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Healthcare providers ought to keep an eye on the deadlines for mandatory (re-)registration!

Seen from the vantage point of legislation, 2012 will go down as the year in which not only the quintessential set of private-law rules (i.e., the Civil Code) underwent revolutionary changes, but a change of tides also occurred in the legislation governing medical services (and the healthcare sector generally).

On 1 April 2012, act No. 372/2011 Coll., on medical services and the terms on which they are provided (hereinafter the "Act" or "Medical Services Act") has come into force, replacing and superseding the previous two-prong framework of laws in the healthcare sector: one for the activities of state-owned ("public") medical facilities, contained in the Public Healthcare Act of 1966 (act No. 20/1966 Coll.), and the other for the activities of non-state ("private") medical facilities, contained in act No. 160/1992 Coll., on the provision of healthcare in non-state medical facilities, along with a plethora of implementation ordinances.

The Medical Services Act really is more of a code of laws, in that it contains general legal provisions which specify and define a (newly consolidated) terminology and the basic terms on which medical services are to be provided, as well as the respective role of, and mutual relations between, the government, healthcare providers, and the patient. The Act categorizes medical services by type and form, and its categorization has been adopted by all newly passed implementation ordinances and other related laws and regulations. This puts an end to the arbitrary terminology previously used for various forms of healthcare by a multitude of different laws.

Above all, the Act clearly delineates one term which has previously been in abundant use without a universally accepted definition: that of the "medical facility", which, under the Medical Services Act, is understood to mean the premises on which healthcare is rendered. As such, the medical facility does not have legal personhood - its operator, the "healthcare service provider", does.

The Medical Services Act introduces a range of changes and new obligations, among them the obligation to obtain a license from the competent administrative authority prior to the provision of medical services. This obligation is by no means limited to newly established medical facilities! The Act requires all medical facilities which wish to (continue to) provide services in the future to apply for a license with the competent regional authority. This (re-)registration must take place within a strict deadline, and the application must meet certain formal standards and requirements in terms of content, as set out in the Act.

Public medical facilities that are currently in operation may continue to provide healthcare in the previous scope until 1 April 2013. After that date, they only may act as healthcare providers if they filed a license application by 1 July 2012, and the competent authority accommodated their request. (Provided that the applicant observes the time period set out in the previous sentence, the administrative authority must rule on the application by 1 April 2013, i.e., by the cutoff date on which the medical facility ceases to be authorized to render services under the previous legal arrangement.).

The current registration for non-state (private) medical facilities expires no later than on 1 April 2015 (with even shorter time periods for ambulance and rescue services). The application for a license authorizing them to render healthcare after that date must be filed by 1 January 2013; if the healthcare provider can show that they comply with the registration criteria under the Medical Services Act, then they must be issued a license by operation of the law. For the event that the private healthcare provider observes the said deadline, but the administrative authority does not meet its duty to render a decision on the license application by 1 April 2015, the Act expressly provides that the original registration of the concerned medical facilities remains in force until that decision becomes final.

If today's medical facilities were to continue to provide services beyond the stipulated time period without obtaining a license for the provision of healthcare under the new Act, they would be committing an administrative offense, under pain of corresponding sanctions.

The transitional provisions of the Medical Services Act stipulate specific requirements for the application by way of which existing medical facilities request the said license. While public medical facilities enjoy no particular procedural shortcuts, the process for reregistration (i.e., the non-negotiable process for obtaining a new proper license for providing healthcare under the Medical Services Act) has been made much easier for private medical facilities: they (or rather, their operator) merely fill in the mandatory particulars in an application form which is then processed by the locally competent regional authority, i.e., no additional documentation in the form of appendices must be filed (in contrast to a 'regular' application for a healthcare license). However, if the applicant were to miss the deadline (which causes their license based on the previous registration to expire), then the application must be furnished with the prescribed appendices.

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Fate of the solar boom is sealed

In response to the favorable terms on which the Czech Republic has been subsidizing the generation of power from renewable sources, investments into photovoltaic installations have soared at an unprecedented rate. Aside from the generous support from state coffers, the fact that the acquisition costs for photovoltaic panels have plummeted also contributed to the rapid expansion of the industry.

In response to the solar boom, Czech Parliament passed two amendments to the Renewables Act, at the heart of which is the introduction of a levy on solar power (we looked into the details of this issue in previous issues of our Newsletter).

These changes to the subsidization structure provoked a wave of opposition among investors, but also among senators who found the passed measures to be unconstitutional. A group of senators eventually filed a motion with the Czech Constitutional Court for abolition of the said laws, invoking the violation of the principle of legal certainty and the ban on retroactive laws.

In May 2012, the Constitutional Court dismissed the motion, arguing that the principle of legal certainty must not be equated with absolute immutability of the law, as legal frameworks are necessarily in a state of constant adjustment to new economic circumstances and to the requirements of a balanced national budget (Pl. ÚS 17/11). The Constitutional Court further stated that while the measure in question was in one sense retroactive, it still concerns future time periods – and thus constitutes a case of (generally permissible) "quasi-retroaction". In actuality, the new rule merely cuts the amount of subsidies while preserving the 15-year payback period. The Constitutional Court noted that the amendment in question was passed in connection with an unheard-of drop of prices in the photovoltaics industry during 2009–2010 which led to an unchecked proliferation of new installations that could neither be absorbed by the grid nor reined in by the energy regulatory authority. Under these circumstances, the Czech Republic took action in order to protect public interests. In a final remark, the Constitutional Court went beyond the substance of the case itself by conceding that the measure might well have devastating impact (in the sense of pushing individual investors to the brink of bankruptcy, due to insufficient cash flow), given the fast-track implementation of the new solar levy, but suggested that such cases could possibly be avoided by utilizing a provision in the General Fiscal Act under which the finance offices may at their discretion defer the payment of such levies or spread the payment over a longer time period in the form of installments.

For Czech investors, the Constitutional Court's ruling de facto means that the lower courts upon whom they have called to decide in the matter will have to respect this constitutional precedent, which substantially reduces the chance that the claimants in pending cases will be successful.

By contrast, foreign investors still have recourse to invoking bilateral treaties on the promotion and mutual protection of investments. The Czech Republic as the defendant in potential arbitration cases is likely to cite the above-referenced decision by the Constitutional

Court to deflect investors' claims, but an assessment of the strength of such defense will have to wait until after the first arbitral award has been handed down in these matters.

Our energy-law experts will gladly assist you if you would like to learn more about this topic.

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How to set the rules for acting on behalf of a company?

In day-to-day parlance, one will often hear the terms "manner of acting on behalf of the company" and "restriction of executive powers" used interchangeably. And yet they designate two distinct legal institutions, one crucial difference between them being the legal consequences under the Commercial Code for breaching them for infringement conduct course of action is ineffective, while failure to comply with license resrictions do not affect the efficiency of negotiations with third parties.

The default manner in which the statutory body (or its members) act on behalf of the company vis-a-vis third parties is set out in Sec. 133 (1) of the Commercial Code (for limited liability companies) and in Sec. 191 (1) (for joint-stock companies), though the memorandum/ articles of association may diverge from this standard by stipulating different rules.

Specifically, at limited liability companies with more than one executive, each of them may individually act on behalf of the company, pursuant to the legal default. However, the memorandum of association may set forth more stringent requirements for the manner of acting executives, e.g. by stipulating that two (or more) executives must always act jointly on behalf of the company. Alternatively, the prescribed manner of acting may be determined such that "each executive is authorized to act independently on behalf of the company in respect of transactions whose value does not exceed CZK 40'000; in transactions with a value in excess of CZK 40'000, both executives must act jointly" (cf. the Supreme Court decision 29 Cdo 301/2010). This manner of acting must be set out not only in the memorandum of association itself, but also in the public record, i.e., in the Commercial Register. If an executive were to enter into an agreement on behalf of the company by acting in conflict with the said requirements, the agreement would never come validly into existence in the first place, and the company would not be bound by it. Analogous conclusions hold true for joint-stock companies.

In contrast to this concept, current judicature recognizes the distinct institution of a 'restriction of executive powers', i.e., restrictions which prohibit the statutory body as a whole or its individual members in specific cases from acting on behalf of the company (engaging in legal transactions in the name of the company), or which make such transactions conditional upon prior consent by the general meeting or the supervisory board. Such restrictions of executive power [pursuant to Sec. 133 (2) of the Commercial Code in the case of limited liability companies or Sec. 191 (2) in the case of joint-stock companies] may be prescribed by the memorandum/ articles of association, by-laws, or the general meeting, but have no effect vis-a-vis third parties. In other words, the actions of executives (board members) who violate such restrictions are still valid and effective vis-a-vis third parties. In such an event, the executive (board member) is liable towards the company for the damage thus caused. The agreement on performance in the position of a corporate officer (manager agreement) may also provide for additional sanctions (e.g. in the form of a contractual penalty). Restrictions of executive power are not being entered into the Commercial Register.

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Legal News in Brief

- The Chamber of Deputies is currently debating a draft **bill for the amendment of tax, insurance, and other laws** in connection with bringing down the public deficit (parliamentary press 695). The proposal includes, among other things, raising the property tax by one percentage point (to newly 4%), slashing the option of self-employed entrepreneurs to report flat-rate expenses, introducing an extra 7% personal income tax on revenues above a certain limit, raising VAT by one percentage point (to 21%, whereas the reduced rate will be 15%), and abolishing the cap on the assessment base for health insurance premiums. If the bill passes, these changes will take effect as of 1 January 2013.
- Also on the docket of the lower chamber of Czech Parliament is a draft **amendment to the Expropriation Act** (parliamentary press 683), which specifies in greater detail what steps must be taken by the party who invokes eminent domain before initiating expropriation proceedings, a change to the principles for determining the amount of compensation for dispossessed property, and procedural amendments for the event that the act of expropriation should be appealed in court. The amendment is supposed to come into force as of the first day of the third calendar month following promulgation of the law.
- Further, a **bill amending the Code of Civil Procedure** is being read in the Chamber of Deputies (parliamentary press 686). One of the fundamental changes contained therein is a new set of rules for determining whether a second-instance appeal ("appeal on a point of law", or dovolání in Czech) - an extraordinary remedy filed with the Supreme Court – is admissible, with the objective, firstly, to curb the number of appeals filed and, secondly, strengthening the role of the Supreme Court in consolidating case law. Other provisions of the amendment bill seek to enhance the rights of underage parties to proceedings or the electronization of justice. If the bill is approved by a majority of deputies, then the changes contained therein come into force on the first day of the third calendar month following the day on which the bill is signed into law.

Current Events at bnt Prague

Social event at the Rokoko theater was a huge success

Another year has passed, and the Prague office of bnt resumed its tradition of welcoming its clients, business partners, and friends on the premises of the Rokoko theater – one of the two stages that form the Municipal Theaters of Prague.

The performance which our guests had the pleasure to attend that night was Stones In His Pockets – a comedy by Irish playwright Marie Jones that won numerous prestigious international awards. Rewarding comedic set-ups with unexpected twists have made it a hit among audiences. Two actors face the task of playing about sixteen different characters, among them also female roles. Absurd situations give way to serious moments, and both form a harmonious whole. The comedic play has been translated into more than sixteen languages. The world premiere was in 1999, and three years later Stones In His Pockets was staged for the first time in the Czech Republic.

After a short welcome address and the two-hour theatrical show, almost two hundred guests enjoyed the opportunity to engage in lively conversations with the staff of bnt and with each other until the small hours, over fine food and drinks. The festive evening also featured a tombola with valuable gifts. Speaking of gifts: upon their departure, each guest received a small keepsake in the form of a pouch containing lava massage stones.

bnt would like to say Thank You for the great turnout, and is looking forward to seeing everyone again on occasion of one of our future events.

A gallery of pictures taken that night can be found at the following link:
http://www.bnt.eu/uploads/files/tschechien/Rokoko%202012.pdf

bnt has a new Lawyer

Mgr. Tereza Chalupová, Lawyer

Tereza Chalupová completed her studies at the Faculty of Law of Charles University in Prague in 2012. As a part of her studies, she attended a one-year stay at the Faculty of Law of Passau University. Even during her studies, she gained professional experience through internships at several law firms –among them also bnt – pravda & partner, s.r.o., whom she has now joined upon graduation, in the position of a junior lawyer. She speaks Czech and German.

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