

EDITORIAL

Dear Readers,

You have just opened the second issue of X Lege – KŠB's quarterly newsletter providing a summary of news in the world of law. We have often mentioned the recodification of private law and, while you had the chance to learn about its general impact on joint stock companies in the last issue, this issue will give you a picture of what is new in this respect for limited liability companies. We have also addressed the amendment to the Energy Act, the changes involved in the transformation of companies, and the impacts of the amendments to the Labour Code and to the Court Fees Act.

In other news, KŠB recently launched a legal web site on the Patria.cz investment portal. Business-focused reporting, articles, and commentary from KŠB experts can now be found at www.patria.cz/pravo. As well as visiting us online, we hope to see you at our annual Good Will Charity Concert which KŠB organizes each year to raise money for the Olga Havel Foundation. The 17th annual concert will be held in the Concert Hall at the Church of St. Simon and St. Jude in Prague's Old Town on 13 November 2011. Should you wish to attend, please contact Josef Kurčina (jkurcina@ksb.cz).

Martin Krejčí
KŠB Partner



New Commentary on the Banking Act

KŠB lawyer Vlastimil Pihera, along with A. Smutný and P. Sýkora of the Czech National Bank, co-wrote a new commentary on the Banking Act. The publication from C. H. Beck is currently the only up-to-date and thorough commentary on this subject available on the market. [For details click here \(in Czech only\)](#)

Jungmannova 24 Na Vyhliďce 53 Českobratrská 7
CZ-110 00 Praha 1 CZ-360 21 Karlovy Vary CZ-702 00 Ostrava
T: +420 224 103 316 T: +420 353 225 996 T: +420 553 030 511
F: +420 224 103 234 F: +420 353 227 781 F: +420 553 030 512
E: ksbpaha@ksb.cz E: ksbvary@ksb.cz E: ksbostrava@ksb.cz
www.ksb.cz

ENERGY LAW SUBJECT TO EXTENSIVE CHANGES

This year is a breakthrough year for energy and utility law in the Czech Republic. Consumer protection and the position of major utility companies were both strengthened by the amendment in August to the Energy Act. Moreover, an entirely new bill on subsidized energy resources is expected to be adopted in the fall of 2011.

The amendment to the current Energy Act, which took force and effect on 18 August 2011, implements the requirements imposed by the so-called EU third energy package, especially those focused on reinforcing the independence of grid operators from utility generation and trade. The amendment also increases consumer protection, and includes a substantial extension of the right to rescind a utility supply agreement (gas or electricity) should there be any change to the delivery terms and conditions.

Utility Business Licenses from Third EU Countries To Be Accepted

The amendment also strengthens the position of major utility companies, allowing them to expropriate structures and land of third parties to develop utility projects. Compared to current practice, the new Energy Act sets forth that utility businesses can operate in the Czech Republic under a license granted by another EU Member State. State authorization (granted

by the Ministry of Industry and Trade) to develop and build power generation facilities or predefined gas facilities is being returned to the Energy Act.

Energy Legislation within a Single Bill

The new definition of the Czech Energy Regulation Authority's position constitutes a fundamental change and provides the Regulator with more independence from other public authorities and institutions. In addition, the Energy Regulation Authority's powers have expanded substantially. For example, it has assumed the full inspection powers from the State Energy Inspectorate over compliance with the duties and responsibilities imposed by the Energy Act.

Finally, an entirely new bill on subsidized energy resources is expected to be adopted this fall – consolidating the thus-far fragmented policies applicable to renewable energy resources, power and heat co-generation, and the subsidized use of secondary energy resources.

COURT FEES HAVE INCREASED

The amendment to the Court Fees Act effective as of 1 September 2011 primarily increases court fees, which have not undergone a substantial change since 2001, despite the ever-increasing number and complexity of court cases. The amendment also focuses on enhancing the regulatory and preventative role of the fees and helps to minimize frivolous lawsuits. Moreover, it boosts the motivation of both parties in a lawsuit to reach a settlement.

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

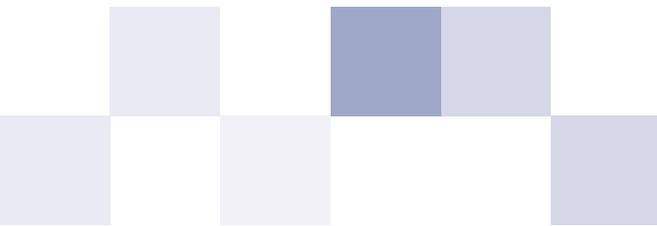
COMBATING CORRUPTION

Martin Šolc, a partner at KŠB, recently published his reflections on the highly publicized but rather unsuccessful fight against corruption in *Hospodářské noviny's* Leaders Voice column on 2 September 2011. In the article, Martin criticizes the ban on bearer shares, which he believes fails to actually resolve anything of substance. However, what could help uproot big-time corruption is the planned introduction of criminal liability for corporations. "Unless the bill falls victim to the legislative creativity of MPs", Martin points out.

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

KŠB Recommended by Chambers Europe

Chambers Europe, a prestigious British rating agency, recommends KŠB and KŠB lawyers in a number of legal fields such as corporate, M&A, competition, tax, project investment, including PPP, and litigation.



LIMITED LIABILITY COMPANIES: WHAT WILL CHANGE?

The previous issue of *X Lege* featured general information on the pending bill on corporations. In this issue, we offer a summary of the most important features the bill will introduce for limited liability companies if it is adopted:

- For limited liability companies, the minimum amount of registered capital will be terminated; the minimum contribution is to be CZK 1;
- The requirement that an auditor who shall value contributions in kind must be appointed by a court is to be repealed (such auditor shall be appointed from the list of experts by the founders of the company upon the foundation of the company or by the company executive in any other circumstances);
- Several different types of shareholdings (membership interests) with different rights and obligations are to be admitted and are to be replaced by a transferable (by endorsement) ordinary certificate which is to have the nature of a security;
- Shareholders are to be allowed to hold several shareholdings, including different types of shareholdings;
- General Meetings are to have the right to issue guidelines on how to manage the company's business;
- The rights and obligations pertaining to maintaining the list of shareholders are to be specified in greater detail;
- A shareholder is to have the right to leave a company even if he/she disagrees with the duty to pay a premium;
- Expansion of the possibility to file a shareholder lawsuit on behalf of the company – lawsuits can thus be filed against supervisory board members, if one has been established, or, as the case may be, against the so-called influential parties;
- Cumulative voting is to be introduced for the election of company body members;
- Shareholders' shareholdings are to be included automatically in the bankruptcy estate if a bankruptcy is declared over such shareholder's assets; the trustee is to be the party authorized to sell the shareholding;
- The effects of increased registered capital (save for increases from the company's own resources) are no longer to be tied to the registration thereof in the Commercial Register (the effects may take place earlier);
- The ban on so-called company chaining is to be repealed.

AMENDMENT TO THE LABOUR CODE IS, ALTHOUGH INSUFFICIENT, A STEP IN THE RIGHT DIRECTION

Receiving a termination notice for failure to adhere to a prescribed method of medical treatment during sick leave, severance pay based on the number of years spent working, extended trial period for managers up to six months, and controversial new features regarding contracts for work – these are just some of the major changes introduced by the amendment to the Labour Code.

The amendment to the Labour Code brings changes to many areas. Some are beneficial for employees, while others are for employers, and some do not benefit either "opponent".

Employers received at least partial protection against the much too often misused temporary sick leave. An employee's failure to adhere to a prescribed method of medical treatment during the first 21 days of sick leave will now constitute new grounds for receiving a termination notice.

This change, however, fails to resolve the obsolete and inflexible policies applicable to employment termination fully and comprehensively and even brings new difficulties. The question is how employers will investigate whether a breach of any prescribed method of treatment is sufficiently serious.

Severance pay based on the number of years spent working is another change introduced by the amendment. Unfortunately, this step increases the flexibility of employment relationships only slightly. The difference between the amounts of severance pay relative to the decisive period is likely to have little impact on employers' behaviour. When scheduling organizational changes, employers must deal with more

substantial issues than the difference of one month's salary.

The trial period for managers is also to change – it will newly be for a period of up to 6 months. What remains problematic for employers, however, is how to define a manager as such definition is based on formal criteria which may often fail to truly apply to top managers who are not formally employees.

Agreements on work: a step behind?

The number of hours permitted to be worked under a contract for work has been dramatically doubled from 150 to 300 hours per year. However, the original, eagerly anticipated amendment is rendered ineffectual by the introduction of social and health insurance payments for any monthly consideration exceeding CZK 10,000. Due to the greater financial and administrative burden, it is likely the agreement on work will be applied only where the consideration would exceed the prescribed limit, even though it is designed to be the most flexible employment-related relationship.

1 January 2012 is the suggested effective date.

AMENDMENT TO THE TRANSFORMATION ACT

The Chamber of Deputies approved a major amendment to the Act on the Transformation of Companies and Cooperatives in September. The amendment serves to replace some problematic provisions of the current Act and simplify certain transformation procedures, as well as unify the terminology, transpose the Directive of the European Parliament and the Council No. 2009/109/EC and, finally, expand the possibility for carrying out cross-border transformations.

One of the major new features is the option to determine the decisive day not only retroactively but also in the future (on the date of registering the transformation in the Commercial Register). Such flexibility of the decisive date shall newly facilitate cross-border transformations with certain countries, since the current Czech law only allows for a retroactive decisive date while some other jurisdictions require that the decisive date be in the future.

Simpler requirements for transformation projects, especially the transferring of a structure of liabilities to the opening balance sheet, constitute another major change. Additionally, there are new rules

Decisive Date

It will now be possible for the decisive date to be determined in the future – on the date on which the transformation is to be registered in the Commercial Register.

for determining the moment at which the relevant expert report is to be made for a particular type of transformation as well as the new rules for valuating assets of affiliated parties.

The amendment should take effect at the beginning of next year.

UPDATE ON THE CONFLICT BETWEEN OVERLAPPING FUNCTIONS

There are pending amendments to the legislation applicable to the conflict between holding a statutory office and standard employment.

The new draft provisions of the Commercial Code will, as of 1 January 2012, explicitly provide statutory bodies with the option to authorize, inter alia, an employee who is simultaneously a member of the statutory body to be in charge of the business management of the company, whether entirely or in part. However, such authorization shall be without prejudice to the liability of the statutory body members. The company body responsible for approving the remuneration for office holders will newly be required to approve the salary of the members of the statutory body who are simultaneously standard employees.

The second draft applies to the amendment to the Sickness and Pension Insurance Act which shall, effective 1 January 2012, expand the group of persons subject to sickness and pension insurance. The persons liable to have sickness and pension insurance newly include executives of limited liability compa-

nies and board members of joint stock companies who receive remuneration for holding their office as, or on, the company bodies.

Although the proposals referred to above are likely (if passed) to reduce the legal uncertainty regarding the conflict of overlapping functions and may even eliminate the principal motivation therefore, please note that they will not apply to conflicts established before the amendment's effective date, i.e. January 2012. The proposals do not resolve relationships that existed before and do not advise the courts on how to approach such issues. A major consequence of the conflict is that the courts usually rule that employment existing concurrently with holding an office of a statutory body will be null and void and, thus, the employee does not have the right to receive salary or any other compensation for work and is not insured in the social security system.

SUBSTANTIAL NEWS IN EUROPEAN COMMUNITY LAW

Fundamental changes on the utility market

In September 2011, the European Parliament adopted the **Regulation of the European Parliament and of the Council on Energy Market Integrity and Transparency (REMIT)**, adopting rules and policies to improve the transparency of electricity and gas markets, preventing manipulations and contribute to fairer wholesale price setting. Although the REMIT applies only to wholesalers, it will have an impact on electricity and gas prices for small businesses and households. The impact will be felt in the derivatives markets, as well.

The Regulation introduces an efficient system of monitoring utility markets in the EU. The European regulator (ACER) will monitor all executed contracts and inform each Member State's national regulators of any breach of the Regulation. ACER will also help collect the penalties.

All utility wholesalers will be required to register with a European register, and no transactions can be carried out without prior registration.

The Council is expected to approve the REMIT soon. Given the direct effects, the REMIT will take immediate effect in the Member States.

Strengthening of Consumer Rights A new EU Consumer Rights Directive

has been adopted especially in relation to on-line selling and the e-commerce sector. On-line retailers will newly be required to display the total costs of a product or service – no additional charges will be allowed. In addition, solicitation through "pre-checked boxes" will not be permitted.

Rescission rights without setting forth the grounds for the rescission have been expanded to 14 days for consumers and a unified form for refund has been introduced.

The new Directive supersedes the two previous directives on remote selling and amends two other directives.

The new legislation has not yet been adopted by the Council. The Member States should transpose the Directive within two years after it takes force.

A FINE CANNOT BE IMPOSED TWICE ON A CARTEL IN THE EU

The Court of Justice of the European Union published the opinion of the Advocate General in respect of the parallel imposition of fines. A gas-insulated switchgear cartel was fined twice in the 1988–2004 period, by the European Commission and the Czech Competition Authority. The Advocate General believes that no more than one competition authority (the European Commission and the national competition authority) or court can impose penalties on one and the same cartel within the EU in relation to the same territory and the same period of time.

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

NEW "ÚZ" LEGISLATIVE SERIES ON ENERGY

KŠB experts on energy and utility law, Václav Rovenský, KŠB partner, and Tomáš Sequens, KŠB associate, initiated and authored a compilation of energy-related laws in the "Úplná znění předpisů (ÚZ)" legislative series.

BRITISH BRIBERY ACT: A SOBER APPRAISAL

On 29 August 2011 *Lidové noviny* published an article by KŠB lawyer Christian Blatchford on the British Bribery Act 2010 in its *Law & Justice supplement*. The Bribery Act, which came into force on 1 July 2011, may have a certain limited impact on Czech companies which have a business connection with Britain.

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

KŠB News

The team of KŠB lawyers welcomed aboard three new associates in August: Ján Béréš, Josef Bedeč and David Sobek. All three have been with KŠB as junior lawyers.

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

