

VK&

NEWSLETTER NO. 2—RECODIFICATION

Dear clients,

In relation to the recodification of the Czech civil law, our law firm is preparing for you a series of Newsletters, which are aimed at providing you with better guidance in the framework of new legislation. The content of each of these Newsletters will be the summary of the fundamental and most important changes arising out of the major acts of the recodifications that are effective as of January 1, 2014 and which are:

- I. New Civil Code (Act No. 89/2012 Coll., the “NCC”)
- II. Business Corporation Act (Act No. 90/2012 Coll., the “BCA”)
- III. International Private Law Act (Act No. 91/2012 Coll., the “IPLA”)

The content of this recodification Newsletter will be the summary of the fundamental changes introduced by the BCA.

BCA lays down the fundamental framework of conditions for operation of business corporations, while it does not provide for complex regulation—certain general conditions for operation of business corporations are included in the NCC and other, more specific areas of regulation, are left to specific statutory regulations (such as Business Corporations Transformation Act, Act on Public Registries). BCA classifies under the term “business corporations” all forms of business companies (limited liability company, joint stock company, special limited partnership, co-partnership company, European company and European economic interest grouping) as well as cooperatives (cooperative as such, apartment cooperative, social cooperative and European cooperative).

It is important to know that the new Act lays down a mandatory rule according to which any provisions of existing constitutional documentation of business corporations (such as Statutes, Articles of Association), which are in breach with the mandatory provision of the new Act (BCA), i.e. in breach with such provisions of BCA from which the business corporations cannot divert, must be brought into compliance with the BCA within a 6 months period as of the effective date of the new law (i.e. by June 30, 2014). Providing the existing business corporation will fail to do that, they are taking a risk of involuntary dissolution of the company by court order (§ 777 BCA).

BCA at the same time allows the business corporations to decide for so called opt-in approach, under which the company will accept a formal decision by which it will conform its corporate governance and operation to the new law and the regime of BCA. There is a two year transition period for such opt-in. In case of using this option, these business corporations will no longer apply

the existing Commercial Code for any of their future corporate relations and by this should avoid major part of any interpretation obstacles and doubts, which may be caused by double-dealing legal regulation.

BCA brings a special transitional provisions with respect to the regulation of executive's agreement (§ 777(3)). These agreements must be brought into compliance with the new Act within 6 months period as of the effective date of the new law (i.e. by June 30, 2014). After the elapse of the above time period, a new mandatory rule will apply stating that the performance of the office of a statutory body of business corporation is deemed to be carried out by the relevant person for no consideration.

BCA more closely operates with the term “diligent business person” (*řádný hospodář*) and adds its corrective in the form of business judgment rule (§ 51 *et seq.* BCA together with § 159 NCC).

Corporate governance rules are also complemented by the authorisation of the court to recall any member of statutory body of business corporation, who, as a result of bad administration, led the business corporation into bankruptcy (§ 63 *et seq.* BCA). This rule is supported by the increase in personal liability of the members of statutory bodies for any debts of the company—provided the company ended in bankruptcy and the statutory body did not introduce any reasonable measures to prevent the bankruptcy (§ 68 BCA).

Joint Stock Company

BCA allows the founders of joint stock companies to decide whether the company will have dualistic (general meeting, board of director and supervisory board—§ 435 *et seq.* BCA) or monistic (administrative board and statutory director—§ 456 *et seq.* BCA) structure. In case of monistic structure the whole management of the company may be vested in one person as BCA allows for the relevant bodies to be monomial.

Other changes that will have practical effects are the abandonment of the rule for mandatory appointment of member(s) of supervisory board by employees, liberalization of decisive process of the general meeting (by way of example possibility to lower the decisive quorum or possibility for cumulative appointment in corporate bodies) and allowing an appointment of a legal entity as member of statutory body of business corporation.

In terms of shares, BCA allows to have different type of shares issued—besides the usual common and preference shares, the corporation may also issue shares that have specific rights attached to them such as different profit share right or different voting rights. This brings bigger flexibility to the administration of the company. The corrective measures here are the rule of equal treatment and ban on breach of good morals. A new speciality can be also seen the institute of so called unit shares—shares that do not have any nominative value and their value is represented by equal share in basic equity of the Company.

BCA also remedies certain trivialities, which used to cause problems in practice—for example it expressly allows for the signature on the share certificate to be replaced by the printed (stamped) copy of the signature, provided the share certificate bears other protective signs against its falsification (§ 260 BCA) or BCA newly specifies the rules for voluntary exchange of share certificates in case of their damage (§ 542—543 BCA).

Limited Liability Company

Limited liability company can be newly founded only with CZK 1 basic capital (minimum amount of CZK 200,000 is abandoned). The above simplifies the starting up business process, while BCA guarantees the protection of the creditors by the rules of corporate governance, increase in personal liability of corporate bodies or the bankruptcy test.

BCA provides for larger freedom in specification of internal corporate processes, which brings greater demands for appropriate drafting of constitutional documentation and the need for professional legal assistance.

The regulation of ownership interest structure in a limited liability company is liberated (§ 135 BCA). The companies will be able to determine in their constitutional documentation that besides the basic ownership interests, which has basic rights and obligations attached to it, the company will also have other types of ownership interests with specific rights attached (such as priority right for profit distribution, etc.). Ownership interests that will have the same spectrum of specific

right attached to them, will fall into the same category of ownership interests. If agreed by the Memorandum of Association, one shareholder can owe more ownership interests of different categories.

An important change is associated with respect to transfer of ownership interests—transfer of ownership interest to other member will no longer require consent of the general meeting of the company. BCA newly allows for possibility to transfer ownership interest to a third party without the consent of the general meeting (this option can be disqualified in the Memorandum of Association). The option to incorporate the ownership interest in the company into an order instrument (security certificate) (§ 137 BCA) will make it easier for the transfer of ownership interest—in this case the ownership interest will be transferred by the endorsement of the relevant security certificate.

We believe that the above summary will allow you better orientation in the new law. We are available for all your requests for any additional information.