

EDITORIAL

Power Transmission, Reserved Power, Reactive Energy

Only a few hard core Czech legal specialists were familiar with these expressions several years ago. However, "solar fever" has in recent times resulted in a great demand for legal services in energy-related matters. Many lawyers, without prior experience in the energy sector, had to start fathoming the depths of energy regulation. Energy law – formerly a narrow specialization – turned overnight into a well-known legal discipline, to which a wide group of lawyers and law firms professed. This contributed much to the recognition of energy law as an independent, substantial legal discipline with an ever growing significance.

The so-called EU Third Energy Package, implemented through a major amendment to the Energy Act, which the House of Representatives only recently approved, introduces substantial changes with significant impact on many businesses. Our energy lawyers, no overnight novices but seasoned practitioners who have nearly 20 years of experience advising in the energy industry, will inform you of the salient details in the near future in this quarterly newsletter, the inaugural issue of which you are now reading.

Václav Rovenský
Partner KŠB



Top 5

KŠB is among 5 Czech law firms nominated for the 2011 [Chambers Europe Awards for Excellence](#). KŠB was the first law firm in the Czech Republic to have received the award from the reputable British rating company in 2008.

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SOLUTION FOR CONFLICT BETWEEN STATUTORY OFFICE AND EMPLOYMENT?

This year's discussions on the conflict between the functions of statutory office holder and employee resulted in two legislative initiatives. KŠB senior lawyers participated in the drafting of amendment to the Commercial Code that was initiated by the Ministry of Justice. The other amendment was drafted by the Ministry of Labour and Social Affairs

The amendment to the Commercial Code primarily aims at eliminating doubts over whether a company's statutory body may delegate a portion of management tasks to the company's senior managers who are employees. The amendment clarifies situations where an individual is both a member of a statutory body and a senior employee at the same time.

"Responsibilities of statutory office holders are not affected by any such delegation.. Moreover, no activity should be remunerated twice," explains KŠB partner professor Jan Dědič.

One of the motivating factors for the parallel existence of statutory office and employment will cease to exist

The Labour and Social Affairs Ministry's draft amendment is expected to extend

the definition of parties subject to sickness and pension insurance to include members of collective bodies of legal entities. Participants (ownership interest holders) and executives in limited liability companies, shall be subject to sickness insurance if they undertake work for, but are not employed by, a company. This should unify the conditions that employees and statutory office holders shall be subject to. This would eliminate one of the motivating factors for the parallel existence of statutory office and employment.

Both draft amendments are now being discussed. However, neither amendment deals explicitly with situations that occurred prior to their effective date. There are many opponents to the amendment to the Commercial Code, hence its future is currently unclear.

IT'S NOT GOOD TO HAVE A LAW FOR EVERYTHING

The March issue of *Právo & Byznys* published an interview with KŠB partner Dagmar Dubecká. She talks about the Czech legal environment, the application of law, law-making as well as the need to return to the grassroots of legal culture that grow from fundamental principles of ethics. Dagmar supports the recodification of private law, a legislative step that has received negative responses as well. *"If we were this critical to all new ideas we would still have inquisitions,"* claims Dubecká.

She also talks about her main field of interest – mergers & acquisitions – and denies that M&A deals can be done on a copycat basis. She admits that contemporary lawyers cannot be specialists in all legal disciplines, but believes that they should maintain their erudition sufficiently enough to draw attention to where a problem might arise and have it submitted to specialist colleagues.

[For the entire interview click here \(in Czech only\).](#)

NEW VAT ACT TO REDUCE TAX EVASION

The amendment to the VAT Act, effective as of 1 April 2011, introduces the definition of long-term assets generated by the operations of a business. When long-term assets are put into operation, it shall constitute a taxable supply for payers with a reduced right to tax deduction. The method of claiming tax deduction has also changed. Now VAT payers must thoroughly monitor accepted tax documents. There are new rules for correcting the right for assets-related deductions claimed previously. The possibility of correcting the amount of tax for receivables due from insolvent debtors is also new.

The amendment introduces mechanisms that aim to prevent tax evasion. A major change is that the recipient of taxable supply shall guarantee the payment of VAT that has not been paid by the provider of taxable supply. Moreover the tax duty has been transferred to payers acquiring gold, selected scrap metal and emission allowances.

[For more details click here \(in Czech only\).](#)

KŠB News

KŠB partner [Petr Kasík](#) was appointed as chairman of the III Chamber of the Czech National Bank's Appeals Committee. [Jan Dědič](#), also a KŠB partner, is the chairman of the Committee, the Czech National Bank's advisory body. Effective 1 January 2011, Petr Kasík was further appointed as a member of the Public Law Commission of the Government Legislative Council.

COMMERCIAL COMPANIES: WHAT IS GOING TO CHANGE?

The new Act on Corporations, which shall partially replace the Commercial Code, will substantially change the current conception of commercial companies, including the rules for company bodies and corporate groups. While this issue of the newsletter provides a general outline of the most substantial changes, the next issue will focus on changes applicable to public and private limited companies.

- the new concept of corporate groups and consequences of controlling commercial corporations (including, without limitation, the scrapping of the institute of controlling agreements and profit transfer agreements);
- the scrapping of the controversial and much criticized provision regulating, among other things, transfers of assets to and from affiliated parties; the mandatory valuation of assets by an expert shall newly apply only to assets worth more than 10% of a joint stock company's registered capital acquired from the founder of, and shareholder in, the joint stock company within 2 years following the incorporation thereof;
- the mitigation of consequences arising from absence of prior consent from company bodies or an expert opinion; the existing automatic invalidity of the agreements affected thereby shall be replaced by providing the damaged party with the right to rescind (the agreements will be held invalid only where explicitly provided for by law);
- the introduction of the rule of business judgment relative to the due care of a prudent businessperson (whoever could, in good faith, reasonably assume that they acted on a well informed basis and in the plausible interest of a business corporation shall not be deemed as having breached the duty to act with the due care of a prudent businessperson);
- the written form required for agreements on performance of office of statutory bodies of capital companies; all fees and remuneration related provisions must be included in, and made a part of, the agreement;
- the admission of delegation of commercial management (up to a certain extent) to third parties (including statutory bodies)
- the mitigation of consequences arising from breach of the non-competition duty by body members (waiver of the breach)
- the submission of an assessment of the existence of obstacles for the exercise of office to the court; a breach of the court decision shall constitute a guarantee for the company's obligations;
- the increase of liability for damage for members of company statutory bodies in respect of damage caused by the company (including a guarantee to discharge the obligations of a bankrupt company);
- the introduction of the possibility of correspondence voting at general meetings;
- the elimination of court appointment of experts; such experts shall be newly appointed by the company statutory body from a list of experts;
- the admission of payment of an advance for the share in profit;
- the elimination of the duty to create a reserve fund from profit for public and private limited companies.

CONSUMER LOAN ACT IN PRACTICE

The new rules give rise to many questions. The problems start as soon as the lenders carry out their reporting duties. The consumer must be able to assess from the information made available whether or not the draft agreement corresponds to their needs and financial situation.

The lenders are required to assess, with due professional care, the consumer's ability to repay the loan. Should the lender have any reason to believe that the information disclosed by the consumer is not trustworthy, they

may check credit registers in which useful information on the consumer may be obtained.

The consumer may rescind the credit agreement within 14 days following its execution, provided that the principal, interest and any other amounts due thereunder are repaid to the lender. However, the credit agreement cannot be retroactively regarded as having never existed. This is why the consumer must be informed of the consequences resulting from rescinding the credit agreement.

ECONOMIC COMPETITION ISSUES – TRANSITORY PERIOD FOR VERTICAL AGREEMENTS TO TERMINATE

Vertical agreements between undertakings with potential to restrict competition that were entered into prior to 1 July 2010 should soon be subject to the new block exemption adopted last year. The transitory period in which agreements complying with the determined requirements can enjoy the original block exemption, even after the same ceased to be valid, expires on 31 May 2011.

This block exemption applies to vertical agreements, namely the relationships between manufacturers and distributors, retail and wholesale businesses, franchisors and franchisees – regardless of the legal form of the business – to private entrepreneurs as well.

Before 1 July 2010, certain arrangements between undertakings were exempted from the ban on anti-competition agreements, unless the supplier's share in the relevant market exceeded 30%. Effective from this date, however, customers are no longer allowed to exceed this threshold. The new

Guidelines on vertical restraints – a kind of interpretive tool – were adopted in connection with the new Block Exemption Regulation. They newly apply to practices typical for retail chain distribution, such as

Guidelines on Vertical Restraints

Manufacturers may set fixed prices for up to 6 weeks under certain circumstances.

category management or prepaid access to the network. While the Guidelines admit such practices under certain circumstances, the Act on Major Market Power generally does not allow them in relation to agricultural and food products. Since the Guidelines are not legally binding, it will be necessary to obtain a binding opinion from future case-law.

AWARDS

Firm of the Year 2006, 2007, 2008 and 2009 in the Czech Republic

WHO'S WHO LEGAL

Chambers Europe National Law Firm of the Year 2008, Czech Republic

CHAMBERS & PARTNERS

LEGAL PUBLISHERS

Law Firm of the Year 2008 in Czech Corporate Law.

Law Firm of the Year 2009 and 2010 in Czech Company and Competition Law

