

Legal update

October 2016

Weinhold Legal

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The information in this newsletter is correct to the best of our knowledge and belief at the time of going to press. Specific advice should be sought, however, before investment and other decisions are made.

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Legislative Amendments

Act on the Central Register of Bank Accounts takes effect

Act No. 300/2016 Coll. on the Central Register of Bank Accounts was promulgated in the Collection of Laws on 21 September 2016 and, with the exception of certain provisions, enters into force on 6 October 2016.

With the effectiveness of this Act comes the establishment of a Central Register of Bank Accounts to be administered by the Czech National Bank. One objective of this register is to facilitate the detection of criminal activity and the prosecution of its perpetrators.

Persons statutorily obliged to submit information to the register, i.e. all banks, branches of foreign banks and cooperative savings and credit unions, will have to submit daily-updated information to the Czech National Bank on the accounts of all their clients, be they natural persons or legal entities. By law, the obliged institutions shall also submit information on accounts maintained for arrangements without legal personality (e.g. trust funds). This will primarily involve information that serves to identify the account owner. The registered information will not include account balances. The information will be kept in the register for a period of 10 years after an account is closed.

In accordance with the register's stated objective, only public authorities such as the Financial Administration of the Czech Republic may request information from it.

The Act provides for significant penalties. If a lending institution obliged to submit information fails to do so, a fine of up to CZK 10,000,000 may be imposed.

Bills Under Discussion

Bill amending the Labor Code

On 9 September 2016, the Government submitted the Chamber of Deputies of Czech Parliament with a bill amending the Labor Code and other related laws, such as the Labor Inspection Act.

The amendment aims to achieve greater flexibility in basic employment relations without weakening employee protections. We also see an effort to reduce employment-related administrative obligations imposed on employers.

One of the biggest innovations introduced by this amendment is the establishment of the institute of the "senior managerial employee", which represents the Government's response to calls for the need for these employees to be differently treated given that they operate under a different work regimen than regular employees.

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For example, there will be no such thing as overtime for these employees; to some extent, they will be able to schedule their own working hours. Moreover, the Labor Code provisions on the fixed weekly working time, maximum shift length, and compensation for work on statutory holidays, nights and weekends will not apply to this category of employee.

The amendment also stipulates several conditions these employees must meet immediately so their employment is eligible for this special treatment. Such an employee may only be a senior employee under the direct managing authority of the statutory body/employer, or an employee directly subordinated to such employees on the condition that the employee's monthly salary is at least CZK 75,000.

The amendment entirely revamps the concept of holiday time. If the amendment is approved, the holiday entitlement will no longer be based on worked days, but on the employee's weekly working time. The amendment also includes a proposal to allow unused holiday to be rolled over to the next year based on an employee request.

The institute of the assignment of an employee to alternative work is also revised, and this should only be possible based on employee/employer agreement. Assignment based on a unilateral act of the employer would only be permitted in special cases when the public interest so requires.

Changes have also been proposed in the areas of collective bargaining, mass layoffs, performance of work outside the employer's workplace and the transfer of rights and obligations.

Recent Case Law

Concurrence of functions of a Board of Directors chair and CEO

(Constitutional Court Ruling No. I. ÚS 190/15 of 13 September 2016)

The Constitutional Court dealt with the question of whether functions may be performed concurrently. Concurrence of functions is a situation in which a member of a company's statutory body is also bound to this company under an employment contract, generally in an executive role.

This decision could mean a significant reversal in the decision-making of the courts in this matter as the Supreme Court has until now held that in cases where concurrency gives rise to an overlap of activities performed under both an employment contract and an agreement for the execution of a function, the employment contract is invalidated as a result.

The Constitutional Court chiefly based its decision on the key principles that everyone can do what is not prohibited by law and no one need do what the law does not compel. It is the view of the Constitutional Court that this applies to labor law,

though it does to some extent entail a special area of the law.

The Constitutional Court rejected the Supreme Court's argument that only dependent work may be subject to the Labor Code, while execution of the role of statutory body is not dependent work. According to the Constitutional Court, dependent work may only be performed in an employment relationship, which limits the possibility of the parties to agree on the performance of dependent work other than employment. It adds, however, that this does not mean other legal relationships not constituting the performance of dependent work cannot be subject to the Labor Code pursuant to the will of the parties. In the view of the Constitutional Court, such an interpretation would totally disregard the purpose of the definition of dependent work. Thus, no reason exists why a member of a statutory body could not perform his/her activity under a contract subject to the Labor Code.

The Constitutional Court also considered the Supreme Court's argument that concurrency of functions is not possible in light of the nature of a business corporation and the function of a statutory body member. In the opinion of the Constitutional Court, the arguments put forth by the general courts were entirely inadequate. In order for their arguments to stand, the courts must further clarify the reasoning behind the legal opinion.

Although the given case involved the pre-recodification legislation, it should be possible to apply the findings of the court to the post-recodification legislation.

Finally, it should be noted that the ruling should only be taken as a guide as to what direction the case law may take in regard to the concurrence of functions because, as mentioned, the Constitutional Court annulled the reviewed decision due in part to the insufficient reasoning of the Supreme Court.

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We hope you will find *Legal Update* to be a useful source of information. We are always interested in your opinion about our newsletter and any comments you may have regarding its content, format and frequency.

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