

Speedread:

- The new Act on Data Mailboxes and Electronic Conversion of Documents brings about a revolution in communication between companies and state bodies
- Correspondence from the state bodies will be forwarded to the companies via data mailboxes
- The new Act on Auditors sets new rules also for persons subject to audits
- The new Act on Auditors changes way of auditor(s) appointment and stipulates new obligations for (so called) Public Interest Entities
- Amendment to the Commercial Code changes rules for provision of financial assistance, acquisition by the company of its own shares and decrease of registered capital

NEW ACT ON DATA MAILBOXES AND ELECTRONIC CONVERSION OF DOCUMENTS

On the 1st of July the new Act on electronic acts and authorized conversion of documents (no. 300/2008 Coll.) came into force. The Act responds to the overall trend of digitalising law and brings fundamental changes to the way of communication with public authorities.

Data Mailbox

The Data Mailbox is an electronic repository which is primarily intended for communication with public authorities. Through the data boxes it is possible to receive and send official documents in an electronic form (data messages) to competent public authorities. An act made (by a natural or legal person) in this way has the same legal effect as an act made in writing and signed. From the 1st of July 2010, it will also be possible to use data mailboxes for mutual official communication between legal entities. It is clear that the law is making significant progress in the possibilities of formal communication with public authorities.

It is important to mention that the data mailbox is not an e-mail box and that it is not possible to use it for archiving messages and documents. They will rather be stored in the data mailbox only for 90 days from the day they are opened. With the introduction of data mailboxes using an electronic signature is no longer obligatory.

Duty to open a data mailbox

Data mailboxes will be established by the Ministry of Interior mandatory for all legal entities registered in the Czech Commercial Register, legal entities founded by law and for public authority bodies within 90 days from the day that Act came into force.

Upon request and free of charge data mailboxes can be established for legal entities, natural persons or natural persons conducting business. Public authority bodies may request for more data mailboxes to be established for them.

Access to data mailbox

On the basis of the Act, data mailboxes of a legal person can be accessed by its statutory body or members of its statutory body. In practical terms, it is advantageous for the company to grant an individual person (e.g. an employee of that company) access to the data mailbox and its overall administration. If allowed by the statutory body, the authorized person might have access to documents intended for the hands of the addressee.

Delivery of data messages

Documents (data messages), which were delivered to the data mailbox are formally considered to be received the moment one logs into the data mailbox. Like regular registered mail, electronic mail is valid on delivery. If the mailbox is not accessed, the document is considered delivered 10 days following the day of its receipt in the data mailbox. The delivery has the same effects as if it were delivered to one's own hands.

However, the Act relieves the relative strictness of the law by stating that under certain circumstances (eg temporary absence or other serious reasons) it is possible to waive the failure to collect data messages.



List of data mailboxes

The Act does not offer a public list of data mailboxes but provides a reverse procedure, so that after sending a data message the sender will be notified that the data mailbox exists and is active. This procedure provides greater assurance for all the parties concerned that the message has been delivered.

Conversion of documents

Another significant change brought by the new Act is a system for electronic conversion of official documents. The act sets out the conditions and procedures under which documents converted from paper to electronic forms (or vice versa) will have the same legal force as the original document. The Act specifies which documents it is not possible to convert and also defines which subjects are allowed to carry out the authorized conversion of documents.

THE NEW ACT ON AUDITORS

On April 14th 2009 the new Act on Auditors (Act No. 93/2009 Coll.) came into force bringing about significant changes to the functioning of the audit, not only from the auditors' point of view, but also from the view of compulsory audited entities. The Act implements the Directive of the European Parliament and the European Council on Compulsory Audit of Annual Accounts and Consolidated Accounts.

New Auditors Selection Method

The first fundamental change introduced by the new Act is a new auditor selection method. According to the Act, a statutory body of the compulsory audited company can conclude a contract with an auditor only if this auditor was already appointed by the highest body of the company. In the case of joint stock companies and private limited liability companies, this is the general meeting. In case the highest decision-making body fails to do so, the auditor is to be selected by the supervisory board of the company. The new requirements concerning the auditor's selection method do not apply to audits in process and also to contractual relationships arising before this Act came into force and the object of which is the compulsory auditing of accounts for a period ending on the 31st of December 2010.

Public interest entities and committees for audit

Another significant innovation brought by the new act is the compulsory audit of so called "public interest entities" (PIE). PIEs are (i) legal persons incorporated according to Czech law and whose transferable securities are traded on the regulated market of any Member State of the European Union or the European Economic Area; (ii) banks, insurance and reinsurance companies, the General Health Insurance Company of the Czech Republic, health insurance companies, pension funds, savings and credit cooperatives, securities dealers, the central depository, clearing and settlement system operators, investment companies, investment funds and electronic money institutions and (iii) companies or consolidated units if their average adjusted number of employees for the immediately preceding accounting period exceeded 4,000 employees.

According to the new Act PIE's are obligated to establish an Auditing Committee. The Committee must have 3 members, of which at least 1 member must be independent from the audited company and also has to have at last 3 years of practical experience in the field of accountancy or audit. Included in the scope of the committee's activities are, more specifically, the overseeing of the compilation of financial statements and consolidated financial statements, assessing the effectiveness of internal control, recommendation of an auditor, internal audit, and risk management systems as well as assessing the independence of statutory auditors and audit firms.

PIEs are required to meet their obligations pursuant to this Act no later than on the 31st of December 2009.

Possibility of unilateral termination of mandatory audit contract

According to this Act it will not be possible for an entity to unilaterally terminate a contract with an auditor only because of different views on the management of accountancy or the audit procedures. The only reason for which the entity is allowed to terminate such contract is the performance of an audit that is not in accordance with the law, the internal rules or the ethical codex.

Continuation — the New Act on Auditors
Necessity to convene the general meeting

With regard to the duties set out in this Act, subjects concerned are obligated to convene the general meeting adopting changes of the statutes or the articles of association reflecting the new Act.

COMMERCIAL CODE AMENDMENT

On 3rd July 2009 the President signed a Commercial Code amendment, which implements in the Czech legal system the amendment of the second EU Directive (no. 2006/68/EC dated 6th September 2006).

This amendment introduces the following main changes:

No more need for an expert assessment of a non-monetary investment when increasing the share capital

The company (limited liability company, joint stock company) will not be obliged to provide an expert opinion for assessing non-monetary investments when increasing the share capital in cases where the value of the non-monetary investment can be identified in other transparent ways, eg by the average price for the realization of securities trades on a regulated market (if such securities correspond to a non-monetary investment), by using the price shown in a certified accounting audit or by assessment from an independent specialist (not expert). The form of assessment will be dependent on the object of the investment. The statutory body of the company must grant previous consent indicating the appropriate form for the assessment of the non-monetary investment.

The regulations mentioned above can only be applied when increasing a company's share capital, not in the process of a company's incorporation.

Financial assistance

According to the current provisions of the Commercial Code, a company (either a limited liability company or a joint stock company) is not authorized to provide financial help (financial assistance) for the purpose of acquiring a share in the company alone. The amendment replaces this regulation and establishes the company's right to provide an advance payment, loan, credit or other monetary assistance or to provide security when acquiring a share in the company, ie financial assistance.

Financial assistance in a limited liability company

A limited liability company will be allowed to provide financial assistance (for the purpose of the acquisition of a stake in such company) under the usual conditions of the business relationships to which are added the following: that it will not cause the company immediate insolvency, it will follow the rules restricting payments similar to those which restrict distribution of profits and that the company's books will not show any unpaid losses. The executive(s) of the company will be obliged to execute a written report concerning the granting of financial assistance. All stated conditions must be fulfilled at the same time.

The granting of financial assistance will be approved by the general meeting of the company and the report of the executive(s) mentioned above must be filed in the official Collection of Deeds of the Czech Commercial Register.

Financial assistance in a joint stock company

A joint stock company will be authorized to provide financial assistance (for the purpose of the acquisition of a stake in such company) as long as this is allowed in the articles and as long as the other conditions similar to those applicable to a limited company will be fulfilled. Beyond the conditions for granting financial assistance in the case of a limited liability company, the following conditions must be (in particular) fulfilled: checking the financial capacity of the person asking for the financial assistance, establishing a special reserve fund in an amount of the provided financial assistance, etc.

The Board of Directors of a joint stock company bears the main responsibility when granting financial assistance and is obliged to prepare a written report detailing it. The granting of financial assistance must be approved by the general meeting of the company (the consent of a minimum 2/3 votes of all shareholders is necessary) and the report mentioned above filed in the Collection of Deeds of the Czech Commercial Register.

A joint stock company's acquisition of its own shares

The amendment changes and specifies the rules for how a joint stock company acquires its own shares. It will be able to do so in cases where the whole shares' issue price has been fully paid up and the general meeting grants its consent with the acquisition of the company's own shares. Other conditions also have to be fulfilled. For example the fact that (i) the company cannot, as a consequence of the acquisition of its own shares, reduce its own capital below the subscribed share capital increased by the funds, which, according to the law or the articles, are impossible to distribute and decreased by the as of yet unpaid share capital and (ii) in acquiring the shares the company cannot cause its own insolvency. At the same time the company is obliged to create a special reserve fund corresponding to the amount of the value of the acquired shares. Acquisition by the company of its own shares is allowed for a period of maximum 5 years (as opposed to previous 18 months period).

Mitigation of the rules for securing creditors' claims in the process of decreasing the share capital of the company

According to the current legal regulations of the Commercial Code, when a company decreases its share capital it is obliged to provide creditors who submit their claims in time with adequate security or satisfaction (for a joint stock company this security is provided on the basis of an application of the creditors).

According to the amendment, this rule will not be applicable (provision of adequate security or satisfaction of the claim) in cases where the enforcement of claims against a company will not become worse as a consequence of decreasing the share capital. If a creditor believes that the enforcement of his / her / its claim will become worse, he / she / it will have a right to apply to the court for a decision on securing this claim. The aim of the amendment is to decrease the total costs and to simplify and streamline the entire process of decreasing the share capital of the company.

Notice: After its signing by the president, the amendment will now be published in the official Czech Collection of Laws.

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