

## EDITORIAL

Dear Readers,

Welcome to this first issue of X Lege in 2012. Although the economic forecasts for this year are rather grim, I for one don't believe that Europe and its common currency will fare as badly as many believe. Those who are looking at things in simple economic terms are mainly pessimists. Though some may regard my optimism as unjustified, I don't believe the eurozone crisis should be viewed purely through a mathematical lens. I believe that, thanks to the extensive efforts and credit invested into European integration and the common European currency, any impending catastrophe will be averted.

I am pleased to see that, although the process has been extremely slow, the Czech Republic is moving forward and we are leaving behind our days as a banana republic and becoming a relatively civilized country. The steps we have made toward the rule of law have been small and not without hesitation, but small steps are what usually lead to progress. This year and the next, however, will be spent in a legal "vacuum" before the new private-law recodification takes effect. I welcome the new Civil Code and Commercial Code with open arms, mainly because the old foundations of the current codes are so weak that there is not much to build on. I believe that these two codes are steps in the right direction, although it will take some time before they are appreciated. As for the year ahead, may you have as much legal certainty and as few pitfalls as possible.

Martin Šolc  
KŠB partner



## Changes in KŠB

Dagmar Dubecká has become KŠB's new managing partner, with KŠB partners Pavel Dejl and Petr Kašík functioning as her deputies. Starting at the beginning of 2012, KŠB's legal form changed from an association of advocates to a limited liability company.

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: ksbpraha@ksb.cz E: ksbvary@ksb.cz E: ksbostrava@ksb.cz  
[www.ksb.cz](http://www.ksb.cz)

## ACT ON TRANSPARENCY FOCUSES ON SHAREHOLDERS AND OWNERS OF OTHER COMPANIES

The act will have a fundamental impact on Czech joint stock companies with bearer shares. "If companies fail to put such shares in the safekeeping of a bank (immobilization) by the end of 2012 or fail to take a decision to change the form of such shares to book-entry shares, the type of shares will be changed by law from 2014 onward," says Vlastimil Pihera, a KŠB attorney and co-author of the bill. Such shares will become registered shares with full legal effect. The existing shares will have to be submitted to the company within six months, and anyone who fails to do so will lose their shareholder rights.

The bill imposes an obligation on shareholders in joint stock companies with registered share certificates to register a bank account in the list of shareholders within the framework of the OECD. Any payments made by companies to the shareholders will have to be transferred exclusively to such account. The bill also newly requires companies whose income from public funds in the relevant accounting period reaches a certain limit (25 or 50%) to disclose their owners (pursuant to AML regulations) in the notes to the final financial statements. It also proposes stipulating that no agreement on performance from public funds may become effective in the period if a company

is late in publishing its financial statements.

The last change obliges legal entities (regardless of their legal form or domicile) that enter into agreements with public institutions to disclose the actual owners before the agreement is concluded, including the owners of all important subcontractors, as well as all their advisors and other parties receiving remuneration under the agreement. False or incomplete information will be severely sanctioned: the company must return all performance received, although it will be reimbursed for reasonably incurred costs. As this is a politically attractive subject matter, however, the bill could still undergo further changes during the legislative process.

## NEWS IN EMPLOYMENT LAW: INSTRUCTIONS FOR USE

At the beginning of this year, a substantial amendment to the Labour Code took effect. To help shed some light on the new amendment, KŠB published a series of nearly two dozen articles at [www.patria.cz/pravo](http://www.patria.cz/pravo) that deal with the various difficulties of labour law.

In individual parts, the author of the series, KŠB attorney Michal Kašpárek, a labour law specialist, explains situations that employers, including members of statutory bodies, HR officers, and individual employees, may face in practice. These

situations include, for example, newly formulated basic principles of labour law, definition of "work under an employment contract", particulars for negotiations concerning employment contracts, other options regarding trial periods, fundamental changes in agreements on employment for a definite period of time, employee secondments, changes of the protection period and changes in the provision of severance pay, disputable new features concerning performance agreements, and many other topics.

## Martin Šolc named Lawyer of the Year for 2011

Martin Šolc, a partner and one of KŠB's founders, was named Lawyer of the Year in commercial law for a second time. In Martin's words, this achievement would not have been possible had it not been for the team work of all KŠB attorneys.



## JOINT STOCK COMPANIES FACE CHANGES

What impacts will the new act on corporations have on domestic companies? In the previous issue of X Lege, we looked at the changes in general and how limited liability companies would be affected; in this issue we focus on the main changes that joint stock companies will face starting in 2014, which are substantial in both number and significance.

- A joint stock company will be able to be established on a one-off basis only and not – as now – with a public offering of shares. Founders will have to subscribe for and pay up the entire registered capital and will be allowed to seek public interest only when the registered capital will be increased.
- Newly, classes of shares that may not be issued (e.g. dividend bearing shares) will be specified. The classes of shares that are not expressly prohibited, however, may be issued, which corresponds with the constitutional rule that private persons may engage in any activity that is not strictly prohibited by law. To date, the approach was precisely to the contrary.
- So-called "no-par-value shares" that have no nominal value will be established and their book value will be obtained by dividing the registered capital by the number of shares.
- The requirement that obliged employees to be represented in the supervisory board will be cancelled.
- Companies can be managed and administered both on a two-tier basis (through the general meeting, board of directors, and supervisory board) and newly on a one-tier basis (besides the general meeting, an administrative board as a cumulative function of the board of directors and the supervisory board can be established).
- Depository receipts will be abrogated.
- Joint stock companies (and also limited liability companies) will have mandatory agreements on the performance of an office with remuneration. If there is no agreement, performance will automatically be for no remuneration. Today the approach is just the opposite, i.e. an office is performed for consideration by law, unless the parties agree otherwise. This change should motivate companies and members of bodies to agree on remuneration rules upfront.
- Joint stock companies will be obliged to have websites.
- Minority shareholders will have a sell-out right under certain conditions.

## CONCURRENT POSITIONS AND MANDATORY INSURANCE

As of 1 January 2012, executives and members of statutory bodies of business companies (such as members of the board of directors) are required to participate in pension, sickness, and health insurance if they receive remuneration for holding their office, unless their monthly income is below CZK 2,500.

Newly, one individual can exercise a mandate-based (i.e. under commercial law) office of a statutory body or be a member thereof and simultaneously be an employed manager. However, rights of statutory bodies and members thereof who are employees of the company differ from those who are engaged on a commercial basis.

An insured person has the right to receive a sickness benefit as of the 22nd day of sickness leave. For the first 21 days of sickness, employees are entitled to compensation of wages, while persons engaged on a commercial basis are not entitled to compensation for their fee for such period. On the other hand, the company is not obliged to reduce their

fee. Pursuant to applicable law, it is not clear whether or in what cases executives or members of statutory bodies who are engaged on a commercial basis are stripped of their right to receive sickness benefits if they are paid their fee for the period of their sickness leave. We believe that insured persons, in order to have the right to receive their sickness benefit, should prove that they actually did not perform work due to their sickness and did not receive any fee for exercising their office throughout such period.

Another change concerns income tax. Newly, the fees to members of statutory and other bodies of legal entities may be included in tax-effective costs.

## PROFESSOR DĚDIČ CELEBRATES HIS 60<sup>TH</sup>



A number of high profile guests and celebrities from the legal community attended the 60th birthday party of Professor Jan Dědič, a KŠB partner and leading Czech corporate law expert. Among the more than one hundred guests were the Minister of Justice Jiří Pospíšil and the chief justice of the Czech Supreme Court.

## FROM FACTORY TO PHARMACY, OR THE CURE AGAINST RE-EXPORTING PHARMACEUTICALS

Re-exporting has been a debated issue on the pharmaceutical market in the Czech Republic for some time now. It involves pharmaceuticals that were delivered to and designated to be sold on the Czech market by their manufacturers but that were later re-exported to other EU member countries.

Strong regulation in this field has facilitated re-exporting. The prices of pharmaceuticals in individual member countries are based only on what "healthcare" budgets can bear, and the consequences include immense differences and the emergence of price zones referred to as "north" and "south". The principle

of the free flow of goods in the EU plays a key role, as well.

The State Institute for Drug Control has threatened distributors with penalties if they fail to supply enough pharmaceuticals to domestic patients. Affected manufacturers will most likely have no other choice than to take over the distribution companies on the Czech market and start to sell pharmaceuticals to pharmacies at their own expense and risk.

This model is not new in Europe. On the contrary, the efforts to influence the sale and equal supply through distributors are practically excluded due to strict competition rules in the EU and threatened punishments.

## CHANGES IN COMMUNITY LAW

### EQUAL RIGHTS FOR LEGAL WORKERS FROM NON-EU COUNTRIES

Last year, the EU adopted a new directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

As regards the combined permit, EU Member States must introduce a clear procedure that will allow a decision to be made in a single proceeding on the basis of a single application from a third-country alien. Moreover, a decision must be made quite quickly; once the application is submitted, the relevant authority should issue a ruling within four months. Negative decisions will have to include the reasoning and the foreign national must be given the chance to defend his position.

The directive also requires that migrant workers have equal rights as compared with domestic citizens, in particular comparable working conditions, including remuneration and dismissals, recognition of qualifications, or the right to be members of trade unions and other organizations that represent employees. Equal treatment also applies to education and training, social security including the right to receive a pension, and tax advantages in cases where the employee is considered a resident of the Member State, and advisory services at job centres. Member countries, however, may adopt restrictions, for example, in respect of foreign nationals whose employment will last for less than six months. The regulation does not apply to seasonal workers.

The new directive should not restrict Member States from deciding on whether to employ non-European citizens. According to EU institutions, domestic labour forces are lacking in a number of fields and it is preferable to eliminate opportunities for illegal employment by adopting harmonized rules. EU Member States will be obliged to ensure they comply with the directive by 2014.

## LAW SUPPORTING ALTERNATIVE ENERGY SOURCES SEES THE LIGHT OF DAY

The Chamber of Deputies has approved a new bill on supported energy sources, as amended by the complete proposed amendment by the Senate. We will go over the main points of the bill below and look at it in more detail in a future issue of X Lege.

- Starting next year, the act will supersede Act No. 180/2005, Coll., on Renewable Energy Sources (some of its provisions will become effective upon declaration).
- The act will concern support for alternative energy sources, such as wind and solar energy, geothermal energy, biomass, landfill gas and biogas.
- The act will also include regulation in the field of support for secondary energy sources, combined production of electricity and heat as well as decentralized production of electricity.
- The support for electricity generated from supported energy sources will be, as with the current practice, in the form of "green bonuses" or state purchasing prices; the support for heat should be in the form of "green bonuses".
- OTE, a.s., a state-owned market operator, is to be the party responsible for payments of the "green bonus", rather than the locally competent distributor (as is done today).
- State purchasing prices will be paid on a "mandatory" basis by the purchaser, i.e. the electricity trader determined by the state or by the selected ministry, and not by the locally competent regional distributor as is done today.
- The act also contains the controversial issue of a tax on solar electricity, which is currently being considered by the Constitutional Court.
- The act also contains a system that enables financing the support for electricity and heat production from alternative energy sources.

## Petr Sedlatý qualifies as a KŠB attorney

KŠB's team of attorneys recently welcomed a new addition, Petr Sedlatý, who has worked for KŠB for more than four years. Petr launched his career as a legal assistant in 2007 and has been a junior lawyer at KŠB for the last three years.

## SUMMARY OF LEGISLATIVE CHANGES IN 2012

Keeping with our tradition of staying on top of all current legislative activity, KŠB has published a summary of the most important changes that will become effective this year. These changes include new features in commercial law, new criminal liability for companies, an important amendment to the Labour Code, and much more. You can read about the changes [here](#).

## CHARITY CONCERT – SPECIAL THANKS FOR SUPPORT

KŠB would like to thank everyone who provided financial or organizational support for the 17th charity concert for the Goodwill Committee – Olga Havlová Foundation, which took place in November 2011 at the Church of St. Simon and Judy in Prague.

## AWARDS & MEMBERSHIP



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