Legal update

January 2024

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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Legislation News

Amendment to the Bonds Act

On 29 December 2023, Act No. 462/2003 Coll., amending certain acts relating to the development of the financial market and the promotion of old-age security ("**Amendment**") was published in the Collection of Laws. In addition to other changes, with effect from 1 January 2024, the Amendment also introduced changes to the Act No. 190/2004 Sb., on Bonds, as amended ("**Act**"), in particular in the area of the conditions for issuing bonds and the decision-making of the owners´ meeting.

According to the previous legislation, the conditions for the issue always contained the information defined by the Act at least by reference to the information contained in the bond prospectus. Therefore, if a prospectus was drawn up, the issue conditions either merely referred to the information contained in the prospectus or duplicated the relevant information in both the issue conditions and the prospectus. As the explanatory memorandum to the Amendment states, such legislation not only did not provide any comfort or protection to the investor, but also unnecessarily burdened the issue conditions with information that was already provided in the prospectus. Therefore**, as of the Amendment's entry into force, the obligation to refer in the conditions of issue to the information contained in the prospectus has been retained only for the most essential information**, including, for example:

- information on the type of bond,
- information identifying the issuer,
- the nominal value as the amount due,
- the proceeds on the bond,
- the maturity date of the amount due, the date of issue,
- information as to whether the bond is a certificated bond, an immobilised security or a book-entry security,
- the subscription period for the bonds,
- etc.

and to information that is relevant for the individual cases provided for in the Act or for the different types of bonds. Examples of such information include:

- the issuer's decision that the bond issue will be issued in tranches within the subscription period,
- the method of drawing lots for a bond whose proceeds is linked to the bond being drawn,
- the issuer's decision to exclude the possibility of separating the right to payment of the proceeds of the bond from the bond,
- the wording of any arbitration clause,
- etc.

Other information and data, such as the issue price or the method of its determination, the manner and place of the subscription of the bond, information on the taxation of the bond proceeds, etc., **are, since the effectiveness of the Amendment, included in the conditions of issue only if the issuer does not also prepare and publish a prospectus.**

In addition, with effect from 1 January 2024, the changes affected bonds offered under the under-limit public offer, i.e. bonds:

- issued by a legal entity;
- offered to the public in accordance with Article 2 (d) of Regulation (EU) 2017/1129 of the European Parliament and the Council;
- without a published prospectus (at latest on the date of issue); and
- whose total value of the consideration on the issue date is higher than the amount corresponding to EUR 100,000 and lower than the amount corresponding to EUR 1,000,000.

The conditions for issue of the bonds complying with all of the above conditions must also contain other information, such as the issuer´s registered seat, description of the main activities carried by the issuer the amount of the minimal investment, the expected volume of the issue, information identifying the beneficial owner of the issuer, etc.

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The above extension of the information concerning the conditions of the bond issue offered within the under-limit public offer should provide simply and immediate tool for an initial assessment of the bonds to small investors, who either have no experience with a similar form of the investment or lack more advanced financial literacy. **On the basis of the mandatory published data and information, an investor may thus get an overview of the overall situation and creditworthiness of the issuer, its asset structure, history of its issues, etc.**

The bond issuer offered in an under-limit public offering is obliged to publish the aforementioned conditions of issue, including all statutory requirements, **on its website** at the latest on the day of the issue of the bond. **The obligation to publish the issue conditions on its website also applies to the offeror in an under-limit public offer**. The offeror are obliged to do so no later than on the date of the commencement of the bond offering. In addition, the offeror in an under-limit public offer are obliged to ensure the conditions of issue are made available on their website free of charge and in the unchanged form permanently for 12 months after the end of the bond offering. The information must have in form of a downloadable data file in a commonly used data format.

Per rollam meetings

Another change of the Act introduced by the amendment is represented by **the possibility of making decision outside the owners´ meeting**. Such decision-making, also known as per rollam, has been allowed since the amendment came into the force, provided the conditions of issue allow it.

The decision is preceded by the notification of the draft decision to all the bonds´ owners. The notification shall be made by a person authorised to convene the meeting of the owners. The draft decision must be notified to the owners of the bonds either in the same way as the conditions of issue were published or in another way provided for in the conditions.

The amended Act also sets out the **requirements for a draft decision outside a meeting of owners**. These include the text of the proposed decision and its reasoning, the deadline for delivery of the bond owner's statement, the record date for participation in the decision outside the owners' meeting, the documents required for the adoption of the decision and other information and data specified in the conditions of issue. The rules set up by the Act for the meeting process shall apply to the per rollam decision-making.

In the case of a proposal to vote on changes of a fundamental nature (such as changes to the conditions of issue, termination of the security agent following a request for a change in the person of the security agent or other situations defined in the conditions of issue), either a verified handwritten signature or a vote via a data box is required.

Case Law News

Passive standing in a dispute over payment of compensation for taking over a customer base

(Judgment of the Supreme Court file no. 16 Cdo 3644/2022 of 14 March 2023)

In the judgment, the Supreme Court addressed the question of passive standing, as a condition on the part of the defendant, who must be the bearer of the subjective material obligation which the plaintiff seeks from the court, in the compensation proceedings for the takeover of a customer base. The issue has not yet been addressed in the Supreme Court´s practice.

In the present case, the claimant, as the terminated tenant, sought compensation for taking over a customer base against the new tenant of the same premises. Both the Court of the First Instance and the Court of Appeal dismissed the action on the ground of lack of passive standing.

Therefore, the claimant appealed to the Supreme Court. In the appeal, the claimant argued that the obligation to compensate the terminated tenant under Section 2315 of the Act No. 89/2012 Coll., Civil Code, as amended ("**Civil Code"**) is primarily intended to apply to the person who, according to the claimant, has in principle "unduly" benefited from the terminated tenant´s often years-long efforts to build up a customer base that generates income. **Section 2315** of the Civil Code **states that a tenant** who has not been terminated from a lease for material breach of its obligations **is, in the event of the termination of the lease by notice from the landlord, entitled to compensation for the landlord´s or the new tenant's benefit gained by taking over the customer base built by the terminated tenant.** The claimant argues that if it was the new tenant who benefited from the takeover of the customer base being taken over, they should have a passive standing to claim damages as well.

However, the Supreme Court took the opposite view and held that although the provisions of Section 2315 of the Civil Code do not explicitly identify the entity obliged to provide compensation, the systematic classification of the legal regulation of the lease relationship in the Civil Code must be taken into account when resolving the issue of passive standing in a dispute over payment of compensation for taking over the customer base.

The lease relationship is a contractual relationship arising from a bilateral legal conduct, specifically from a lease contract, which, in accordance with Section 1759 of the Civil Code, is by default binding only for the parties to the contract and is effective against other persons only in cases provided for by law. Neither Section 2315 of the Civil Code nor any other provision of law expressly provides that the new tenant is, or may be, obliged to provide compensation for the benefit obtained by taking over the customer base of the terminated tenant. Since the legal conduct of the contracting parties cannot, in principle, give rise to an obligation to perform for a third party without its consent, the Supreme Court holds that the obligation to provide compensation for the takeover of the customer base rests exclusively with the landlord, as the compensation is a claim arising from the terminated lease relationship between the landlord and the terminated tenant.

According to the Supreme Court the above applies regardless of whether the benefit of the takeover is received by the landlord or the new tenant. **Terminated tenant is thus entitled to claim compensation for the takeover of the customer base only against the entity which was the landlord at the time of the termination of the lease.** On the contrary, the terminated tenant cannot claim the compensation against the new tenant as an entity with which the terminated tenant was not in any legal relationship at the time of termination of the lease.

For the sake of completeness, we would like to point out that the judgement of the Supreme Court in question was also reviewed by the Constitutional Court of the Czech Republic. However, the constitutional complaint was rejected as manifestly unfounded.