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LEGAL UPDATE

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The information in this newsletter is correct to the best of our knowledge and belief at the time of going to press. Specific advice should be sought, however, before investment and other decisions are made.

For further information, please contact your usual partner/manager or:

Banking and Financial Services:
Pavel Jendrulek

Mergers and Acquisitions:
Daniel Weinhold, Dušan Kmoč

Litigation / Arbitration:
Milan Polák, Ondřej Havránek

Information Technology and Intellectual Property:
Martin Lukáš

Competition Law / EU Law:
Thilo Hoffmann, David Emr

Labour Law:
Milan Polák, Ondřej Havránek

Real Estate:
Pav Younis

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NEW LEGISLATION

AMENDMENT OF THE ACT ON PUBLIC CONTRACTS

A Senate statutory measure amending Act No. 137/2006 Coll. on public contracts, as amended, and Act No. 55/2012 Coll. amending Act No. 137/2006 Coll. on public contracts, as amended, was promulgated under number 341/2013 in the Collection of Laws.

The stated objective of the legislative change is to cancel or defer the effectiveness of some earlier adopted changes to the Act on Public Contracts, which would have entered into force on 1 January 2014 had this amendment not been adopted.

The first major change is **an increase in the limits for small-scale public contracts**, i.e. those that may be awarded without being subject to the Public Contracts Act, to CZK 2,000,000 (excl. VAT) in the case of public contracts for supplies or services and CZK 6,000,000 (excl. VAT) for public contracts for building work. The amendment represents a step backwards as regards the transparency of awarding public contracts and a return to the status before 1 April 2012. The originally proposed Senate statutory measure only set out to preserve the existing CZK 3,000,000 limit for public contracts for building work, which should have been reduced to CZK 1,000,000 as of 1 January 2014 pursuant to the earlier adopted regulation. However, a motion to amend led to the above limit increases.

The second affected area is the **removal of the institute of the specially qualified person**. According to earlier adopted regulations slated to take effect 1 January 2014, a specially qualified person should have issued an opinion on the tender conditions of every above-limit public contract before a tender procedure be-

gan. As the Ministry for Local Development failed to receive promised funds to conduct a training program for the thousands of civil servants who were to have become specially qualified persons, there is at present no one who fulfils the requirements to be a specially qualified person. Hence, without the amendment described here, it would not be possible to begin any above-limit tender procedures as of 1 January 2014.

The third area the amendment addresses is **deferral of the effective date of the provision concerning the list of evaluators**. This is another example of a response to the state administration's lack of preparedness for the nearing effective date of new legislation under which the Ministry for Local Development will have appointed two members and two alternates from its list of evaluators to an evaluation committee for major public contracts as of 1 January 2014. As the ministry does not currently keep such a list, the effective date of the respective provisions was postponed for one year.

This amendment enters into force on 1 January 2014.

GOVERNMENT REGULATION IMPLEMENTING CERTAIN PROVISIONS OF PRIVATE LAW

On 16 October 2013, the Government approved a Government Regulation on the implementation of certain provisions of private law.

The regulation addresses the following areas:

- default interest amount and minimum amount of expenses associated with the enforcement of claims between entrepreneurs;
- method of determining compensation and calculating out-of-pocket expense reimbursement for the liquida-



tor and court-appointed liquidation administrator and member of a body of a corporate entity;

- issuance and management of the Commercial Bulletin, and
- scope and method of publishing entries in a public registry.

No change is made to the current level of default interest, an area the regulation addresses indirectly. The level of default interest will thus continue to correspond to the repo rate set annually by the Czech National Bank for the first day of the calendar half-year in which the default arose, increased by **8 percentage points**.

An implemented requirement of Directive 2011/7/EU of the European Parliament and of the Council on combating late payment in commercial transactions is the setting of a **minimum amount of expenses associated with the enforcement of a claim** between two entrepreneurs or between an entrepreneur and a contracting authority. The Regulation sets this minimum amount at **CZK 1,200**, i.e. slightly more than the Regulation-required minimum of EUR 40. The reimbursement of this amount to the entrepreneur will depend on how and whether the expenses associated with the enforcement of a claim were actually incurred (with there being no need to furnish proof). However, an entrepreneur's request for a higher reimbursement of expenses associated with enforcement of a claim will require proof that such expenses were incurred.

Pursuant to the Regulation, the remuneration of the liquidator (court-appointed liquidation administrator or member of a body of a corporate entity) shall be determined by the court in accordance with the applicable percentage of the respective liquidation balance. The court may, however, adjust the remuneration up or down, where appropriate.

As has been the case to date, the Commercial Bulletin will continue to be issued and managed by the Ministry of the Interior via the public administration portal. Publication of an entry in a public registry or lodging of a document in the Collection of Documents maintained by the Bulletin in a manner enabling remote access shall be deemed to constitute the publication of an entry or lodging of a document. Con-

cerning the publication of entries in a public registry, the Regulation stipulates that data entered in a public registry and documents lodged in the Collection of Documents are deemed as published once they have been published in a manner enabling remote access. Petitions for the registration, changing or striking of an entry in a public registry performed by a court shall be filed as a form completed online that may be sent to the court in electronic or hard-copy form.

This Government Regulation enters into force on 1 January 2014.

SENATE STATUTORY MEASURE ON A TAX ON THE ACQUISITION OF IMMOVABLE PROPERTY

A Senate statutory measure promulgated under number 340/2013 in the Collection of Laws replaces real estate transfer tax with a new tax on the acquisition of immovable property.

The content of this regulation builds on an earlier bill on a tax on the acquisition of real estate that the Senate rejected, though the controversial provision in that bill concerning the person of the taxpayer, owing to which the earlier bill was rejected, has been amended.

As of 1 January 2014, the transferor will be the taxpayer in the case of the purchase or exchange of immovable property, though the law provides for an agreement between the parties that the acquirer shall be the taxpayer. The regulation also preserves the current concept whereby the acquirer of title to immovable property shall be the guarantor of the tax payment. However, if the acquirer is the payer of the tax, this legal liability lapses.

The statutory measure harmonizes the terminology used in the Act on Real Estate Transfer Tax with the preceding private law recodification and is also a response to newly established institutes. For example, the regulation addresses taxation in the case of the appropriation or acquisition of immovable property for a trust fund.

What is important from a practical perspective is that the number of cases in which an expert opinion identifying the ascertained price must be prepared for the purpose of determining the tax base is reduced. This in turn reduces the cost to

the taxpayer of securing these opinions. The tax base will now be derived from what is known as the acquisition value. For the purpose of tax base determination, the agreed price will be compared with the comparative tax value, which will chiefly be derived from what is known as the guide price based on the prices of commonly transferred immovable property (in a given location and at a comparable time) that have been accumulated by tax administrators. According to the explanatory memorandum, a tax calculation will be available online with which anyone can calculate a guide price in advance and, based on the result, decide whether it is more practical to let the tax base be determined based on an expert opinion, i.e. the procedure that continues to apply today.

This statutory measure enters into force on 1 January 2014.

SENATE STATUTORY MEASURE ON TAX LAW AMENDMENTS IN CONNECTION WITH PRIVATE LAW RECODIFICATION AND ON THE AMENDING OF CERTAIN LAWS

A Senate statutory measure adapting the tax laws to the private law recodification, the Act on Investment Companies and Investment Funds and other changes that are to enter into force on 1 January 2014 was promulgated under number 344/2013 in the Collection of Laws.

The primary change, as compared to the earlier Senate-rejected bill, is the treatment of the taxation of investment funds and the removal of the exemption for dividends and the possibility of extraordinary asset depreciation.

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