



## CZECH REPUBLIC DEVELOPMENTS 2000/2001

- Civil Procedure Code Amendment

One of the critical chapters in the ongoing accession talks between the Czech Republic and the EU in that of the judiciary and the courts. It is widely admitted that the efficiency of Czech courts and effectiveness of Czech judges represents one of the major problems facing the country in its bid to become a member of the EU. Although the battle to implement reforms in this sphere continues, a large step towards judicial reform took place on January 1, 2001 with enactment of a major amendment to the Czech Civil Procedure Code.

Part of the judicial reform is also represented by the newly defined competence of Czech courts. Separate commercial courts were eliminated on January 1, 2001. All commercial disputes and other proceedings related to business and matters of competence of the former commercial courts now being dealt with by regular regional courts, which have created specific panels of judges for commercial and business law.

Highlights of the amended provisions of the Civil Procedure Code include the following:

- ❑ If a defendant does not submit a response to a petition within the time provided by the court (a minimum of 30 days), a presumption applies that he/she recognizes the claim and the court is entitled to issue a default judgement for recognition.
- ❑ Stricter requirements as to the amount and quality of evidence submitted with an action apply. The court will decide about the timing and the terms for presenting of evidence. Previously, this principal did not govern Czech civil proceedings and the system of presentation of evidence was rather chaotic, with many opportunities for manoeuvres, speculations and misuse. Parties are now generally required to submit all evidence in support of their claim with their initial pleading. If the court requests additional evidence and if such evidence is not submitted in the additional term provided by the court, the court will automatically reject the submission on grounds that it is defective.

The new concept of presenting and consideration of evidence is mostly focused on the predictability of the judgement during the court proceedings. The court is bound by the duty to instruct the parties properly and define in detail which matters of fact are contested in the proceedings and which are commonly agreed, therefore limiting the scope of the evidence.

- ❑ A petitioner may withdraw a petition even after a judgement of the first instance is passed, provided that the judgement is not yet enforceable. If other parties do not agree with the withdrawal of the action, the court will decide whether the reasons for objection to the withdrawal are of such seriousness that the withdrawal will not be approved.

- ❑ Hearing of the parties to the case will be the exception, with the legal representatives of parties dealing primarily with proceedings. A party to the action will be heard only if a) this is specifically requested, b) if facts to be proved cannot be proved by different means of evidence, and c) if the party agrees. If the party of the claim does not agree to testify, it cannot be forced to do so.
- ❑ Notarial protocols are now considered to be trustworthy public documents for evidentiary purposes with the presumption of correctness. A Notarial protocol may be written about most important facts relevant to a particular claim (for instance the condition, quality or delivered amount of goods, or time or specific circumstances of the delivery). The Notary is bound by the duty always to issue such a Notarial protocol on demand of a party.
- ❑ A “revolutionary” provision concerning sexual discrimination claims in labour matters has been introduced. The party to the labour dispute claiming sexual discrimination is not required to present any evidence, with the other party of the dispute being bound by the duty to provide evidence to refute the claim.
- ❑ Implementation of international treaties has resulted in new rights of minors in Czech courtrooms. Minors must be respected as individuals and their opinion must be heard. The court therefore is bound by the duty to hear a minor, if necessary with the help of other people „interpreting“ the opinion of the child. Hearing of a minor is possible even without the presence of parents or guardians.

### Appellate Proceedings

- ❑ After the first instance judgement is passed and verbally promulgated, the judge will ask the parties whether they give up their right to appeal.
- ❑ Appeal is not possible in the cases where the value of claim is less than CZK 2.000 (approximately USD 50).
- ❑ Appellate proceedings have been changed from the so-called “full” appeal to a “partial” appeal.

In general the only arguments that can now made be on appeal are:

- Evidence was not utilized even if submitted.
- Legal findings contrary to the submitted evidence.
- Evidence was provided in an illegal manner.
- Procedural error.

The new concept of partial appeal results in a situation where only limited “new” evidence is admissible during the appellate proceedings. New evidence allowed to be submitted on appeal is primarily limited to:

- Evidence excluded by the first instance judge due to lack of competence of the court.

- Evidence that was excluded due to a procedural defect, i.e., due to lack of a compulsory instruction of the lower court.
  - Evidence that was erroneously deemed illegal.
  - Evidence that without fault of a party could not be presented in the original proceedings.
- ❑ During the appellate proceeding parties may not raise new claims or new counter claims.
  - ❑ Absence of the parties during an appellate court hearing is not a reason for adjournment of the proceedings.
  - ❑ The appellate court may abolish the original judgement and ask the court of first instance to pass a new decision by another judge or another panel of judges or even transfer proceedings to another court.

### Enforcement & Execution Proceedings

European Union officials have frequently criticized enforceability of judgements in the Czech Republic. The new amendment to the Civil Procedure Act includes what is hoped to be more effective rules concerning specific forms of execution, including the forced sale of an enterprise, new rules concerning judicial auctions and other instruments of the enforcement.

In execution proceedings (enforcement of the judgement) creditors and courts may now make use of a new tool for discovering assets of debtors; the summary statement of ownership. A creditor may apply to the court for an order requiring a debtor to come to the court and face questioning by a judge related to the property owned by the debtor. If the creditor does not attend such a proceeding, he/she commits the criminal offence. During such a hearing, the debtor is bound by the duty to disclose information regarding his/her bank accounts, employers, creditors, movable and immovable property and enterprises.

- Labour Code Amendment

The Czech Parliament has passed an important and extensive amendment to the Labour Code, effective from January 1, 2001, in order to harmonise the Czech labour law with that of EU countries. Some significant new provisions of the Labour Code include the following:

- ❑ The law introduces a right of employees to information concerning their employer. Employers are obliged to directly inform employees (or their trade union or Council of Employees, if established) about the economic and financial situation of the employer; the impact of the employer's activities on the environment; prospective assignments of employment relationships; legal standing of the employer, its management structure and statutory representatives; changes in areas of business activities; and anticipated developments concerning employment, structural or organizational changes. In addition an employer is obliged to discuss with its employees any assignment of employment rights, large-scale employment terminations and work safety matters. Subsequently, the

new amendment codifies the right of trade unions to participate in discussions over a number of key matters concerning the employer.

- ❑ Employees of firms with more than 25 employees now have the right to form a Council of Employees. Such Councils will have the right to discuss with the employer all key issues concerning the employer and the employees. In the event of formation of a Council of Employees, the employer is obliged to create reasonable conditions for performance of any duties of the Council of Employees, including provision of suitable premises and provision of adequate free time to employees elected to the Council for carrying out their Council activities and to remunerate them for the time spent for such activities.
- ❑ An Employer, upon agreement with an employee, may now incorporate a non-competition clause into a labour agreement. The maximum period for such a clause is one year after ending of the employment relationship. Breach of such obligation by the employee may also be subject to a contractual penalty. It must be noted that any non-competition clause that is more restrictive than that which is mentioned in the law would be considered as null and void.
- ❑ In case of senior executives whose labour relationship is based on appointment or election, the parties may now agree on a redundancy payment in case of termination of the senior executive before expiration of his appointment to such position, provided that a non-competition agreement with the senior executive was also concluded. It must be again noted that any arrangement other than that which is stated above would be considered as null and void.
- ❑ From January 1, 2001 male employees caring for a child under the age of three are granted the same rights as female employees taking care of children under the mentioned age.
- ❑ A new provision concerning regulation of mass dismissal of employees has been implemented. The term „mass dismissal“ is defined as termination of employment relations for the reasons of shutting down an employer, relocating it or for redundancy on the basis of a notice of termination or agreement on termination for specified reasons concerning at least 10 employees in case of a business with 20 to 100 employees or at least 10% of employees in case of a business with 101 to 300 employees or at least 30 employees in case of a business with more than 300 employees. The employer is obliged to notify all employees of its intentions concerning a mass dismissal at least 30 days prior to making such an act. The employer is also obliged to provide written notice of its decision to a relevant trade union or council of employees. The employer is also obliged to provide written notice of its intentions regarding a mass dismissal to the relevant State Labour Office.
- ❑ From January 2001, maximum working hours per week must not exceed 40 hours per week. The new law precisely defines scheduling of working time and defines the term “flexible” working time. In addition, a new obligation on all employers was introduced requiring them to keep records of working time, overtime, stand-by time and night work with regard to every employee and to allow employees access to such records.

- ❑ The basic annual leave period has been increased to four weeks per year.
  - ❑ An employer must inform a respective trade union, Council of Employees or an employee individually about the transfer of rights and duties arising from labour relations, i.e., in the case of a merger of the employer and another firm. The new law also specifies that rights and obligations arising from labour relations must pass from the employer to the new one in case of a merger.
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- Commercial Code Amendment

January of this year saw enactment of a significant amendment of the Commercial Code. The new provisions are focused mainly on changes concerning the requirements for setting up companies, on controlling of their statutory organs and on regulating the relationship among shareholders.

It should be noted that the changes introduced by this recent amendment are so numerous that they cannot all be mentioned here. Additionally, due to the existence of some poorly worded and unclear provisions in the text of the new amendment, many of the effected provisions, especially those concerning minority shareholder rights, will have to again be amended.

Some of the notable changes flowing from the amendment include the following:

- ❑ A founding memorandum in the form of a Notarial deed is now required for establishment of a limited liability company and company limited by shares. This may only be made on the territory of Czech Republic before Czech Notary.
- ❑ Strict regulations governing the valuation of non-monetary capital contributions apply when setting up a new company. This includes a compulsory expert valuation of the capital made by two independent expert witnesses nominated by the court in the case of a value exceeding CZK 10 million.
- ❑ All limited liability companies must now create a reserve fund.
- ❑ A company with only one shareholder may not act as a sole founder or sole shareholder of another company. One individual (physical person) may be the sole shareholder of no more than three limited liability companies.
- ❑ In case of a company with one shareholder, all contracts between the company and the sole shareholder must be in writing and notarised.
- ❑ The minimum registered capital of a limited liability company has been raised from CZK 100.000 to CZK 200.000 (approximately USD 6.000).

- ❑ The minimum registered capital of company limited by shares has been raised from CZK 1 million to CZK 2 million (approximately USD 60.000).
- ❑ Any payments made by a company to the members of its' statutory bodies must be approved by the shareholder's meeting.
- ❑ Provisions concerning majority shareholders rights and protection of minority shareholders are more detailed. The new definition of a controlling shareholder is fulfilled if the threshold of 40% of voting rights is reached.
- ❑ A detailed definition of a holding company is provided. Holding companies are required to submit annual reports to the Company Register concerning the relationship between the holding company and its' subsidiaries.
- ❑ A new instrument of guarantee in business matters has been introduced, i.e., a lien on a share in a limited liability company. This right is subject to registration in the Company Register.