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Attorneys-at-law in Central and Eastern Europe

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## Has your staff been examined by a medical doctor?

**The Act on Specific Healthcare Services imposes new obligations on employers and employees.**


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## Don‘t forget to approve and archive your financial statements in time!

**Failure to comply with the statutory obligations may trigger harsh sanctions.**


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## Defective legal transactions pursuant to the new Civil Code

**As of 1 January 2014, defects of a legal transaction will no longer trigger the legal consequence of absolute nullity.**


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## Legal News in Brief

## Current Events at bnt Prague


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## Has your staff been examined by a medical doctor?

On 1 April 2012, act No. 373/2011 Coll., on specific healthcare services, has come into force; among other things, it sets forth rules for the provision of occupational health services, the assessment of occupational diseases, and the assessment of the fitness of job candidates to work for the given employer. In this manner, a whole range of new obligations is imposed on employers and (future) employees.

Among other things, employers are required under the Act to procure occupational health services, by entering into a written contract made with a healthcare service provider. This "company doctor" must then regularly inspect the premises of the employer and the work carried out by the employer's staff, keep records of the occupational healthcare services rendered for the employer, etc.

Other new obligations of employers include e.g. the obligation to provide those employees who are being asked to submit to an examination by the company doctor with a formal request, specifying details regarding the type of work, the work regimen, and the working conditions of such employees, or the obligation to send employees to an ad-hoc examination if they so request.

Further, the Act requires job seekers to undergo an initial medical examination before the employment relationship or similar relationship comes into existence (e.g. under an "agreement on the completion of individual job assignments" – dohoda o provedeni práce – or "agreement on work performance" – dohoda o pracovní činnosti –, which are two special forms of agreement recognized by Czech labor law). This "pre-employment medical exam" is to be performed by the provider of occupational health services ("company doctor") with whom the employer has a written contract, or by the primary physician to whom the applicant was sent by the employer. The costs in connection with the pre-employment medical exam are borne by the job applicant. The costs of the examination by the company doctor are borne by the employer, however, if the employment relationship or similar relationship has already come into existence even though the employee has not yet reported for their first day of work, or if the employer and the employee have an understanding according to which the employer should cover the costs.

The Act expressly states that a job candidate who does not submit to a pre-employment medical exam qualifies as unfit for work under medical aspects. In this respect, the Labor Code stipulates that employers must not allow employees to carry out work for them which is not in line with their occupational aptitude, or "fitness". If an employer were to allow employees to carry out work who did not undergo a pre-employment medical exam, the employer could be found guilty of an administrative offense under the Labor Inspection Act, which carries a fine of up to 2 million crowns for the legal entity in the role of the employer.

The above-described medical assessment of a candidate's aptitude to perform their job applies not only to classic employment agreements, but also to the above-mentioned special forms of employment ("dohoda o pracovní činnosti" and " dohoda o provedení práce"). With a view to this fact, it is advisable to enter into such agreements only for a longer time period (or for an unlimited period of time), such as to avoid having to send employees repeatedly for medical examinations (each time a new employment relationship is incepted).

In response to critical voices which took exception to the above adverse consequences for employers, the Czech Health Ministry has since issued a policy paper in which it expressly states that for a one-year transitional period, i.e. until 1 April 2013, healthcare services (including the pre-employment medical exam) may be provided pursuant to the previous rules, thus bringing light into the rather ambiguous transitional provisions of the Act on Special Healthcare Services. In other words, employers will have to comply with the duties described in this article only as of 1 April 2013, with the sole exception of the Act's provisions on the reimbursement of services of company doctors, which are effective already as of 1 April 2012. For the sake of completeness, we ought to mention that the Health Ministry anticipates the passage of an amendment which ought to simplify procedures in the case of "alternative forms of employment" under the "dohoda o provedení práce" and the "dohoda o pracovní činnosti".

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## Don't forget to approve and archive your financial statements in time!

Limited liability companies and joint-stock companies must approve their financial statements on an annual basis. In companies with a single stakeholder, this is done by way of a decision by the single member or shareholder, which must take the written form. Companies held by more than one owner approve their financial statements through the general meeting. The pertinent decision of the general meeting must be recorded in the minutes of its proceedings (a notary's deed is not required). The contents of the said decision by the single stakeholder / general meeting are: (i) recognition of the earnings for the given past fiscal period; and (ii) determination of the manner in which to settle the company's economic performance of the past year - i.e., if profit was generated, whether to distribute it in the form of dividends, keep it within the company, etc., or if loss was incurred, whether to require the stakeholders to compensate for it, carry it forward, etc. Companies must approve the financial statements within 6 months from the end of the fiscal period (i.e., from the balance date). Suppose that the company's fiscal period matches the calendar year, then the latest possible date for approving the 2011 financial statements is 30 June 2012. Following approval of the financial statements, they, along with related documents, must be lodged with the register court in the Collection of Deed, within 30 days from approval and auditor's certification of the financial statements. For the event that the company should not approve the financial statements, the Accounting Act provides that the documents must then lodged with the Collection of Deeds no later than by the end of the subsequent fiscal period – i.e., in the case of the 2011 financial statements, by 31 December 2012.

Failure to approve the financial statements and to lodge the pertinent documents with the Collection of Deeds may be a very costly mistake: under the Accounting Act, the tax authorities may impose a fine of up to 3% of the company's asset value if it is found in breach of the obligation to publish its financial statements (and possibly its annual report). Yet another sanction may be imposed by the register court: failure to archive documents in the Collection of Deeds as set out in the Commercial Code even after being called upon by the register court to do so may trigger a fine of up to 20 000 crowns, and the court may impose this fine repeatedly. A company which does not make their financial statements part of the public record may also commit the criminal offense of misrepresenting its earnings and its economic situation, if it were to do so with the intent to jeopardize or curtail the rights of others; as of January 2012, legal entities (i.e., companies) have criminal liability in the Czech Republic.

What is more, the Czech Supreme Court has ruled that if the general meeting convenes only after six months have passed since balance date, it has no authority to decide on the allocation and appropriation of profit based upon the financial statements that were drawn up as at that balance date (29 Cdo 4284/2007). If a company wishes to distribute the profit which it generates, it may only do so if the general meeting convenes within six months from balance date to make the pertinent decision. Missing this date means that the company may divide up any profit only as a part of the decision on earnings that will be taken with respect to future fiscal periods. If the company desired to distribute profit before then, it would have to do so on the basis of, and procure the compilation of, extraordinary financial statements.

With a view to the above risks, we advise clients to make sure that financial statements are approved in due time and lodged with the Collection of Deeds within the statutory deadline.

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## Defective legal transactions pursuant to the new Civil Code

In this first installment of a series on the recodification of Czech civil law, we take a look on one of the major achievements of the new Civil Code (act No. 89/2012 Coll.), which substantially curb the adverse effect of nullity in the event that a legal transaction suffers from a defect (note the change of terminology in the original Czech of the new Civil Code, which newly speaks of "právní jednání" instead of "právní úkon").

The new Civil Code differentiates between fictitious transactions ("sham transactions") which do not qualify as true legal transaction (or "legal act") in the first place (Sec. 554) and transactions which suffer from one defect or another that causes them to be invalid. The current "old" Civil Code (act No. 40/1964 Coll.) does not recognize fictitious transactions as a separate category. It considers declarations of will to be absolutely invalid if they are marred by error or by lack of seriousness, determinateness, or transparency. In the terms of the new Civil Code, these cases are in fact no declarations of will, and the "legal transaction" has no legal relevance, but constitutes a fictitious act. In practice, a contract containing a part which constitutes a fictitious (partial) transaction would be treated as if it had been made without such particular covenant. Lack of transparency or determinateness of a legal transaction may now be remedied by the parties, by providing additional clarification to make their declaration of will transparent and determinate – in which case, the legal transaction is considered to have existed from the beginning (Sec. 551–554).

The provisions on the nullity of legal transactions in the new Civil Code are preceded by an introductory provision establishing the principle that, on balance, legal transactions should be considered operative ("valid and effective") rather than inoperative (or "null and void"; Sec. 574). In this respect, the new Civil Code confirms a paradigm shift away from the current practice of, in particular, the courts, whose angle of perception of the law has been formalistic and who have been declaring legal transactions null and void for all kind of defects.

A legal transaction is rendered null and void, according to the new Civil Code, if the transaction is offending good morals (contra bonos mores) or in breach of a law (which also includes "intent to circumvent a law" - something which is not spelled out explicitly in the wording of the new Civil Code itself, but has been elaborated upon in the proposal of the bill); other reasons for nullity include the initial impossibility of performance, lack of capacity to enter into legal transactions, and failure to observe the required legal form. Under certain circumstances, error may also cause a legal transaction to be inoperative.

Regarding the breach-of-law criterion, it is not enough that the given legal transaction be in violation of the letter of the law. Rather, it must be the case that the intent and purpose of the law call for nullity of the legal transaction [Sec. 580 (1)].

The new Civil Code preserves the older principle of "absolute" vs. "relative" nullity, but has abandoned the idea of giving an exhaustive list of reasons which cause relative nullity, replacing it instead with general criteria (that prefer relative nullity over absolute nullity). A legal transaction is said to suffer from relative nullity if the nullity serves to protect the interest of a specific person (in which case nullity can be invoked only by this specific person; Section 586). Legal transactions suffer from absolute nullity if they are clearly contra bonos mores, in conflict with the law, or in obvious breach of public policy, or if they oblige a party to render performances which are impossible from the outset (Sec. 588).

For the event that the reason for nullity affects only a certain part of a transaction which is severable from the rest, the new Civil Code and the old Civil Code alike set forth that only that part shall be null and void. The new Civil Code stresses the importance, however, of taking into account the parties' respective interest: if it is to be assumed that either party would not have entered into the transaction without such inoperative part, the entire legal transaction is to be considered null and void (Sec. 576).

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## Legal News in Brief

- The Chamber of Deputies overrode the president's veto and confirmed the **Act on Subsidized Energy Sources** (act No. 165/2012 Coll.). This law, which unifies the subsidization of renewables, secondary energy resources, and the co-generation of power and heat from renewable sources, will come into force on 1 January 2013.
- In June, an **amendment to the Civil Code** (act No. 170/2012 Coll.) will come into force which improves consumer protection by newly allowing for the rescission of contracts within 14 days from entering into them even in those cases in which the consumer expressly arranged for the supplier's visit so that they could place an order.
- On 30 June 2012, an **amendment to the Trade Licensing Act** (act No. 169/2012 Coll.) comes into force which aims at reducing the administrative burden on the shoulders of entrepreneurs. For the future, it will e.g. no longer be necessary to label individual business premises with a special identification number, nor to report a change of one's place of business if it is identical with one's address of residence.
- The Chamber of Deputies has given final approval to the **bill for a Mediation Act** (parliamentary press 426), in the amended wording as proposed by the Senate. This new dispute resolution method will thus become available as of 1 September 2012. Please be referred to the 7–8/2012 issue of our Newsletter for detailed information on the institution of mediation and the possibilities which it offers.
- The Chamber of Deputies is currently discussing a bill which seeks to resolve certain issues in connection with the **provision of services related to the use of apartments** (parliamentary press 657). The goal is to simplify and streamline today's set of regulations. If the bill passes, then the new rules will come into force as at 1 January 2013.

## Current Events at bnt Prague

Dear Clients,

We would like you to know that after a two-year hiatus, Michaela Tamoková has re-joined bnt and been promoted to Tax & Accounting Senior Consultant. Michaela Tamoková has years of experience with complex accounting and payroll management for a Czech and German clientele. In 2010–2012, she primarily oversaw the accounting and compilation of tax returns for Slovak entities, as well as to some limited degree for various non-profit organizations. If you are interested in this kind of consultancy, you should not hesitate to contact her at michaela.tamokova@bnt.eu.

### Invitation to a seminar – **Fraud prevention at legal entities** (in Czech)

bnt, in cooperation with Surveilligence, s.r.o. and the Czech Institute of Internal Auditors, organizes a seminar on 12 June 2012 on the topic of preventing fraudulent conduct at businesses and other organizations.

The seminar is aimed at presenting efficient fraud prevention instruments with which to effectively detect, and thus to minimize the occurrence of, fraudulent conduct at companies and other organizations. Special attention will be devoted to the discussion of how the fight of companies against illicit conduct should be properly managed, with a comparison of the state of affairs in the Czech Republic and abroad. In particular, participants will be acquainted with the hands-on experience with fraud detection in companies gained by the presenters – Mgr. Jan Šafránek and Ing. Ján Lalka –, and with the inner workings of fraud prevention systems.

Additional information can be found at:
http://www.interniaudit.cz/profesni-vzdelavani/seminare/detail-seminar.php?idSeminar=1596

### Invitation to a cost-cutting seminar – **Mediation** (in Czech)

On 20 June 2012, bnt, in cooperation with the education agency 1. VOX a.s., organizes a half-day seminar to present a completely new legal concept recently introduced in the Czech Republic. The objective of the seminar is to familiarize the professional community as well as the general public with a new form of conflict resolution known as „mediation“, which has now become a real alternative to judicial proceedings and arbitration for resolving commercial and civil disputes. The lecture is designed to hold broad appeal across the business sector, but may be particularly useful for members of the management of companies. Mgr. Libor Ulovec, attorney-at-law and chartered mediator, will be the presenter.

For detailed information, please be referred to the website:
http://www.vox.cz/vzdelavani/verejne-vzdelavaci-akce/mediace-v-obchodnich-a-civilnich-sporech-9849/

### Invitation to a professional seminar – **Sale and capital contribution of enterprises and parts thereof** (in Czech)

On 21 June 2012, Mgr. Pavel Pravda will give a lecture at NOTIA Středisko vzdělávání, spol. s.r.o. on the issue of selling an enterprise (or part thereof) or using it as a capital deposit - a contribution-in-kind to a legal entity‘s capital stock.

This half-day seminar is designed for all those who are involved with transfers of enterprises, be it through acquisition from a third party or because of restructuring within a holding group.

For more details, please visit:
http://kurzy.notia.cz/prodej-a-vklad-podniku-a-jeho-casti-11621-36910-FILTRY

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