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Main Topic:

Do you take publishing of financial statements and annual reports seriously enough? What could hal and tomorrow?

What could happen to you today and tomorrow?

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- Amendment to the Consumer Credit Act

Do you take publishing of financial statements and annual reports seriously enough? What could happen to you today and tomorrow?

The obligation to publish the financial statements and annual reports results from the EU regulation. Protection of third parties, mainly business the partners, is a primary reason for the introduction of this obligation. They should have the possibility to check up with whom they make business with and what risk they undertake. Furthermore, it is a liability of the statutory bodies to act with due managerial care when choosing the business partners in such a manner that no damage is caused to the company, e.g. by concluding business with an over-indebted company that cannot meet its obligations.

Breaching the obligation to publish the necessary documents, i.e. annual reports and financial statements after the potential auditor's authorization and approval by the general meeting, can lead to a number of sanctions, emerging from various legal regulations.

The most severe financial sanction can be imposed by the financial office and could go up to 3 percent of assets of the company that breached the obligation.

The management of the company doesn't often realize that by not fulfilling the publishing obligation, they expose not only themselves, but the company as well, to the risk of committing a criminal offense of "misrepresentation of data on the state of economy and assets". The sentence of imprisonment up to two years or prohibition of certain activities can be imposed for this criminal offence. The company itself could be punished in this connection by eg a monetary penalty. The state authorities can prosecute for this criminal offense within five years of its occurrence due to time limitation of criminal liability.

Finally, the Registry Courts may enforce the fulfilment of this obligation by imposing a fine amounting up to CZK 20,000.

The State doesn't systematically punish the obligation to publish financial statements and annual reports; there have been just few cases, where, e.g. the financial offices acted in this manner. The risk of sanction is thus underestimated. Given the fact that breaching of this obligation, which can be very easily found out and checked up, can be abused in the competitive struggle among businesses, we recommend in this connection being as cautious as possible. As a matter of fact, most sanctions were imposed based on points made by third parties. Moreover, the approach of the state authorities to the enforcement of this obligation may change radically, as there are sums running to millions that could enrich the state budget.

News

Ambruz & Dark/Deloitte Legal has won a prestigious international award in the field of Commercial Law

The law firm Ambruz & Dark/Deloitte Legal was declared Law Firm of the Year 2012 in the field of Commercial Law by the Acquisition International journal. The title "Czech Commercial Law Firm of the Year 2012" is awarded by a professional jury for excellent work and merit and it refers to companies that are considered leaders in the given field.

New rules for entrance medical check-ups for job applicant since 1st April 2013

As of the 1st April 2012, an Act on Specific Healthcare Services, which among other areas also regulates the conditions of the provision of the occupational health services such as provision of entrance and final medical check-ups, entered into force. The Act however allowed the employers, with the exception of the obligation to reimburse for these services, to proceed on the basis of the previous legal regulation until the 31st March 2013.

After the lapse of the transition period, the employers will be from the 1st April 2013 obliged to ensure that every job applicant undergoes the entrance medical check-up even before the conclusion of the employment contract or any of the agreements on work performed outside of an employment relationship. Originally, the Act on Specific Healthcare Services required that all persons who are about to enter into an agreement to perform work or an agreement on working activity have to undergo the entrance medical check-up. This obligation, however, met with criticism of professionals. According to the amendment to this Act, which was passed by the Parliament recently, the persons working under agreements on work performed outside of an employment relationship will be obliged to undergo the entrance medical check-up only in case, that they will be performing work which is, according to the Act on Public Health Protection, considered as high-risk or work for which the capability conditions are provided by another legal regulation.

An important consequence of breach of employer's obligation to ensure that the job applicant undergoes the entrance medical check-up will be the fact, that the job applicant will be considered as incapable of the work. In view of the fact, that the employer is obliged by Labour Code to not allow to any employee to perform work, which does not match to his or her capability of work, the employer who breaches this obligation will be put in risk of an imposition a fine in amount up to 2 million CZK for a misdemeanour or administrative offense in the area of work safety by the inspection of the work.

A&Dvocate: March 2013

Amendment to the Consumer Credit Act

Although no law can protect you from your own carelessness, the amendment to the Consumer Credit Act now offers some level of protection for those who use this type of credit and do not always enter into obligations where they can change the conditions at their discretion.

For this reason, the amendment introduces basic content and form requirements for the contract on consumer credit. It prevents the abuse of the provider's or broker's position in relation to the consumer by firmly setting basic aspects and by limiting the possibilities of facultative provisions in the contract on the side of the provider. Except for the seemingly-trivial requirement on the letter size in the general conditions, there is also eg a duty of agreeing the price for the arrangement of the contract directly in the contract if the credit is rendered by a broker. It provides to the broker's clients the right to cancel the contract if the broker fails to conclude the contract within 14 days and ensures that the broker's fee be returned to the client. Compared to the year 2012, once the 2013 amendment is promulgated it will not be possible to render credit or require the provision of security through a so-called blank promissory note or cheque; furthermore, it will not be possible to require a disproportionately higher value of security than the value of the rendered loan (eg securing a credit of small value by a mortgage). The amendment is in this way fighting against the predators who take advantage of the realisation of credit's securing.

One of the fundamental changes brought by the amendment is the obligation to assess the ability of the consumer to repay the credit. The provider must assess the income and expenditure of the consumer with due professional care and on the basis of this information decide whether to render the credit or not. Furthermore, it will not be possible to use the so-called telephone number with a set price (lines starting with 9), which are usually several times more expensive than standard lines, during the offer, negotiation or arrangement of consumer credit via voice telephone communication or text or multimedia message.

If the provider breaks its legal obligations, it may face a fine of up to CZK 20 000 000; therefore, the area of consumer credit regulation requires the exceptional attention of not only consumers but also the providers as the aim of the amendment is to ensure higher consumer protection and not the complete elimination of risk.

Invitation

Deloitte Legal International Webcasts

Corporate and M&A
Cross-Border Mergers: Practical Considerations
for Implementing Pan-European Reorganisation Projects

Wednesday, 6 March 2013 12:00 noon – 1:00 PM CET (GMT +1) Register

With the European regulatory framework for mergers fully implemented, cross-border M&A may now be conducted under corporate statutes and regulations throughout Europe. What are the benefits, limitations, and alternatives associated with this new environment? We'll discuss:

- drivers of European cross-border mergers, including entity reduction, pooling of regulatory and reporting requirements, and human resources and employee representation.
- issues to be addressed, including merger procedure under applicable corporate and commercial law, regulatory filings with competent authorities, notification to employees, and employee vested rights.
- project management, time line, and implementation considerations, including feasibility, step plan, implementation, and post-merger integration.

Explore the new framework and concepts of cross-border reorganisations in Europe, and learn effective practices for implementing your structuring ideas.

Commercial Law Anticipating Bankruptcy: Pre-Insolvency Procedures in Continental Europe

Wednesday, 27 March 2013 12:00 noon – 1:00 PM CET (GMT +1)

Register

In the context of crisis, some European countries encourage use of legal tools that help distressed companies avoid insolvency. How do pre-insolvency procedures vary from one European country to another, including France, Germany, Spain, and Belgium? We'll discuss:

- Pre-insolvency procedures vs. insolvency procedures their objectives, who is typically involved, and differences between the four countries.
- Common issues, including confidentiality, takeover potential during a pre-insolvency procedure, public and judicial views of the procedure, and coherency and harmonisation of procedures across Europe.
- of successful and efficient use of the procedures and areas of possible improvement.

Learn about benefits and challenges of pre-insolvency procedures in continental Europe and why their use, despite countries' cultural differences, may grow, and not only in Europe. If you have any questions regarding the issues raised in this publication, please get in touch with your contact person from Ambruz & Dark/Deloitte Legal, or with a professional in the field addressed herein:

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Ambruz & Dark is a Law Firm cooperating with Deloitte Legal. Thanks to the high standard of the provided legal services and expertise, personnel and technology of our firm as well as the firm's command of languages, Ambruz & Dark ranks among the most prestigious law firms in the Czech Republic. The office has its branches in Prague, Brno and Ostrava and currently represents a number of clients from the Czech Republic and abroad.

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