



2014

Anniversary:

CZ: Obligation to
comply for companies

Recognition in
employment law

EU: New Directive
on the Protection of
Personal Data

We celebrate our anniversary in 2014. Ten years ago, the Dvořák law firm was founded in Prague, and eight years ago, the Hager law firm was founded in Bratislava. Dvořák Hager & Partners, which was created by the merger of the two firms, celebrated its first anniversary in March this year. We would like to use this opportunity to thank all our clients and business partners for their trust, loyalty and cooperation. Almost six months have passed since the extensive re-codification of civil and commercial law in the Czech Republic. You must decide for yourselves whether or not it is a reason to celebrate. However, it is certain that many deadlines for modifying your corporate documents in order to comply with the new legislation will soon expire and many new features introduced by the new legislation will no longer be avoidable. You can read more about this topic as well as important changes in other areas of law in Slovakia, the Czech Republic and the EU in this newsletter.

SK: Changes relating to the Heat Power Industry

An amendment to the Heat Power Industry Act takes effect on 1 May 2014. The amendment mainly set out new heat supply sources, including efficient centralised heat supply systems, and is a partial implementation of the Energy Efficiency Directive. (MS)

CZ: Mandatory Disclosure (Internet)

Effective from 1 January 2014, the Companies Act now requires joint-stock companies and European Companies (Societas Europaea) to publish prescribed information and notifications on their websites; a similar requirement applies to limited liability companies that have websites. (JK)

SK: Changes relating to personal data protection

The persons authorised to process personal data no longer need to be employees; they may now carry out work on another contractual basis, such as a contract for the performance of work. The fines for violation of the Act are no longer mandatory – the Office for Personal Data Protection may impose the fines at its own discretion. (JS)

CZ: Arbitration clause in contracts for the transfer of shares

According to a decision of the Czech Supreme Court, an arbitration clause may be also included in a contract for the transfer of a shareholder's shares since disputes arising from such contracts are eligible for alternative dispute resolution. (TM)

SK: New Act on the Short-Term Lease of Flats

A New Act on the Short-Term Lease of Flats takes effect on 1 May 2014. The Act contains special provisions for lease agreements up to two years which regulate the reasons for termination, the notice period, security deposits, eviction, right of distraint and the parties' rights and claims if the lease termination is found to be invalid. (ZP)

CZ: Obligation to comply for companies

Under the new Companies Act, companies must comply with certain new duties. However, the Act also offers some new practical solutions. What are they?

By 30 June 2014, companies must **adjust their Memoranda of Association/Articles of Association to the new legislation** and file the adjusted documents with the Collection of Deeds of the Commercial Register. A court may order liquidation and dissolution of the company as the ultimate penalty for non-compliance.

By the same deadline, **Management Agreements** must also be adjusted to the new legislation. The agreements must now contain all fees and other rewards, otherwise, there is a risk that the discharge of the office under the old agreement will be held to be gratuitous.

To avoid legal risks, we recommend removing all instances of the **'concurrency of functions'** of executive officers and managers carried out as employment. The safe solution is to ensure that executive officers perform all of their functions/duties under a single Management Agreement.

However, the Companies Act also offers some **new practical possibilities**: For limited liability companies, these are, for example, lifting the ban on chain ownership which allows for simpler group structuring, defining different kinds of shares with different rights (votes, dividends etc.) or issuing negotiable ordinary share certificates representing shares in the company. For joint-stock companies, interesting developments include terminating the mandatory participation of employee representatives in supervisory boards, flexible determination of the number of governing body members, removal of statutory reserve requirements, or issuing shares with special attaching rights (votes, dividends etc.)

If we are forced to adjust and update our corporate documents, we should consider whether we might at the same time benefit from some of these new options.

Stanislav Dvořák



CZ: Debts follow flats

Under the New Civil Code, any debts related to the house and land management pass to the buyer of the flat. However, the seller becomes the guarantor of such debts. Neither the buyer nor the seller are entitled to request that the flat owners association or the house manager settle the seller's contributions/debts related to the house management with the seller before conveyance. Only a request for confirmation of the extent of debts which pass to the buyer may be made. (MW)

EU: New Directive on the Protection of Personal Data

The European Parliament has passed a new draft data protection directive in the first reading. The new Directive aims at reinforcing the personal data protection regulation and responding to new trends in personal data processing. (TP)

EU: European Court concerning illegal copies

The European Court has determined that making a copy for personal use may only be considered lawful if such a copy is made from a legal source. (JH)

**CZ: Amendment to the Cash Payment Restrictions Act**

The Amendment defines 'payment in cash' as a handover or transfer of cash, thus broadening the definition to include, for example, gifts and loans where the obligation only arises at the time of provision and settlement is not limited to repayment of the original obligations. (LV)

CZ: Commercial disputes to be heard by district courts only

From 1 January 2014, the district courts are now also responsible for disputes between businesses with a value exceeding CZK 100,000. (ZT)

CZ: Judgment concerning the statute of limitations

According to a judgment of the Czech Supreme Court, a mere extension of a payment deadline (debt) under the (repealed) Commercial Code will not affect the 10-year limitation period; the period shall always be 10 years from the date it first commenced. (OH)

CZ: First forced liquidation for tax evasion

A first (final and non-appealable) judgment on the dissolution of a company for a tax offence has been delivered. The risks of corporate criminal liability may be reduced by adoption of correct internal measures against corporate crime. (TP)

CZ: Changes relating to the draft amendment to the Employment Act

The Chamber of Deputies is deliberating an amendment to the Employment Act. The amendment should re-institute the category of 'health disadvantaged' persons for the purpose of compliance with the mandatory quotas for the employment of disabled persons. (KD)

CZ: Capital Requirements Directive IV (CRD IV)

The Czech Republic is delayed in implementing CRD IV which creates a new regulatory framework for banks and other financial institution in reaction to the financial crisis. The act implementing CRD IV, which was to enter into effect from 1 January 2014, is currently in the second reading in the Chamber of Deputies. (VO)

CZ: Register: new rules for filing

As of 1 January 2014, contracts no longer need be attached to the proposal for registration. A written declaration by the interested parties on the establishment, change or extinction of title, and the specifics thereof, will suffice. (JM)

Recognition in employment law

The international rating agency Chambers Europe has moved Dvořák Hager & Partners' ranking in employment law to Band 2. This confirms the growing reputation of the firm's employment department. Apart from employment law, Dvořák Hager & Partners were also recommended for corporate law and M&A.

SK: No seizure of property up to EUR 2,000

From 1 June 2014, the forced sale or auction of property is not possible if the claim is less than EUR 2,000. The regulation applies to individuals, not to companies. (ZUS)

CZ: Application of Section 441(2) of the new Civil Code in practice

The requirement for notarised powers of attorney for transactions performed in the form of notarial deeds is not uniformly applied by all courts of registration. Some courts require the notarised powers of attorney but others accept powers of attorney only with the certified signatures of the principals. (MR)

SK: Draft Whistleblower Protection Act

The Act will regulate the protection of 'whistleblowing' employees. The National Labour Inspectorate should be responsible for whistleblower protection. The employer will bear the reverse burden of proof under a penalty of up to EUR 50,000. (MAB)

CZ: Courts entitled to change a competition clause

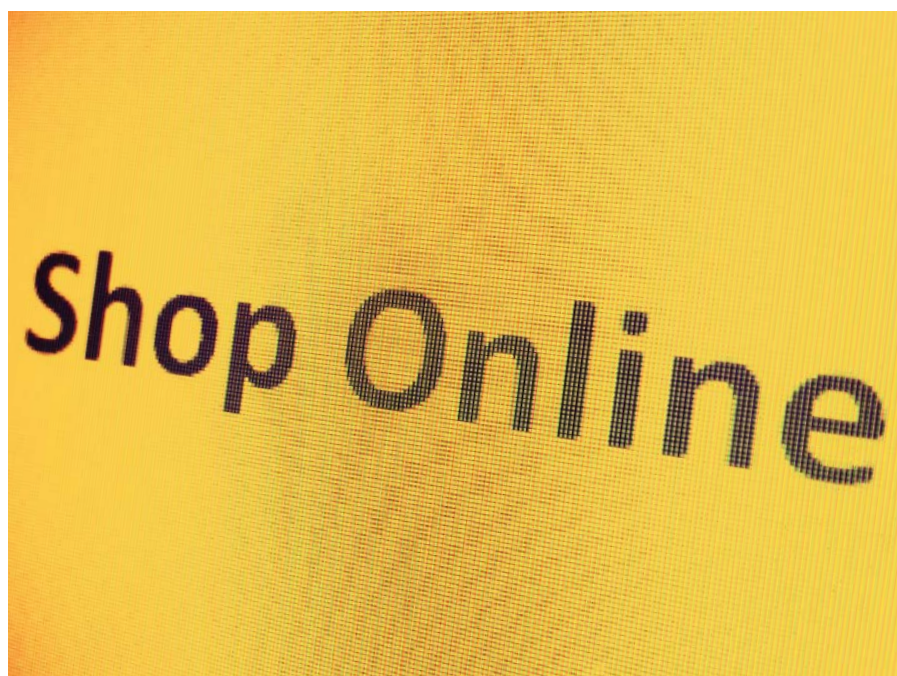
The courts may adjust the unlawfully stipulated quantities, deadlines and territorial scopes. A competition clause concluded by an employee more than one year is no longer always invalid. Under Section 557 of the new Civil Code, a court may adjust an unlawfully stipulated deadline in a way accomplishing the fair and just disposition of the parties' rights and obligations. (TJ)

CZ: Restriction for joint-stock companies receiving subsidies for generating electrical energy from Renewable Sources

The amendment to the Promoted Energy Sources Act retains the disputed requirement that joint-stock companies receiving subsidies for generating electrical energy from Renewable Sources must either have all their shares in a book entry form or change their legal form by 1 July 2014. (JS)

SK: Purchase of land by foreigners starting from 1 May 2014

From 1 May 2014, foreigners are allowed to purchase agricultural land. Under the current bill proposed by the Government, all Agricultural Land to be sold will first be offered to potential buyers residing in the municipality, then to potential buyers residing in the neighbouring municipalities, and only then to other potential buyers. (MAB)

**SK: Warning to e-shops – new level of consumer protection**

E-shops and firms delivering services to a customer's place of business/residence (e.g. household repairs) must adjust their standard agreement and information forms by the middle of June 2014; otherwise, the consumer may unilaterally terminate the contract up to one year and use and enjoy the goods and services gratuitously in the meanwhile. (TA)

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