Legal update

November 2023

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.

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News in legislation

Amendment to the Act on Capital Market Undertaking

On 4 November 2023, an amendment to Act No. 256/2004 Coll., on Capital Markets Undertakings, as amended, and Act No. 277/2009 Coll., on Insurance, as amended, entered into force. The amendment deals specifically with the right to conduct a business, which is guaranteed by the Constitution (Article 26 of Charter of fundamental rights and freedom). According to the submitter, the amendment fully respects the principle that restrictions on fundamental rights should respect their nature and importance (Article 4(4) of the Charter of fundamental rights and freedom). The submitter states that the restrictions on these rights are balanced by the legitimate interest of consumer protection. The amendment was submitted by the Government to the House of Commons earlier this calendar year and passed through the ordinary legislative process without any changes.

According to its explanatory memorandum, the main objective of this amendment is to implement Regulation 2022/858 EU of the European Parliament and of the Council of 30 May 2022 on a pilot scheme for market infrastructure based on distributed ledger technology. It also implements amendments to EU Regulations 600/2014 and 909/2014 and Directive 2014/65/EU. In addition to specific references to these regulations, it also amends the definition of an investment vehicle and creates the possibility for the Czech National Bank to set general thresholds for the operation of market infrastructure under the pilot regime with respect to the use of distributed ledger technology. A subsequent correction to the translation of EU Regulation 2022/858 replaces the word "shared" with "distributed". This essentially changes the definition of investment vehicles. Member States were to apply these revised requirements from 19 October 2022.

One of the biggest novelties of the amendment to Act No. 256/2004 Coll., on Capital Markets Undertakings, as amended, is, as already mentioned, the new definition of an investment instrument. Following the amendment, this includes instruments issued using distributed ledger technology (DLT), which are subject to the relevant investment services regulation. The term DLT is explained in the Market Infrastructure Pilot Regulation in Article 2(1). MiFID II does not contain this definition of distributed ledger technology. However, a definition of DLT similar to the one in the aforementioned Market Infrastructure Pilot Regulation is likely to be included in the Crypto Markets Regulation (MiCA Regulation) in the future. According to the MiFIR, DLT is a technology that enables the operation and use of distributed ledgers. A distributed ledger is a repository of information recording transactions that is distributed among DLT network nodes and synchronised using a consensus mechanism. Thus, in the aforementioned Capital Market Enterprise Act, the term distributed ledger technology is interpreted in light of the definition in the Pilot Regulation and the future MiCA Regulation.

The amendment also established the supervision of the Czech National Bank over entities operating DLT MTFs or DLT TSSs, regardless of whether these systems are managed by a central depository, a securities dealer or a regulated market organiser. The Czech National Bank may impose sanctions on these entities for breaches of the legal regulations governing their activities. In the case of securities dealers or regulated market operators, this mainly concerns the MiFID II Directive. In the case of CSDs, the sanctions for breaches of Regulation (EU) No 909/2014 are set out in Article 176(1) of the Capital Market Undertaking Act.

If there is a breach of the Market Infrastructure Pilot Regulation, the Czech National Bank is obliged to withdraw the special status of the person concerned under this Regulation (in Article 8(12), Article 9(12) or Article 10(12)), which de facto means withdrawing the possibility to operate under the simplified regime. However, this does not mean withdrawal of the primary authorisation to operate, e.g. a CSD does not lose its ability to act as a CSD, etc. The Czech National Bank may also impose error correction measures pursuant to Article 11(3) of the Regulation on the pilot regime for market infrastructures or Section 136 of the Capital Market Undertaking Act

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News in case law

Identical statements by the parties

(Judgment of the Supreme Court Case No. 21 Cdo 1313/2022 of 21 July 2023)

In the following case, the Supreme Court dealt with an appeal by the applicant, who had stored her goods with the defendant under a framework agreement. It was procured in exchange for storage fees. In the contract concluded between the parties it was also agreed that the warehouseman could not exercise his right of retention within the meaning of section 1395 et seq. of the Civil Code. However, after period of time defendant told the applicant that it had not been paid for the storage of the goods and would therefore retain the goods in order to secure its claim. The applicant did not agree with this step as she was the owner of the stored goods on the basis of the paid invoices.

The Court of First Instance ruled in favour of the applicant. In particular, it took the view that, by concluding the framework storage contract, both parties had indicated their intention to regulate all contractual relations of a certain category according to the same legal framework. After the decision of the District Court was delivered, the defendant appealed and also returned some of the items to the applicant, according to the undisputed argument of the parties. As the applicant did not withdraw the action in that situation in respect of the items delivered, the Court of Appeal amended the judgment under appeal by dismissing the action, since the benefit sought by the applicant had been delivered to it by the defendant during the appeal proceedings.

The applicant appealed against this final decision of the Court of Appeal. The Supreme Court then considered the legal nature of the allegedly identical allegations and the conditions under which a court may treat those allegations as findings of fact. This included the question of whether a court could accept one party's allegations as valid simply because the other litigant did not deny or dispute those allegations.

The Supreme Court then concluded that a necessary prerequisite for deciding the case is a proper determination of the facts. As a rule, the facts are established by evidence. Facts of legal significance which the parties have introduced into the proceedings by their allegations are primarily proved by means of the evidence listed by way of example in the provisions of Article 125 of the Code of Civil Procedure, which nevertheless provides that certain facts are not subject to proof. These are facts which are generally known to the court and facts which are known to the court in its official capacity. In addition, facts on which the parties have agreed, i.e. identical statements of the parties within the meaning of Article 120(3) of the Code of Civil Procedure, are not subject to proof. Here, the parties' identical statements are a means on the basis of which the court may make findings of fact on the facts of the case which would otherwise have to be clarified by evidence if the parties had differed in their statements. **However, the court cannot take as its findings of fact a party's allegations merely because the party on the other side of the dispute has not 'disputed or contested' those allegations**, since such inaction by a party does not yet indicate what position that party takes with regard to the truth and completeness of the facts alleged; those factual allegations cannot therefore be regarded in the same way as identical factual allegations within the meaning of section 120(3) of the Civil Procedure Code.

Legal action without adequate retaliation within the meaning of §240 of the Insolvency Act

(Judgment of the Supreme Court Case No. 29 Cdo 91/2021 of 31 July 2023)

The dispute commenced when the defendant acquired the ownership of the property from her grandparents through a deed of gift and an easement agreement. The property was encumbered with a right of lifetime usufruct for the donors and also for the defendant's parents. The easement was granted free of charge for the symbolic sum of 5 000 CZK. Subsequently, an agreement was concluded between the defendant and the beneficiaries of the contract on the termination of the right corresponding to the easement in favour of the defendant's mother. This was done in order to obtain full security for her loan. Later, insolvency proceedings were opened in respect of the defendant's mother's property and the insolvency court also found the debtor bankrupt.

The Supreme Court then had to answer the question of whether the settlement of the easement creates an obligation to claim payment for the cancellation of the easement in a situation where the debtor (as the beneficiary of the easement) is bankrupt (or threatened with bankruptcy)?

The Supreme Court is of the opinion that for the purposes of assessing whether the debtor undertook to provide a performance free of charge or for a consideration whose normal price is substantially lower than the normal price of the performance which the debtor undertook to provide, the quantitative aspect, i.e. the ratio between the normal price and the agreed price (expressed e.g. as a percentage) and the difference between the two prices (representing a specific amount), is relevant. At the same time, however, it is necessary to take into account the impact of the disputed legal act on the debtor's assets in terms of the ability of the creditors who, on the date when the disputed legal act of the debtor took effect, had claims against the debtor to obtain payment of the debtor's claims (and the debtor's ability to pay those claims) and the reasons for which the debtor took the disputed legal act (e.g. the debtor's desire to obtain funds to pay the creditors' claims already due), as well as the other circumstances in which the debtor took the disputed legal action. The key question is then whether the cancellation of the easement without consideration adversely affected the debtor's ability to satisfy her creditors, and in particular whether they would have been better satisfied had the debtor not relinquished the easement or had she demanded compensation for the cancellation of the easement. If the easement had not been extinguished, the debtor would still have been entitled to use the property in question by virtue of her right in rem. However, monetization of the easement would not be an option, since personal easements are not transferable to other persons (Article1265(2) Civil Code). Thus, the easement would not be available to the debtor's creditors.