

## EDITORIAL

Dear Clients and Business Partners,

Not surprisingly, the new issue of X Lege is devoted primarily to the recodification, which will surely keep us all busy this year. With that in mind, we continue to focus our efforts on making your life easier by keeping you up to date.

The new laws associated with the recodification are currently being prepared. However, the recent Czech political shake-up could still change things somewhat. Especially if the Chamber of Deputies is dissolved, the entire process could slow down, if not stop entirely. And without the new laws the new legislation could be hampered. Let us hope that our political elite can keep their heads cool during this heated time.

As D-Day approaches, even the strongest opponents of the new legislation can see that it is time to start dealing with practical issues. Lease agreements will be subject to the new rules (with certain exemptions) even if entered into now. This means that the new legislation should be taken seriously!

It is interesting to see how difficult it is for some people to abandon the existing formal approach to interpretation. Perhaps it is a relic of our education system – learning by heart rather than by using one's head? This approach, however, is not part of the new Civil Code. I dare say that "sound common sense" is the right term to describe the major interpretation rules. The first fourteen sections and the joint and transitory provisions should be your mantra every time you sit down to read the new Civil Code.

Have a nice summer!

Jiří Horník

## KŠB Again Recommended in Prestigious Chambers and Partners' Annual Publications

Renowned British rating agency Chambers and Partners recommends KŠB and its lawyers in two annual publications Chambers Global 2013 and Chambers Europe 2013. Details are available [here](#) and [here](#).

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## GREATER FREEDOM MEANS GREATER RESPONSIBILITY

Prep work is a must since the Devil is in the details. This is what Professor Jan Dědič, a KŠB Partner and one of the co-authors of the Czech recodification, wants Czech companies and citizens to bear in mind regarding the changes due to take effect in the Czech legal system on 1 January 2014.

### KŠB: How is the accompanying legislation doing?

**Professor Dědič:** The accompanying legislation passed the second reading and was originally due to undergo final approval during the June session. We will see what happens given the current turbulent political situation. There will certainly be some minor changes since inconsistencies are being discovered as the relationships between the accompanying legislation and the new Civil Code and the Corporations Act are being monitored, and such inconsistencies will have to be removed. However, I believe the changes to be only of technical nature, nothing substantial.

### KŠB: Which change do you think to be the greatest breakthrough for corporations?

**Professor Dědič:** Greater freedom in drafting corporate documents, removal of

certain formal obstacles, especially excessive requirements for expert reports or for certain contracts or acts to be approved by the general meeting. However, greater freedom means greater responsibility for company directors and officers, for example, if they breach the duty to act with due care. Restrictions which were more or less of an administrative nature are transferred to the sphere of responsibility for duly exercising one's office.

### KŠB: What do you think about Czech companies' readiness for the changes?

**Professor Dědič:** I think the pace has gotten faster. Companies which are serious are very thorough and careful in getting ready—both in terms of corporate and contract law. Many companies have spent tens of millions of Czech crowns, so the costs alone are enormous.

## NEW MAJOR INCOME TAX ACT AMENDMENT

The Chamber of Deputies recently tabled an important draft amendment to the Income Tax Act, which if everything goes smoothly should take effect on 1 January 2014. The amendment is needed in relation to the recodification of Czech private law, which comprises primarily the new Civil Code and Corporations Act and should also take effect on 1 January 2014.

With nearly 600 pages (including the parliamentary report), the massive amendment constitutes an important step in introducing a single cash collection point (the launch is expected to take effect at the beginning of 2015) and comes ahead of the bill on public insurance and personal income tax adminis-

tration, which is still in the preparatory stage of its legislative journey. That amendment has its own objectives, including essential changes in income taxation, and should take effect on 1 January 2015 (as validly set by the Act on the amendment to acts associated with the establishment of a single collection point and other amendments to tax and insurance laws).

Along the way, the amendment wiped out the Inheritance, Donation and Real Estate Transfer Tax Act and unified the first two taxes. The real estate transfer tax vanished all together and is to be replaced by real estate acquisition tax, which will be subject to a separate act. For more details, click [here](#).

## KŠB Institute a Success

KŠB's new learning platform KŠB Institute was a success in its first semester. Workshops and other events, which focused primarily on the new Czech Civil Code and Corporations Act, were attended by both lawyers and managers alike. The Institute, with Professor Jan Dědič, co-author of the recodification and a KŠB partner, as the head lecturer, also offers tailor-made seminars. The fall schedule will soon be available at [www.ksbinstitut.cz](http://www.ksbinstitut.cz).

## NEW PRIVATE LAW: CHANGES IN REGISTERS AS OF 2014

As a result of the upcoming recodification, the commercial register rules will transfer to a new independent act. The act will also include rules for other registers administered by registration courts. What are the changes?

- One of the most significant changes is the new opportunity to register in a public register through the notary public who made the notarial deed;
- The registration court may inform a legally interested party whether a certain legal entity is being prosecuted under the Act on criminal liability of legal entities;
- The Act removes the current doubt and confirms that simple filing via a data mail box without an e-signature is sufficient for registration purposes;
- The data that must be registered in the commercial register shall newly be as follows:
  - 1) number of members of the statutory or supervisory body;
  - 2) domicile of natural persons and a residential address, if different;
  - 3) manner of acting as a proxy, including information that such power applies to a certain branch office or facility and information whether the proxy may dispose of or encumber real property;
  - 4) information on whether the corporation subjected itself to the Corporations Act as a whole;
  - 5) information on whether a body member or a proxy has been suspended from office;
  - 6) whether there is a ban on encumbering or disposing of a shareholding in the corporation, if established as a right in rem;
- Registered parties are required to make their registration compliant with the new rules within six months, while associations have three years to do so. If they fail to do so, they will be subject to a penalty of up to CZK 100,000 or termination of the registered party.
- If a party registered in a public register fails to disclose mandatory details in its commercial documents or on its website, it may be subject to a penalty of up to CZK 100,000.

## COUNTDOWN FOR MAKING BEARER SHARES COMPLIANT WITH THE LAW IS UNDERWAY

Although the intention to make shareholder structures more transparent was highly criticized, the governmental draft was approved and the Act on certain measures to increase transparency of joint-stock companies took effect on 30 June.

One potential reason for the criticism is that, despite losing the advantages they offer, existing bearer shares will not actually be terminated. The Act provides companies with a few options.

The first is immobilization, i.e. handing over bearer share certificates to a permanent deposit with the central depository or a licensed securities broker without actually changing the share form or type. However, this fact must be included in the company's Articles of Association, which means a general meeting must be held. The immobilization of the share is, in line with the concurrent amendment to Capital Market Trading Act, subject to the same procedure as the entering of shares into the company's books.

The other two scenarios require abandoning either the share type or form, i.e. a decision needs to be made whether to

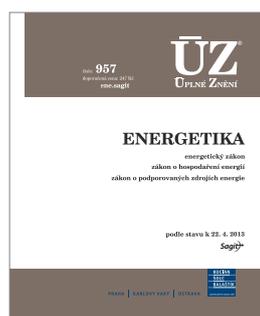
convert the shares into registered certificates or book-entered bearer shares. However, even these two options require a general meeting and amendment to the Articles of Association.

The deadline for adopting either measure is the end of the year. If no measure is taken, the shares will automatically be converted into registered share certificates on 1 January 2014. All related steps, such as adjusting the Articles of Association, filing registration applications and submitting the shares for replacement or appropriate endorsement, are to be taken by 30 June 2014. Shareholders who fail to do so will be stripped of their ability to exercise their rights.

Bearer shares can now be issued only as immobilized or book-entered. This will continue to apply when the new Corporations Act takes effect on 1 January 2014.



## UP-TO-DATE ENERGY LAWS NOW AVAILABLE



KŠB's energy experts contributed to the new issue of energy-related laws in Sagit's publication "Unabridged laws". The concise and practical publication contains up-to-date versions of the Energy Act, the Energy Management Act and the Supported Energy Sources Act. The most important implementation laws are also included.

## TOMÁŠ SEQUENS ON ENERGY PERFORMANCE CERTIFICATES

In a recent interview for Hospodářské noviny, KŠB lawyer Tomáš Sequens discussed the current situation regarding energy performance certificates (EPCs).

EPCs were introduced in January 2013 by an amendment to the Energy Saving Act as a way to describe how much energy a particular building consumes. Property owners are required to present the EPC to potential buyers and renters. How-

ever, the Ministry of Industry and Trade has already expressed interest in making the rules less stringent. A Parliamentary amendment which intended to do so was on the agenda of the June session; however, the Czech Government Office's Compatibility Department claims that the amendment is in conflict with the relevant EU Directive. To read the full version, click [here](#).

## NEW EUROPEAN ACCOUNTING DIRECTIVE

The directive on annual financial statements, consolidated financial statements and related reports of certain types of undertakings was approved at the end of June. It consolidates the rules set forth by the existing directives on annual accounts and consolidated accounts, also referred to as the Fourth and Seventh Directives.

In addition to consolidating the requirements into a single piece of legislation, the new directive revises the current requirements for drafting financial statements and the usefulness thereof. Although the European Commission's primary aim was to reduce the administrative burden on small companies in particular, the changes will impact large companies as well since the directive seeks to modernise and improve the quality of financial statements in order to enhance comparability across the EU.

Principally, the criteria for distinguishing small enterprises from large ones were adjusted. Small companies shall be those with fewer than 50 employees, a balance sheet total of not more than EUR 4 million and/or a net turnover of not more than EUR 8 million. Undertakings which on their balance sheet dates do not exceed the limits of two of the three criteria above shall be considered small undertakings. The directive also seeks to reduce and limit the amount of information which small businesses are required to report. Small businesses will therefore be required to disclose only an

abridged balance sheet, profit and loss account and notes. Member States may not demand small businesses to disclose further information except in legitimate cases, such as where certain data are necessary for tax collection.

Member States are provided with a broad range of powers to limit the requirements on micro businesses, including the disclosure of their annual accounts. Micro-entities shall be those with fewer than 10 employees and a balance sheet total of not more than EUR 350,000 and/or a net turnover of EUR 700,000.

Small and medium-sized enterprises (SMEs) are also defined more precisely in the new directive.

To improve the quality of financial statements (especially in terms of comparing the financial state of businesses), the directive introduces a limited number of model structures for the balance sheet and the profit and loss account.

The Member States are required to transpose the new requirements into their national laws by 20 June 2015.

## SMART PHONES AND PERSONAL DATA: EUROPEAN COMMISSION TAKES A STAND

The great boom in smart phones, which continue to process ever increasing amounts of personal data, carries with it certain security risks. EC's advisory body, the Article 29 Working Party, issued a statement recently which describes obligations imposed on application developers and providers to ensure that our data are safe.

The responsibility for processing mobile phone data lies with many different parties, including those engaged in the development, distribution and technical setting of mobile applications, such as application developers, virtual shopping operators, smart phone OS manufacturers and any other third parties who have access to personal data, such as analysis providers or advertising agencies. As such, each of them must keep in mind that they are administrators or processors of personal data who are therefore required to follow applicable personal data protection laws. This is why such parties must obtain the application

user's consent to personal data processing beforehand and users must be informed of the data processing before granting their consent. Moreover, users must have the opportunity to withdraw their consent and un-install the application.

It is difficult, however, to enforce such rules efficiently against parties from third countries (outside the EU). Thus, users should think twice before submitting data to parties from third countries. If they decide to do so, carefully reading what they are consenting to before installing the application is recommended. For more details, click [here](#).

## STUDENTS COMPETE IN A CONTRACT COMPETITION

KŠB, in cooperation with the law student association ELSA, held a Contract Competition for law school students recently. In total, eleven teams took part in simulated contracts negotiations regarding the purchase/sale of a development project on a luxury street in downtown Prague. The contestants were asked to put forward their clients' interests – which were undisclosed to the other "party" – while adhering to generally binding rules. For more information, click [here](#).

## TWO NEW ATTORNEYS AT KŠB

Kocián Šolc Balaščík recently welcomed two new attorneys to its team – Zuzana Čísařová and Martin Krčmář. Zuzana specializes in intellectual property law, media and advertising, labour law, litigation and arbitration, while Martin, who joined KŠB as a junior lawyer in 2010, specializes in competition law and public aid. More details are available [here](#).

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



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

## WHO'S WHO LEGAL

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