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## NEWSLETTER 1/2020

Legislative news expected in 2020

## **MOST EXPECTED LEGISLATIVE NEWS OF 2020:**

### **I. A new Real Estate Brokerage Act**

- It is expected that the new law will bring us a new and complete legal framework relating to the Real Estate Brokerage and thus it will ensure a higher level of consumer protection, when a real estate business is realized through a real estate broker.
- The new legislation introduces in particular:
  - (i) **A new classification** of the real estate brokerage as a **regulated licence** (prior to the Act it was a simple uncertified licence);
  - (ii) **Tighter requirements for activities of a real estate broker** (qualification requirements, clean criminal record, mandatory insurance, etc.);
  - (iii) **Statutory form and requirements for real estate brokerage agreements** (mandatory written form, statutory ban to claim commissions from both the seller and the buyer, prohibition of contractual obligation to buy or sell on the side of the client, agent's notification duty with respect to known defects of the property);
  - (iv) **Agent's escrow limitations** (it is possible only upon a written request of the client, money must be held on a separate bank account, solely for the purposes of the real estate contract etc.).
- The new Act is expected to come into effect as of **1<sup>st</sup> March 2020**.

- Existing brokers are obliged to take out a **mandatory insurance** no later than **2 months** from the effective date of the new Act. The notification duty (information that the agent wishes to conduct the brokerage services) must be also fulfilled towards the **Trade Licence Office within 6 months** from the effective date of the Act. As the real estate brokerage will require a certified licence, only individuals, who will meet the professional requirements (work experience and degree of education), will be allowed to apply for the licence. The Act provides two year transition period to the existing real estate agents to comply with the new requirements. Change of existing licence will be exempt from an administrative fee. Failure to fulfil the new statutory requirements within the set deadlines will result in the expiration of the current licence.

## II. Novelization of the Business Corporation Act (Act No. 90/2012 Coll.)

- Major novelization of the existing Act.
- The most important changes brought by the new law include in particular:
  - (i) Explicit clarification that a corporation may **distribute the profit approved from its financial statements until the end of the accounting term following the accounting term, for which the financial statements were prepared** (currently it was possible only within 6 months from the end of the respective accounting term);

- (ii) **A new obligation** (applying to **legal entities appointed as a member of a statutory or other elected body** of a capital company or a cooperative), **to appoint an individual**, who meets statutory requirements for the performance of the relevant office, **as the representative of such legal entity in the relevant body** (without the parallel registration of its appointed representative, the legal entity will not be registered in the Commercial Register as the member of the elected body and its office will terminate);
- (iii) Modifications concerning the **Executive Service Agreement** (the law shall specify, e.g.: consequences of failure to approve the Agreement by the supreme body of the company; principles for determining the director's remuneration in case of invalidity of the Agreement for reasons attributed to the company; conflict resolution between the Executive Service Agreement and the Memorandum of Association, etc.);
- (iv) Specification of **types of ownership interests (shares) in a limited liability company**; a limited liability company must have the minimum of **one share with attached voting rights**;
- (v) A new possibility for limited liability companies and joint stock companies to determine in their constitutional documentation that their shares are carrying the right to appoint and recall one or more executives/members of the Board of Directors (Supervisory Board);
- (vi) Changes in the **monistic system** administration of a joint stock company, which abandon the position of the Statutory Manager and introduce the **Administrative Board** as the new statutory body;
- (vii) New rules for the **election of employee's representatives in the Supervisory Board of a joint stock company**.

- The novelization is linked to other legal regulations, especially **the Public Registers Act** (*Act No. 304/2013 Coll.*), which shall newly connect the Czech Commercial Register with other similar European Registers and lead to **effective enforcement of the obligation to file accounting documents in the Collection of Deeds of the commercial courts** (if a business corporation fails to deposit its ordinary or extraordinary financial statements for 2 consecutive accounting periods and fails to remedy upon notification, the court will be entitled to impose a fine or to initiate the liquidation of the corporation).
- **The novelization has already been approved and its effectiveness is set as of 1<sup>st</sup> January 2021.**
- Business corporations will **be obliged to adapt and register their Memorandum of Association or Articles of Association** within the transition period of **1 year** from the effective date. Additional registration requirements introduced by the new law will have to be registered within **6 months** from the effective date, save for the abovementioned **obligation of a legal entity to appoint and register an individual as its representative within the statutory body representation**, which must be fulfilled within the period of **3 months**.

### III. Amendment to the Labour Code (Act No. 262/2006 Coll.)

- The amendment to the Labour Code had been awaited for some time by both employers and employees. The new law is expected to bring the following:
  - (i) **Shared working places** (when two or more employees are employed on part-time or on reduced-time basis in respect of one full time working position to. This change aims to improve the employment of mothers and seniors);
  - (ii) **New rules applying to holidays** (annual holidays will be granted according to the number of worked hours (not days), therefore reflecting weekly working hours and part-time arrangements. The annual holiday is not to be reduced due to an excused absence from work);
  - (iii) **New regulation related to delivery of documents** (presumption of delivery of documents after elapse of a certain statutory period; rules for delivery via data / mailbox);
  - (iv) **New conditions for transfer of employees in EU countries** in compliance with European legislation, in particular Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC.
  
- **The expected effectiveness of the amendment is set as of 1<sup>st</sup> July 2020** (the part concerning the delivery of documents and the implementation of the Directive) **and as of 1<sup>st</sup> January 2021** (the part relating to the annual holiday and work sharing). The amendment was approved by the Czech government on 16<sup>th</sup> December 2019 and now has been referred to the Czech Parliament for the further discussion.

#### IV. New rules in the area of waste management industry

- The area of waste management industry shall be newly governed by several new legal acts, which have already been approved by the Czech government and now are submitted to the Czech Parliament.
- New legal acts should be following:
  - (i) **The new Waste Act**, by which the amount of recycling and the re-use of municipal waste shall increase up to 65% in 2035 and at the same time the fee for the disposal of mixed waste in a waste dump shall be gradually increased;
  - (ii) **The new Act on Selected End-of-Life Products**, which will represent a special law in relation to the abovementioned new Waste Act and thus will have a priority over the general law (it shall include special legislation related to the extended responsibility of a producer of such products and take-back obligation);
  - (iii) **An amendment to certain laws in connection with adoption of the Waste Act and Act on Selected End-of Life Products**;
  - (iv) **An amendment to the Packaging Act** that *inter alia* sets conditions for fulfilment of the take-back obligation, minimal density of waste collection points, possibility of appointing an authorized representative for foreign persons/entities who place package on the Czech market or put it into circulation in the Czech Republic, etc.

- **The new rules should become effective as of 1<sup>st</sup> January 2021.**

#### **V. New legislation regarding the registration of beneficial owners**

- The new legislation has been submitted in order to implement the **5<sup>th</sup> AML Directive**, i.e. Directive (EU) 2018/843 of the European Parliament and of the Council of 30<sup>th</sup> May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/26/EU. The implementation period elapsed on 10<sup>th</sup> January 2020.
- The issue of beneficial ownership shall be newly regulated in one specific act, whereas it is currently scattered over several laws, particularly in the Public Register Act, the AML Act, the Public Procurement Act and the Insolvency Act.
- The new legislation shall especially constitute:
  - (i) **More precise and detailed definition of a beneficial owner** (the beneficial owner shall always be a natural person who is the ultimate beneficiary or who exerts ultimate influence, or top management representative), this will apply also to holdings;
  - (ii) List of legal entities without a beneficial owner (e.g. state, regions, municipalities, etc.);

- (iii) Statutory duty of commercial courts to initiate the registration of the beneficial owner *ex-officio* and new possibility of **direct registration by a notary**;
  - (iv) **Automatic transcription of data**, already registered in other public register, into the beneficial owners registry;
  - (v) Proceedings to remove **irregularities** (in case that there are incorrect or missing data in the registration);
  - (vi) **Direct financial sanctions** for failure to comply (up to CZK 50,000 or CZK 250,000 might be imposed);
  - (vii) **Publicity of the registration of the beneficial owners** (anyone will be entitled to obtain, by remote access, an electronic excerpt of the most important data relating to the beneficial owner of any legal entity; at the same time it will be possible to obtain an electronic certificate that individual is not registered as a beneficial owner – *negative excerpt*).
- **Legal entities must update their already registered data within 6 months from the date of the effectiveness of the new legislation.**
  - **Originally, the effectiveness of the new act has been set as of 1.12.2020. Nevertheless, it is at the beginning of the legislative procedure, now it is submitted to the Czech government.**

## VI. New Building Act

- **The main purpose** of the new Building Act is to **simplify** and **accelerate the planning permit procedure** in the Czech Republic. Furthermore, it should establish a two-instance permit system, governed by **the Supreme Building Authority**, under which would fall the regional building authorities.
- **The proposal is now in the comment procedure**, by the end of March 2020 the Ministry for Regional Development should deal with all comments submitted on the proposal. The expected effectiveness of the new law is in the middle of 2023.

We hope the above summary will ease your orientation in the new legislation. We are available for any of your additional requests or information or legal assistance in this area.

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