



CZECH REPUBLIC DEVELOPMENTS 2003/2004

As of May the 1st 2004 Czech Republic has joined European Union. 2003/2004 legislation process was therefore primarily focused on the finalization of harmonization of the domestic law with that of the EU. As the most significant change we can see progress was achieved in areas of Public Tender legislation, Labor legislation, Trademarks or Collective Investment.

Public Tender Act

Area of Public Tenders was always widely criticized by European Commission reports in recent years. Public tenders in Czech Republic suffered by lack of transparency, vague and only general legislation creating a wide range of possibility to avoid the regular Public Tender process by numerous exceptions, shortened procedures, extraordinary means in the cases of claimed serious political or economical interest etc.. Existing old legislation was also criticized as discriminatory to foreign competitors in many respects. New legislation is fully in accordance with the EU directives laying emphasis on the non-discrimination, mutual recognition, proportionality, transparency and free economic competition.

Applicability of the new Act follows the criteria of Value of the deal exceeding amount of 2 mil. CZK excl. V.A.T. (app. EUR 65.000). Avoidance of the Act by splitting the Contract to separate parts (frequently used so far) is no more possible. Regarding the strategic contracts of the major economic importance, Act also provides for the direct applicability of EU directives including the identical criteria of applicability according to Value of the particular Deal.

New Criminal legislation -Act on juvenile jurisdiction

The Act on juvenile jurisdiction published in the Collection of Laws of the Czech Republic under the no. 218/2003 has become effective on January 1, 2004. This Act deals with all aspects of criminality of juveniles. The Act newly introduces into the Czech law a system of specialized juvenile courts and determines new spectrum of possible remedies to criminal activity of juveniles. The Act also covers conduct of children younger than 15 years that can commit otherwise criminal act with regard to the fact that children under the age of 15 are still not criminally liable.

Act provides for protective measures (e.g. protective therapy, seizure of a thing, reformative training) educational measures (e.g. supervision of probation officer, probate programme, educational restrictions and similar) and criminal measures. In connection with criminal

measures the Act brings a number of significant changes namely in the area of alternatives. Juvenile court may impose on a juvenile criminal measures as: publicly beneficial work, pecuniary measure, forfeiture of a certain thing, prohibition of a certain activity, restriction of free movement and imprisonment.

The Act also newly determines spectrum of measures that can be imposed on children under the age of 15. It concerns supervision of a probation officer, placement in educational or other training programmes .

The Act on juvenile jurisdiction also provides for new rules concerning publishing of information regarding juveniles in connection with their criminal prosecution. With regard to a special interest on protection of privacy and protection of a personality of juveniles the Act stipulates that until the end of criminal prosecution of a juvenile the relevant authorities active in criminal proceedings are allowed to publish only such information which can not endanger the purpose of the criminal proceedings and that do not contravene demand for protection of a personality of a juvenile. Generally it is prohibited to publish before the final verdict any information in any form (in public media or otherwise), which contains data about the name of a juvenile or a child under the age of 15, who committed an otherwise criminal act or data that enable identification of a such juvenile or a child, provided publishing of such information is not necessary to clear up the matter or at the same time there does not exist a suspect that a juvenile is dangerous to other people and publishing of information is not necessary for apprehension. The verdict is pronounced in open court in the presence of a juvenile. Verdict may be published but in principle without name of a juvenile and in such a way that juvenile is protected from defamatory impacts on his or her person.

2004 Novelisation of Criminal Act

Novelisation of Criminal Act (No.91/2004Coll.) has introduced new criminal offense: "Terrorizing of the person living in the same apartment or house ". The new criminal legislation is targeted to prevent especially the domestic violence cases but also to cover all types of landlord - tenant criminal assaults. Penalty for the new crime could be up to 8 years imprisonment.

New Trademark Act

The coming accession of the Czech Republic into the EU has resulted in enactment of a new Trademark Act, published in the Collection of Laws of the Czech Republic under the no. 441/2002, which in its major extent will become effective on April 1, 2004, but at the latest in some parts on the day of accession of the Czech Republic to EU.

The new trademark law brings a number of significant changes, but the main purpose is to connect the national and European system of trademarks and to prepare the Czech legal environment for the fact that after accession of the Czech Republic CTMs will be effective on the territory of the Czech Republic. While the elements introduced with the new Act are for the most part taken directly from the CTMR, many represent new concepts for the Czech trademark practice.

The first of these new concepts is the possibility for the Czech Office of Industrial Property to refuse registration of applications made in „bad faith“. For purposes of examination of the question of bad faith, the new Act allows that any relevant condition shall be considered in order to determine whether if an application was filed in bad faith, but particularly mentions the following: whether the applicant knew or could have known about the existing rights of another person for the same or similar denomination at the time of filing of application; or whether use of such denomination would conflict with the accepted principles of morality or would damage the unique character or reputation of an existing denomination.

The new Act also introduces into the Czech law the term “trademark with a good reputation” which is distinguished from a “well known” trademark. This is defined as a trademark that the public is familiar with due to its use and that the public connects with good quality for the goods and services bearing the trademark. A trademark with a good reputation can be both a formally registered trademark and well-known trademark.

Another new element in Czech trademark law is possibility for any one to submit “observations” during the application process of a trademark without need for the person filing such remarks to be a party to the proceedings.

As far as the application procedure of trademarks is concerned, it is worth noting that a one-month period to pay official fees for filing of applications has been introduced. Failure to pay the fee in the required period will result in discontinuation of registration proceedings. The same time limit and consequences now apply in case of failure to pay official fees for oppositions, as well as in the case of fees for appeals against decisions.

Another significant concept introduced by the new Trademark Act is in the area of cancellations. Although the possibility of cancellation of a trademark for various reasons, for example non-use by the owner, existed in the previous trademark Act, the new Act also allows filing of actions seeking elimination of an improper state of affairs. In successful cases of elimination of an improper state of affairs that occurred before registration of a trademark, the new Act does not merely provide for cancellation a trademark registration; rather it provides that a trademark will be declared as being invalid.

Finally, the City Court in Prague has been designated the competent court in the area of trademarks and CTM matters in the Czech Republic

Changes to the Czech Labor Code

Czech Parliament has recently approved the government-proposed amendment to the Labor Code to implement appropriate EU directives into Czech labor law. The amendment defines and prohibits direct and indirect discrimination, annoyance, and sexual harassment at the workplace.

New legislation also introduces the provisions of a EU directive regarding the practice of “chaining” employment contracts concluded for a definite period of time. These provisions make it more difficult for an employer to conclude employment contract for a definite period repeatedly with employees

Important is the discontinuation of the widely popular practice of optional severance payments (“golden handshakes”) so far used at almost all managerial positions including the state owned companies. Amendment also adds new regulations regarding non-competition clauses. A non-competition agreement can be concluded between an employer and an employee only after the probation period expires, and for a maximum period of one year. Employers are also required to compensate employees with at least their average monthly salary for each month that the non-competition clause is effective.

Amendment to the Act on Citizenship and Name and Surname Act (Registry office Act)

Amendment to the Act on Citizenship, enable Czech citizens who marry a foreign national to acquire the citizenship of their spouse without losing Czech citizenship. Another provision would apply to the many Slovak citizens who were originally Czech citizens but who had to give up their Czech citizenship to become Slovak citizens after the division of Czechoslovakia in 1993. The amendment allows them to regain Czech citizenship without losing their Slovak citizenship. The Czech Republic was one of only a few European countries that bar dual citizenship, and this amendment is a slight relaxation of the current rigid approach of Czech law toward citizenship.

“Revolutionary” progress has been achieved in rather conservative rigid traditional cultural area of Slavic surnames. Tradition legislation officially requiring use of different forms of surname for men and woman, common in all Slavic languages (Navratil + Navratilova, Frischmann + Frischmannova) was after many years of public debate amended in 2004. This tradition was contested for many years mostly from the perspective of equality of sexes and other constitutional principles (please mention that suffix “-ova” has a traditional meaning of “a wife of”). This was compulsory for all types of surnames of all origin at the territory of Czech Republic, including the very foreign surnames. Amendment of the Registry Office Act (165/2004 Coll.) brings the possibility not to use this Slavic form of the surname using the suffix “-ova” in following cases

- Foreigners
- Citizens with foreign residency
- Wives of foreigners
- Women with other than Czech nationality

Changes to the rules governing investment companies

A new Act on Collective Investments has recently been enacted, bringing Czech legislation in line with the EU directive governing investment funds and investment companies (85/611/EEC). The Act brings important changes to the rules governing collective investment funds and, in general, further opens the Czech market to EU investment companies. These changes should also benefit consumers, as a greater variety of investment products can now be offered. The Act takes effect 1 May 2004.

Securities issued by EU standard mutual funds (UCITS) can be publicly offered to investors in the Czech Republic based on authorization by the home regulator only. Previously, permission

was also required from the Securities Commission (KCP). Similarly, EU investment companies now require only home regulator approval to provide services on the Czech market.

Czech standard mutual funds can be offered in EU member states based solely on approval by the KCP.

The range of activities that investment companies can carry out is greatly expanded to include management of mutual funds created by other investment companies, management of investment portfolios of individual investors, and the provision of services to other investment companies related to collective investments.

The types of investment instruments into which the assets of standard funds can be invested has been expanded, e.g., derivatives, securities issued by other collective investment funds, non – listed bonds, etc.

Special funds, e.g., special risk capital funds, special property funds, special derivatives funds, etc., are newly defined in the law. As special funds have specific investment aims and are usually higher risk investments, limitations on investment for these funds are more relaxed than for standard funds.

The Act's interim provisions regulate the transition of existing funds and investment companies. In general, investment funds and companies already operating in the Czech Republic under a KCP license have one year to fully meet the requirements of the new Act.