



Ambruz & Dark, advokáti, v.o.s. offices are located at the following addresses in the Czech Republic:

Kateřinská 40/466
120 00 Prague 2
Tel.: +420 251 152 911
Fax: +420 251 157 911

náměstí Svobody 20
602 00 Brno
Tel.: +420 542 520 111
Fax: +420 542 214 796

Zámecká 20
702 00 Ostrava
Tel.: +420 595 137 290
Fax: +420 595 137 790

www.ambruzdark.com

Amendment to the Czech Commercial Code simplifying disposal of a company and associated amendments

The amendment to the Act on Trading in the Capital Market, which was published on 8 March 2006 in the Collection of Laws, significantly amended the Commercial Code and other legal regulations. The change to the Commercial Code considerably simplifies the processes related to transfer of a business or a company's assets and liabilities and affects the provisions on de-merger of a company. The amendment also contains new, more extensive regulation of the obligations of securities issuers whose securities are to be offered to a broader public range of persons within a public offer of investments securities. The amendment extends the provisions of the Civil Code on consumer contracts to include the new legal regulation of distance contracts for financial services.

Simplification of transactions concerning business

The amendment to the Act on Trading in the Capital Market amends the wording of Section 67a of the Commercial Code. The original wording of this provision ordered to apply adequately the provisions of the Commercial Code on merger or de-merger to the disposal of a business or assets and liabilities of a company, which was similar to a merger or de-merger but in which processes the company, whose business or assets and liabilities were disposed of, was not dissolved. The amendment cancels this obligation and newly stipulates that the agreements, based on which the transfer, lease or pledge of business or its part take place require the consent of the shareholders or the general meeting of the company. The new wording of Section 67a simplifies significantly the processes upon transfers of a business or the company's assets and liabilities.

De-merger by split-off

By enactment of the amendment to the Act on Trading in the Capital Market, the provisions of the Commercial Code on regulating de-merger of companies is amended, among other things. Existing forms of the de-merger of companies (de-merger with establishment of new companies, de-merger by merger and a combination of both of the above forms) are completed by two other forms – de-merger by split-off with establishment of new companies and de-merger by split-off with merger.

Both forms of the de-merger by split-off differ from other forms of de-merger. By realisation of the de-merger by split-off the company being de-merged does not dissolve or terminate, only a defined part of its assets and/or liabilities is transferred to a newly established successor company (de-merger by split-off with establishment of new companies) or to an existing successor company (de-merger by split-off with merger). In principle (the exchange of property for a participation in company), the de-merger by split-off is similar to a contribution of a part of business. The main difference between these two processes consists in the fact that it is not required for the de-merger by split-off that the assets and liabilities to be transferred form

a separate branch. The de-merger by split-off thus may present an administratively easier restructuring alternative for some companies.

Extension of opportunities to raise financial resources in European capital markets

The reason to implement new rules for the realisation of a public offer of investments securities is particularly the need to transpose the European directive on prospectuses. Upon a public offering, the issuer offers the securities for sale to a wider range of persons. The preparation and publishing of the security's prospectus is a basic duty of the issuer and without its fulfilment the issuer is not authorised to make the public offer. The duty to prepare and publish the security's prospectus concerns emissions whose amount exceeds a limit of EUR 200,000. In this regard, Czech law goes beyond the EU directive's requirement imposing this duty only on the emissions amounting to over EUR 2,500,000. Nevertheless, this stricter Czech criterion is not at variance with the European regulation in any way.

The amendment improves the conditions for raising financial resources in European capital markets for Czech issuers because the prospectus approved by the Czech Securities Commission ("CSC") can be used for the purposes of a public offer or acceptance of securities in the regulated market also in other EU Member States. The issuer is no longer obliged to arrange for the prospectus in the state where he wants to place the securities and has to submit only a certificate on approval of the prospectus issued by CSC to the respective body of a respective Member State. In relation to the above, the possibility to use the English language for the prospectus is also newly regulated. It is possible to submit a prospectus in English for securities put on the Czech capital market if the issuer proves that this procedure is in favour of the investors. A summary in the Czech language must be prepared for such a prospectus.

If Czech issuers decide to place securities on a European market, it is suitable for them to use qualified assistance upon this action. The public offer as well as the securities' placement in the regulated markets is a relatively complicated process and its faultless performance is necessary for reaching the intended economic contribution. Among other things, the issuer has to pay higher attention for example to the content of promotional and other information disclosed about the public offer. By infringement of the rules determined for the content of this information, the issuer puts himself in danger of penalisation by CSC up to the amount of CZK 10,000,000.

In any case, the amended regulation of a public offer of investment securities brings new opportunities for raising financial resources in the capital markets.

Distance Contracts for Financial Services

The amendment defines the contracts to which consumer protection rules newly apply, if the respective contract is concluded with the use of distance communication media (particularly Internet, e-mail, phone, leaflets, radio, television, fax etc.). This concerns the following types of contracts:

- contracts regarding banking, payment, creditor insurance services,
- contracts regarding additional pension insurance,
- contracts regarding the provision of investment services or contracts regarding transactions in the market with investment instruments.

For the avoidance of doubt, it is understood, that the respective provisions always apply to the contracts, where a certain subject acts on the side of the financial services provider, i.e., a bank, a building savings-bank, an insurance company, an insurance agent, a securities dealer, investment agent etc.

After the amendment comes into force, it is necessary for the providers of financial services to determine whether this new regulation applies to the services provided by them and what kind of measures must be taken, so that the duties set by law are fulfilled and the provision of services contrary to the consumer protection provisions is avoided.

Contact us

Prague:

JUDr. Vladimír Ambruz

tel.: +420 251 152 921

e-mail: vladimir.ambruz@ambruzdark.com

Mgr. Bc. Jan Spáčil

tel.: +420 251 152 923

e-mail: jan.spacil@ambruzdark.com

Brno and Ostrava:

Mgr. Ing. Ludvík Juříčka

tel.: +420 542 520 290

e-mail: ludvik.juricka@ambruzdark.com

www.ambruzdark.com