a specific topic that you would like us to cover we welcome your suggestions.

Jiří Horník  
KŠB Partner



## KŠB INSTITUTE STARTS NEW TERM WITH NEW LECTURERS

KŠB's educational platform  
KŠB Institute has prepared a number of new seminars for the upcoming semester. To sign up and reserve your spot, go to [www.ksbinstitut.cz](http://www.ksbinstitut.cz).

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## EMISSION ALLOWANCES: LIKE A BOOMERANG

From 2008 to 2012, emission allowances were allocated to electricity producers in the amount determined by the National Allocation Plan. But this originally trouble-free matter may become expensive for the state.

During the first three years of the second allocation period, all allowances were allocated for free in compliance with the EU directive, which required at least 90% to be allocated for free. Thanks to the generous conditions for state aid, a solar boom started in 2009. However, despite being prepared in the autumn, the related amendment to the Renewable Resources Support Act was not passed in 2009. Consequently, photovoltaic power plants were connected under the original conditions for all of 2010 and a massive increase in funding was needed.

Although the allowances are not related to those power plants, the state, in order to obtain additional financial resources, introduced a gift tax on the allowances allocated to large electricity producers in 2011 and 2012 and obtained approx. 7 billion crowns. The Constitutional Court

found the tax lawful, saying that the state may impose taxes and measures in the public interest unless doing so has a strangling effect. But according to the Regional Court in Prague, the tax violates European law. The Financial Directorate challenged the judgment in a cassation complaint and the Supreme Administrative Court (SAC) submitted the matter to the European Court of Justice (ECJ). The SAC stated that if the allowances are to be allocated for free, in its opinion, it is not possible to charge for them.

The ECJ's proceedings may take a year, so we may not know the result until 2015. If the ECJ confirms that the tax violates European law, the SAC will confirm the judgments. But it is possible that the state will have to return all taxes, and pay a hefty fine, which would damage not only the treasury but also the Czech state's reputation.

## EXPERIENCE WITH REGIONAL AIRPORTS IN EUROPE

This past spring, KŠB partner Jiří Horník took part in an international air transport conference in Bucharest. The topic of his discussion, which you can read more about at [www.patria.cz/pravo](http://www.patria.cz/pravo), concerned the operations of regional airports, which often have to fight for their own survival. Many regional airports rely on state aid, which has become harder to obtain following the introduction of stricter rules. In practice, many airports could wind up in trouble.

One hundred representatives from international organizations such as the ICAO and European Commission, national civil aviation offices, airlines and their associations, airports, law firms and the

academic community attended the event. Other topics discussed at the conference concerned certain changes proposed to strengthen the rights of passengers, the impact of the crisis on certain airlines and the regulation of unmanned aircrafts.

The conference was followed by the fifth annual International Air Law Moot Court, in which 20 student teams from across the globe participated. Their performance was assessed by nearly 50 judges, mainly experts in air or international law, including Jiří Horník. The final battle was fought between the University of Leiden and China University of Political Science and Law, with the representatives from the University of Leiden coming out on top.

## SUCCESSFUL SECOND YEAR OF KŠB'S CONTRACT COMPETITION

This year's Contract Competition, which KŠB held in cooperation with student organization Elsa Praha, focused on investment and equity. Students tried their hands at negotiating and concluding transactions based on a pre-defined task. Their skills were tested in a simulated environment in which they first had to prepare an ideal draft agreement that reflected their client's interests. They then attempted to push through those interests in oral negotiations with a counterparty.

## FIRMS START USING OPTIONS AVAILABLE UNDER THE RECODIFICATION

Despite a certain cautiousness, according to professor Jan Dědič, a KŠB partner and co-author of the legislation, one can see growing interest in the new legal institutes that are supposed to simplify the lives of firms and their managers.

**The new Civil Code and other recodification acts have been in effect for several months now. What's your assessment so far?**

The fact that there appears to be interest in taking advantage of the new possibilities provided by these acts is positive. At the same time, interpretation problems do exist and answers to queries about how to proceed in a certain case can sometimes be ambiguous. Definitive interpretations will be delivered by courts.

**Which features are drawing the biggest interest in practice?**

In my experience, clients are being rather conservative. On the other hand, interest in simplifying certain matters, for example, a company's statutes, is clearly evident. Some clients are also making use of the fact that a company's bodies in a two-tier corporate governance system no longer need to have three members. Minor joint-stock companies are interested in per rollam decisions instead of general meetings and in the possibility to allow a general meeting to take place even though the rules for convening the meeting were not followed.

**In your opinion, what are the most pressing interpretation problems brought by the Corporations Act?**

Ambiguous opinions concerning the admissibility of concurrent positions, lack of clarity in whether a company's statutes allow employees the right to elect and dismiss a part of the members of the supervisory board etc. The proper way to become a member of a corporate group on the company's website, which can bring certain advantages, is also not yet quite clear. Moreover, there is uncertainty as regards which general meeting decisions need to be prepared in the form of a notarial record. But I believe that many of these issues will be clarified as quickly as possible, either by interpretation or through amendments.

## TRANSPARENT TO THE BONE

In March, the European Parliament passed in the first reading an amendment to the original draft AML Directive, which requires Member States to establish registers of legal entities and trust structures in which the end owners and beneficiaries will be listed. The information is to be available to the public. This means that not only major (at least 25%) shareholders but also beneficiaries of private foundations, trusts and similar structures will be disclosed. KŠB lawyer Vlastimil Pihera comments on the draft as follows:

This requirement would substantially increase the information listed today in the Companies Register and the Register of Foundations and would require establishing a Trust Register and a Register of Trust Succession Assets as well.

However, the most controversial issue is that the EU requirements will impact property institutes that manage family assets and resolve inheritance and other sensitive issues. The duty to disclose and make such information publically available is not supported by any clear argument that would justify such an invasion of privacy. Especially in terms of trusts, the requirement is comparable to requiring that bank account balances be made available to the public.

Although there may be a certain amount of understanding for the political appeal of the idea of full transparency, the requirement must always be corrected by the right to privacy as a fundamental right to a life of freedom. Transparent walls in our homes will not make anyone happier. Remember, the concept of modern civic society (which European culture still claims (at least formally) to be a part of) was born in a city. The city environment had liberating effects not only thanks to the city infrastructure but primarily because it offered anonymity, which was utterly inconceivable in the country and which provided room for freedom.



## KŠB'S TEAM OF TAX ADVISORS AWARDED AGAIN

KŠB's team of tax advisors led by tax partner Helena Navrátilová (pictured) was named one of the leading tax practices in the Czech Republic by International Tax Review, a tax guide published by rating agency World Tax 2014. The awarded tax team members are Pavla Blažková, Alena Jurič and Jan Černohouz.



## ARE INTERNET LINKS LAWFUL?

**Hyperlinks are common. But are they lawful if they link to copyrighted documents? The European Court of Justice issued a decision on Internet links for the first time this past February.**

The ECJ's decision exclusively concerns copyrights but may be relevant to other areas as well, such as competition law. Lawsuits concerning deep links and embedding have been underway for a number of years now, but how does the

situation look pursuant to European law, which seeks harmonization through the 2001 [EU Information Directive](#)? Can one freely link to other material without having the author's consent? For the entire article (in Czech only), go to [www.patria.cz/pravo](http://www.patria.cz/pravo).

## COMMUNITY LAW NEWS

The mandates of some former European MPs have stimulated legislative endeavours by Community authorities. Long sought-after rules for public contracts and concessions, and audits of financial statements, were finalized and adopted in the first months of 2014.

The European Parliament managed to discuss and pass to the Council many fairly substantial proposals across all industries, such as competition, trademarks, personal data protection, staff secondment, as well as stricter AML rules, and capital market regulations and policies.

### New EU Rules for Public Contracts

The major goal of the new public contract directives was to update outdated rules. One of many important new features is the literally breakthrough rule for dividing contracts into parts. Not only is this now desirable, it will be mandatory in some cases. However, if a public contract awarding authority does not split the contract it will have to justify its decision in the contract documentation. This policy is aimed at increasing the involvement of small and medium sized business. Moreover, subcontractors should be able to request the contract awarding authority to pay for consummated subcontracts.

The Directive introduces major changes to how bids are evaluated: the current trend of looking at the overall economy takes into account not only the acquisition costs but the overall lifecycle costs,

including energy efficiency, maintenance costs, pollutant disposal costs and environmental discarding costs. There is also a special emphasis on supporting innovations in a new type of proceedings: innovation partnerships, where a contract awarding procedure can be opened to resolve a particular problem.

The awarding procedure should be streamlined thanks to broader opportunities to discuss and negotiate the bids, primarily by means of negotiated procedures or competition dialogues. There are also endeavours to reduce the administrative burden. Moreover, proving one's qualifications should also be easier, with the bidders' affidavits playing a bigger role, and the public awarding procedure should gradually be made fully electronic. The opportunity to modify concluded agreements or assign additional work is to be substantially extended, as well.

What is important for Czech contract awarding authorities and bidders alike is how the EU legislation is to be transposed into Czech law. The Ministry for Regional Development has already commenced working on the new Public Contracts Act, which should take force on 1 January 2016.

## TAX ASPECTS OF PROFIT SHARE ADVANCES

The Corporations Act has brought a lot of positive changes since January. Members of corporations certainly welcome the option to pay profit share advances on the basis of interim financial statements, provided the corporation clearly has enough to pay them and other legal conditions are fulfilled.

How are the advances taxed? Unfortunately, the amendment to the Income Tax Act (ITA) did not sufficiently address such changes and therefore certain situations will be problematic for taxpayers.

Although it is not expressly set forth by the ITA, the tax regime for paying a profit share advance is most likely identical to the regime for paying out profits. But trouble may occur if – in the period between the payment of the profit share advance and the moment of settlement – a member is

changed, for example, if the corporation does not generate a sufficient level of profit or the general meeting does not approve the dividends payment. The ITA does not specifically cover such situations. Who is the taxpayer in this case? Can a corporation apply to have withheld tax returned? There are no clear answers. Therefore, the act will most likely have to be changed or a clear standpoint from the General Financial Directorate will be necessary.

## NEW ATTORNEYS-AT-LAW AT KŠB

KŠB's team of attorneys-at-law has welcomed two new members. Milada Kürtöšiová graduated from Charles University's Faculty of Law and the Faculty of International Relations of the University of Economics, focuses on pharmaceutical law, labour law and personal data protection. Kateřina Slováčková graduated from the Law Faculty of Masaryk University in Brno and specializes in public contracts, administrative law, litigation and contract law. Both attorneys began at KŠB as junior lawyers.

## KŠB ATTORNEY ELECTED BOARD MEMBER OF FRANCHISE ASSOCIATION

KŠB attorney Martina Parusová Zímová has been re-elected as a member of the Czech Franchise Association's management board. The association is a non-profit professional organization that brings together franchisors, legal experts and advisors specializing in franchising. The association is also a member of the European Franchise Federation. For more information, go to [www.caf.cz](http://www.caf.cz).

## MEMBERSHIP



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## AWARDS

Chambers Europe National Law Firm of the Year 2012 Czech Republic. Shortlist Nominee for Chambers Europe Awards 2014 and 2013.



National Law Firm of the Year 2012 and Firm of the Year 2012 in Competition Law. Law Firm of the Year 2011, 2010 & 2009 in Czech Company and Competition Law. Law Firm of the Year 2008 in Czech Corporate Law.



Silver Award in Best Central & Eastern European Law according to International Legal Alliance Summit & Awards.

