



# Legal update

March 2022

## Weinhold Legal

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The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics listed in this bulletin should be consulted before any decisions are made.

#### Banking, Finance & Insurance:

Daniel Weinhold, Václav Štraser

#### Mergers and acquisitions:

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#### Insolvency and Restructuring:

Zbyšek Kordač, Jakub Nedoma, Michal Švec

#### IT, Media & Telecommunication:

Martin Lukáš, Jakub Nedoma, Michal Przewczek

#### Real estate:

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#### Personal Data Protection:

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#### Labour law:

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#### Slovak law:

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#### Family office:

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#### Competition law / EU law:

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#### Start-ups and Venture Capital:

Pav Younis, Martin Lukáš, Jakub Nedoma

#### Public procurement & Public sector:

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### News in Legislation

#### Government proposal for an amendment to the registration of natural and legal persons in public registers

Last month, the government approved a bill amending the laws governing the entry of natural and legal persons in public registers, ie the Trade Licensing Act, the Court Fees Act, the Business Corporations Act and the Public Registers of Legal Entities and Trust Funds Act.

The law is currently only at the beginning of the legislative process, however, it largely transposes European regulations and can therefore be expected to be adopted to at least a basic extent. The proposed effect should take effect on July 1, 2022, with the exception of some provisions, which should take effect on January 1, 2024.

A simpler procedure is proposed for the establishment and creation of legal entities in connection with obtaining a trade license. It will be possible to register a trade or apply for a concession not only before the submission of an application for entry in the public register, but also after its submission, while this choice will depend on the will of the founders or members of the statutory body of the established legal entity. However, in the case of a trade registration or application for a concession, it will not be necessary to wait for the result of the assessment by the Trade Licensing Office and it will be possible to submit a proposal for registration of a person in the public register without delay.

It is also proposed to adjust the obstacles to the performance of the function of members of elected bodies in the Business Corporations Act and to adjust and extend the information obligation of persons who are to become members of the elected body of a business corporation. Among other matters, it is proposed to abandon the definition of integrity according to the Trade Licensing Act and the actual specification of integrity by the Business Corporations Act. Offences which constitute an obstacle to membership of an elected body should be as follows::

1. criminal offences of embezzlement, fraud, insurance fraud, credit fraud, subsidy fraud, legalization of proceeds of crime, legalization of proceeds of crime due to negligence, usury, breach of duty in the administration of third-party property, breach of duty in the administration of third-party property due to negligence, damage to the creditor, advantage of the creditor, causing bankruptcy, breach of duty in insolvency proceedings, conspiracy in insolvency proceedings, breach of the obligation to make a true declaration of property,
2. tax, fee or foreign exchange offences,
3. criminal offences against binding rules of market economy and circulation of goods in contact with foreign countries, or
4. similar offences under points 1 to 3 abroad.

The government proposal also aims to establish a register of persons expelled from office as a member of an elected body of a business corporation in order to strengthen public order protection by providing a database that effectively verifies that a certain obstacle to function in relation to a particular person persists. According to the proposal, it should be a public administration information system administered by the Ministry of Justice. In the record shall entered persons:

- a) who have been excluded by a court decision from the performance of the function of a member of the statutory body pursuant to Sections 63 to 65 of the Business Corporations Act
- b) who have been subject to an injunction constituting an obstacle to the exercise of the function,
- c) who have been convicted of an offence constituting an obstacle to the exercise of the function, or
- d) who have been declared bankrupt.

The records should be non-public and only courts and notaries should have access to them. The Ministry of Justice will issue the applicant with a statement or confirmation of the non-existence of his registration, i.e. the absence of obstacles.



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Following the requirement of the so-called Digitization Directive, the Ministry of Justice should then create and publish model partnership agreements for the fully electronic creation of a limited liability company

With regard to the amendment to the Public Registers Act, data on a branch and also a branch abroad, such as their designation, registered office or location and the number of the entry in the foreign register, should also be entered in the Commercial Register.

### News in Case Law

#### **Co-adjustment of damage by breach of the preventive obligation of the injured party**

(Judgement of the Supreme Court File No. 30 Cdo 1908/2020 of 15th December 2021)

The bailiff, as the plaintiff in the title dispute, sought compensation from the Czech Republic for the maladministration applied in execution proceedings conducted by another bailiff.

The plaintiff was entrusted with the execution, within which he ordered the sale of real estate owned by the debtor by an execution order and at the same time established an executory lien, which was registered in the real estate cadastre. However, due to an error by the cadastral office, this executory lien was deleted from the cadastral register in another proceeding. However, the cadastral office subsequently corrected the error and informed the plaintiff of this fact.

In the meantime, however, another bailiff decided to sell the same real estate of the liable party, issued an auction notice and conducted the auction. During the enforcement proceedings, this executor obtained three extracts from the relevant title deed to the debtor's real estate, none of which resulted in the plaintiff's lien.

In the course of the court proceedings, the plaintiff argued that the executor who conducted the auction had acted in breach of the law by failing to respect the order of the execution orders and thus overtaking the plaintiff. Furthermore, attention was drawn to the fact that the cadastral office corrected an error in the cadastral register and the registration of the plaintiff's execution lien was ascertainable from the real estate cadastre more than a month before the auction. Pursuant to Section 14, Paragraph 1 of Act No. 119/2001 Coll., Which lays down rules for cases of concurrent enforcement of decisions, if executions simultaneously affect the same real estate of the debtor, the execution that was first ordered shall take place; proceedings in other executions shall be suspended on this matter on the day of their legal force.

The main argument against the above was that the plaintiff was aware that the executory lien had been cancelled and that another had been entered on the relevant title deed. It must therefore have been clear to the applicant that the second executor could thus proceed in another execution by selling the property in question.

The issue of preventive duty thus became a key issue in the present dispute. This issue has already been addressed by the Court of Appeals, pointing to the fact that the plaintiff breached his precautionary duty when he was informed from the information of the cadastral office that his executory lien had been canceled and at the same time another executor's lien was registered. The Court of Appeals criticized the plaintiff for not doing anything to avert the damage when the other executor was aware of the existence of his priority executory lien, respectively did not inform about him the error in the cadastral operetta.

Section 2903 Paragraph 1 of the Civil Code states, that „If the person who is at risk of harm fails to act to prevent such harm in a manner appropriate to the circumstances, everything which he could have prevented is borne by the person.“

The Supreme Court in present matter expressed this opinion:

„The regulation of the prevention of damage or injury which directly threatens the injured party is a manifestation of the basic principles of private law, that everyone should first and foremost protect their interests, and not just patiently take into account how damage is created or increased. However, unlike the previous regulation in Section 417 of Act No. 40/1964 Coll., The Civil Code, as amended until 31 December 2013, the Civil Code does not impose an intervention as an obligation, as it is based on the belief that it is up to everyone to deal with their own property. The non-aversion is thus at the level of the imputability of one's own conduct to the co-adjustment of the injury.“

„The legal consequence of inaction is that if a legally relevant damage or injury occurs, the injured party cannot successfully claim compensation. The reason is that the injured party actually caused the damage, or did not do everything that a reasonable person should do to defend his rights. At the same time, the Civil Code is not based on the concept that compensation for damage suffered is not provided because the injured party has breached his obligation, but because he co-caused its non-prevention to the extent that any reasonable person would behave, ie on an objective scale. The extent to which the injured party did not act is the objection of the tortfeasor in claiming damages. This fact is expressed by the words "bears of what he could have prevented".“

The Supreme Court stated the existence of the injured party's preventive duty, but at the same time further addressed the issue of the extent to which the injured party was obliged to intervene, given the circumstances. In that regard, it is always necessary to determine the extent to which the applicant could have expected that damage would occur. The Supreme Court also stated, in connection with previous case law, that "no one is obliged to anticipate the unlawful conduct of another person, unless its existence or potentiality is based on the specific circumstances of the case."

Therefore, the above-mentioned decision of the Supreme Court of the Czech Republic states that the injured party's inaction in the case where, according to the circumstances, he could have averted the damage is sanctioned by bearing the damage he could have averted. On the other hand, it is always necessary to examine the circumstances of a particular case and the predictability of damage. There is no general obligation to automatically assume that another person will act unlawfully, especially when it is a bailiff, ie a person into whose hands the state has entrusted the exercise of public power on the basis of its expertise.

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