

EDITORIAL

Dear Clients and Business Partners,

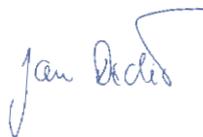
As we are not even two months into the new year, 2013's big events still remain largely hidden to us. Although we can expect – or at least anticipate – certain things to take shape, we cannot foresee those other extraordinary and unexpected "black swans" that Nassim Nicholas Taleb referred to in his famous book. We can only hope that any black swans that arrive in 2013 are as favourable as possible.

One thing that cannot be called a black swan, however, is the recodification of Czech private law, which will be effective in roughly 320 days, unless it is postponed, which I believe would be unfortunate. What earlier could have seemed like a small wave on the distant horizon is now growing in both size and shape. In my opinion, a certain veil is lifted with less than a year to go until the big day. Even those who previously paid no attention began to show some interest.

Recodification, however, does not only concern the main legal codes, i.e. the new Civil Code, Commercial Corporations Act, and International Private Law Act. Adopting certain new acts and amending dozens more will also be necessary. The work on such a giant task began when the Ministry of Justice presented the bills to the government's legislative bodies for consideration last December.

We will exercise our best efforts to help you prepare for the fundamental changes over the next several months, especially through our new learning platform the KŠB Institute, which you can read more about [here](#). For now though, I wish you all sound health, a clear mind, and many bright ideas in the New Year.

Jan Dědič
KŠB partner



Dagmar Dubecká Among 2012's TOP 25 Czech Business Women

KŠB Managing Partner [Dagmar Dubecká](#) was recognized in the TOP 25 Czech Business Women poll at the end of 2012. In addition to ranking 25th overall, she ranked 3rd in the Legal Services category.

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ARE YOU SUBJECT TO THE NEW COLLECTIVE INVESTMENT RULES?

In January 2013, the Czech government submitted a new draft Investment Companies and Investment Funds Act to the Chamber of Deputies. Although the name does not differ from the 1992 Act that applied until 2004, the new Act will bring substantial changes (as of 1 July 2013) that should be of great concern even for those who previously had no reason to pay any attention to the business of collective investment.

Collective investment regulation will change as a result of the 2012 Alternative Investment Fund Managers Directive (AIFMD) and apply to basically all commercial structures showing traces of professional asset management for several investors for the purpose of collective investment in line with a predetermined strategy to the benefit of such investors.

Venture capital and private equity funds will be subject to the regulation regardless of their legal form. Any commercial structure in which more than two investors pool their funds for a joint investment, as well as trusts and foundations, can be regulated. The Czech regulation will apply to structures governed by Czech law and structures whose managers or investors are based in the Czech Republic.

If a certain structure qualifies as an investment fund, the key detail is whether

the volume of managed assets exceeds the predetermined thresholds of EUR 100 or 500 million. If they do, the manager will be required to obtain a license from the Czech National Bank. If not, registration and compliance with certain reporting duties will suffice.

The Investment Companies and Investment Funds Act will not apply to structures formed primarily for finance, manufacturing, trade, research or any services other than financial services. Moreover, the Act will not apply to long-term financial shares in companies and joint asset management for companies forming a corporate group. Nevertheless, no one can be sure that developers or holdings will not be caught in the web. We must therefore recommend those who are uncertain to analyze whether the new Act applies to them or not.

MOST SIGNIFICANT NEW REGULATIONS AS OF 1 JANUARY 2013

Many new acts and amendments became effective on 1 January, including legislation concerning civil proceedings, including execution, the energy sector, and environmental law. Taxes, pension reform, and real estate also have new features.

In execution, the existing system which enabled creditors to collect receivables either through litigation or through executors, has been removed. The sweeping majority of cases of forced fulfillment will newly be resolved by executors and only enforcement of resolutions in specific cases, such as raising minors or resolutions by foreign bodies, will stay with the courts.

The Supported Energy Sources Act also became effective, thereby introducing a new model of purchasing electricity and paying out support that will be carried out through a market operator and not via a regional distribution systems operator as before. The amendment to the Energy Management Act extended the obligation of building owners to attach an energy label to buildings to specify the building's energy consumption. Emission allowances trading has changed and the pension system reform, consisting of several legal regulations, has also become effective. Owing to the austerity package, higher VAT was also introduced. For a complete list of changes, click [here](#).

Jan Dědič and Vlastimil Pihera Become Members of New KANCL Group

Prof. [Jan Dědič](#), KŠB partner and author or co-author of many significant acts, including the recodification, and KŠB attorney [Vlastimil Pihera](#) have been named members of a newly established committee charged with ensuring a smooth introduction of the new recodification. The Komise pro aplikaci nové civilní legislativy (KANCL) consists of a 40-member expert group and an internal team from the Ministry of Justice tasked with preparing standpoints on individual issues.

NEW PRIVATE LAW: WHAT SHOULD YOU KNOW?

Recodification of private law is fast approaching and no one will be able to avoid the changes brought about by the new Civil Code ("NCC") and the Commercial Corporations Act ("CCA") in 2014. Here is some important information on the upcoming new legislation.

- The basic principles of the NCC will also apply to contractual undertakings established before 2014 even if they do not voluntarily subordinate themselves to the NCC. Such principles include the principle of protection of legitimate expectations and the principle that one cannot file an action for illegal conduct he himself was party to. This will also be reflected in ongoing court or arbitration disputes.
- Real estate or apartment owners, take note. Leases will be governed by the NCC as of 1 January 2014 regardless of whether or not they were established under the previous legal regulations. The changes concerning rental housing will be revolutionary.
- The personal and family rights and rights in rem existing before the NCC will be governed by the new legal regulation as well. Divorce shall be pursuant to the NCC, and restriction of one's legal capacity shall be only in the extent of the NCC. Real estate owner's rights and obligations will also be governed by the NCC.
- Security in rem (typically liens) will be an exception. It will be governed by the existing legal regulations unless the parties agree otherwise.
- Commercial companies and cooperatives should avoid a laid-back approach and get ready now since, first of all, they will have to adjust their foundation documents (articles of association, statutes, etc.) to the new legal regulation by mid-2014.
- They must also amend remuneration issues in office performance agreements by mid-2014; otherwise, members of company bodies will perform their services for free.
- It is advantageous for commercial companies and cooperatives to subordinate themselves to the recodified legal regulation as a whole or they might face huge problems after 2014 when deciding by which acts (old or new) their internal company relations are governed in terms of the rights and obligations of owners.

WILL YOU HAVE TO PAY VAT FOR YOUR SUPPLIERS?

Despite considerable difficulties, certain changes to the VAT Act took effect on 1 January 2013 and will wrinkle the forehead of many a VAT payer. Businesses have almost reconciled the fact that under certain – although not entirely clear – circumstances they may be held to guarantee VAT which their supplier failed to pay. However, most of them have not admitted that they could become actual guarantors. Starting this year, that will change.

The list of supplies to which the guarantee duty applies was expanded substantially so it is wise to familiarize yourself with the list and, primarily, to pay attention to who your suppliers are. Only VAT payers can become guarantors and only for VAT on an accepted taxable supply that was not paid by a supplier who is also a VAT payer. Newly, customers who accept a taxable supply from a supplier who is an "unreliable" supplier at the moment the taxable supplies takes place shall guarantee VAT.

The only party authorized to label a supplier "unreliable" is the tax authority, who may do so only if the supplier has

committed a gross breach of its tax obligations. A list of unreliable payers will be available online and is expected to contain more than twenty thousand businesses. Moreover, the new rules require customers to guarantee tax unpaid on a taxable supply from a supplier if they pay at least a portion of the price by wire transfer to any account other than the one the supplier notified to the tax authority for public disclosure.

The guarantee for VAT which the supplier fails to pay will result in a fair amount of uncertainty for VAT payers since tax authorities and courts have little experience with this concept.



JIŘÍ HORNÍK MADE KŠB PARTNER



On 1 January 2013, [Jiří Horník](#) became a new partner at KŠB. The law firm's ninth partner specialises in property law and project financing and is one of only a few Czech experts on aviation and aerospace law, an exciting field that is becoming more and more important thanks to the recent dynamic development of space exploration and commercial space operations. Also, Jiří is listed as an aviation law expert in the latest issue of *Who's Who Legal*. For details, click [here](#).

EMPLOYERS NOT REQUIRED TO OFFER REPLACEMENT JOBS TO LAID-OFF EMPLOYEES

KŠB helped a client win a groundbreaking lawsuit filed by a laid-off employee who claimed his employer did not comply with its duty to offer him a replacement job. The employee believed that his employer could not dismiss him on the grounds of Section 52(c) of the Labour Code since it had a vacant job requiring a similar level of experience and skill.

Both the court of first instance and the

court of second instance ruled in favour of the plaintiff, but the Supreme Court dismissed both judgments following the employer's appeal and held that labour laws effective since 1 January 2007 did not include the duty to offer a replacement job. The judgement was made in order to unify civil and commercial judicial practice and should be followed by all courts. For more information click [here](#).

UNITARY PATENT PROTECTION FINALLY ARRIVES

On the last day of 2012, two regulations introducing unitary patent protection in almost all EU Member States were announced in the Official Journal of the European Union.

This is a significant achievement since negotiations to reach an agreement across the EU took dozens of years. The regulations will not apply in Spain and Italy, however, as both countries chose not to be part of the new system. The new European patent with unitary effect should put an end to unnecessary complications and high costs.

European patents granted by the European Patent Office (EPO) will no longer require validation in each country where the applicant applied for patent protection. The unitary effect in the participating Member States will begin automatically upon the applicant's request and no further actions are necessary.

The requirement for translations into national languages, which made patent protection more expensive (costing up to tens of thousands of Euros), will also be eliminated. In the future, the requirement for translations into a non-official language

will practically be cancelled as well, since the EPO will use high-quality machine translations for all official EU languages. Applicants will therefore have to ensure that files are always available in English and another EU official language for a temporary period only. Patent owners, however, will be required always to obtain the necessary translations in the event of a dispute arising from an asserted claim.

Renewal fees have also been simplified and will no longer be paid individually in each country for which the European patent was validated but via a single joint payment at the EPO, which eliminates the need to monitor the relevant internal regulations in each Member State.

Lastly, a unified patent court – to be established later this year – will also be a welcome change. Before the new patent arrangement can be applied, however, the agreement will have to be ratified, which will likely happen after 1 January 2014.

CZECH ENERGY SECTOR 2013: NO BORING YEAR AHEAD

The energy sector is certainly worth watching closely this year, be it because of the anticipated boom of renewable energy generation in Germany, completion of the Temelín power plant, or the sale of the strategic gas transmission system operator.

The Czech energy industry, as well as the energy industries in most EU countries, is about to tackle the need to upgrade its power generation facilities to be able to meet strict environmental limits and to improve the Czech Republic's entire energy infrastructure, which too often fails to meet the requirements imposed by the increasing phenomenon of decentralized power generation, primarily from renewable energy sources. Grid stability is a must, given the anticipated boom of renewable energy generation in Germany. This will certainly give rise to discussions over the EU's uniform energy policies and powers each EU country will want to retain in such an extremely important and strategic industry.

Closely associated with this is the Czech energy concept, which primarily counts on burning brown coal and nuclear power. Although a fairly unique approach in "post-Fukushima" Europe, it is not totally ill-founded given the Czech Republic's geography and natural resources. The anticipated fight over who will finish the Temelín power plant cannot be omitted in that respect. It will certainly be very interesting to watch how the tender develops given the disqualification of Areva. Nevertheless, thanks to the dropping price of electricity on European markets, such a long-term investment can hardly be expected to go unguaranteed by the government. However, a big question mark still remains. The full article is available at Patria.cz.

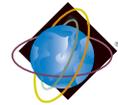
KŠB AND CHAMBER OF NOTARIES PUBLISH NEW GUIDEBOOK

Last autumn KŠB and the Czech Chamber of Notaries published a guidebook on issues such as mergers, divisions, and company transformations: Transformations of Commercial Companies and Cooperatives for Business – A Practical Guide To Preparing and Approving Transformations. The authors of the book are KŠB partners Prof. [Jan Dědič](#) and [Petr Kasík](#), and KŠB attorneys [Jan Lasák](#), [Jaroslav Míkovec](#), and [Vladimír Trop](#).

CONCERT FOR COMMITTEE OF GOOD WILL – THE OLGA HAVLOVÁ FOUNDATION

Late last November, KŠB organized the foundation's 18th annual charity concert in Prague's Ss. Simon and Jude Cathedral. The proceeds from the concert went to the Senior program, which, in cooperation with selected non-governmental and nonprofit organizations, provides and improves care for seniors who are left with no choice but to rely on charitable help. We thank all clients and friends who supported the event.

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WHO'S WHO LEGAL

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