Legal update

January 2017

Weinhold Legal

Contents

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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Bills under discussion

Payment Systems Act amendment

A Payment Systems Act amendment came into force on 29 December 2016.

The bill is designed to transpose requirements stipulated in EU regulations concerning payment accounts and interbank fees for payment card transactions into Czech law. In substantive matters, the bill does not impose higher standards on entities than are required by EU law.

The bill primarily introduces changes designed to provide consumers with the option of opening a basic payment account in any EU Member State, to introduce a standardized approach to changing a payment account with payment service providers ("providers") and, among other things, to set some disclosure requirements for providers.

The first new item is an obligation on providers that keep payment accounts for consumers legally residing in the EU to enter into an agreement on a basic payment account at the consumer's request. The basic payment account shall be kept in Czech currency and the consumer shall be provided with legally specified services on the condition that these services are provided to other consumers who have accounts other than basic payment accounts with the provider. This duty does not apply to savings banks and credit unions.

A second major addition is the introduction of an option to make payment account changes, which banks have only done voluntarily until now. As of the amendment's effective date, providers (with the exception of the CNB) will have to make a change to a payment account at the user's request. In connection with this change, the amendment also provides the option of asking for a reasonable consideration commensurate with the costs incurred by the provider from the account owner for making a payment account change. However, a mandatory account change will only be possible between payment accounts kept in the same currency and maintained in the CR. In other cases, whether and under what conditions this service will be offered will continue to be left at the provider's discretion.

Another new item is the provider's duty to provide pre-contractual information about the consideration for the most commonly provided services associated with a payment account before a payment account agreement is executed and to make it available on the provider's website and designated office premises, or the duty to provide the user with a summary of the consideration for services associated with the payment account and information about interest for the prior calendar year by the end of February of every calendar year.

The last new feature is the standardization of payment services terminology based on the establishment of statutory definitions (e.g. payment, standing order) or the standardized designation and definition of services associated with a payment account set out in a CNB

Legal update

January 2017

decree or the setting of rules for online comparisons of services associated with a payment account.

The now valid law should enter into effect on 1 March 2017, with some provisions taking effect on 13 January 2017.

Civil Code amendment

A Civil Code amendment came into force on 30 December 2016.

This amendment removes some of the thorniest conflict situations that arise when applying the Civil Code. This is a step that cannot be delayed. Among other things, the changes relate to employing minors, acting on behalf of a legal entity, acquiring stakes in companies and cooperatives, right of first refusal to purchase real estate, offsets or agreements on wage withholdings and rental agreements.

The amendment allows minors who have reached the age of 15 to enter into an employment contract, an agreement to complete a job or a work agreement before completing their compulsory education. However, the start date of their employment may not precede the date of completion of their compulsory education.

Further, the provision regulating the conduct of a legal entity with a collective statutory body in dealing with employees (§ 164[3] of the Civil Code) is repealed. The general rules of conduct of statutory body members should once again apply to conduct in dealings with employees. Thus, these legal entities will no longer be obliged to authorize statutory body members to act in dealings with employees and enter them in the commercial register. However, voluntary authorization of such a member will continue to be possible.

The amendment expressly states that the acquisition of a stake by a spouse does not establish the other spouse's participation in a company or cooperative, with the exception of housing cooperatives. This should eliminate some complications associated with the required consent of a spouse to the acquisition of a stake forming part of marital community property.

The amendment also regulates the first right of refusal of co-owners and first right of refusal pursuant to § 3056 of the Civil Code. In the first case, the first right of refusal of co-owners of real estate is established, with the exception of the transfer of real estate to next of kin. Conversely, in the second case the amendment abolishes the first right of refusal of owners of lands over certain constructions and other objects (formerly "utility constructions"), necessarily spreading over multiple plots of land, are located (while not forming a part of these lands) and also abolishes the first right of refusal of the owners of these constructions regarding the lands on which they are built.

Moreover, it will now be possible to offset a claim against salary, wages or other compensation for employment or employment style work in an amount exceeding half thereof. It will be also possible to secure debt through withholdings from these forms of income (also in an amount exceeding half thereof.
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No less importantly, it will be possible to require a security deposit from a residential lessee of a maximum of three – not six – times the monthly rent.

While already valid, the law should enter into effect on 28 February 2017, with some provisions taking effect on 30 December 2016 and others on 1 January 2018.

For more information, see our Legal Alert of 23 December 2016.

Business Corporations Act amendment

A Business Corporations Act amendment came into force on 30 December 2016.

The amendment is designed to re-establish mandatory representation of employee representatives on the supervisory or management boards of joint stock companies.

Under the amendment, only salaried employees of a joint stock company will have the right to elect members to that company's supervisory board. Moreover, only salaried employees will be able to recall members of the supervisory board. The amendment sets a 2-year deadline for joint stock companies with more than 500 salaried employees to bring their statutes and the composition of their supervisory board into compliance with the amendment.

While already valid, the law should enter into effect on 14 January 2017.

Recent case law

Particulars of a request to discharge a bank guarantee with regard to the guarantee letter wording

(Czech Supreme Court Judgment of 31 August 2016, file No. 32 Cdo 4752/2014)

The Supreme Court dealt with a situation in which a bank refused to discharge a bank guarantee because the creditor's declaration had not been effected in compliance with the wording of the letter of guarantee; though according to the letter of guarantee, the bank was not authorized to examine the legal relationship between the creditor and the debtor.

According to the Supreme Court

Legal update

January 2017

"if the provision of § 316(1) of the Commercial Code stipulates that a bank shall guarantee the performance of a secured obligation up to an amount and under conditions stipulated in a letter of guarantee, then the letter of guarantee alone is used to assess whether the creditor is entitled to performance from the guarantee, i.e. whether the conditions to discharge the bank guarantee were met."

Thus, if the creditor's request for performance of the obligation failed to include the "due payment obligations" required by the letter of guarantee, the bank was not obliged to satisfy the creditor due to formal defects in the request. The decisive factor was the duty to strictly adhere to the formal particulars of requests, i.e. "due payment obligations", irrespective of whether or not these obligations were in fact due. There is no statutory obligation of a bank to provide reasons for not discharging bank guarantees.

Moreover, in prior proceedings the appellate court ruled (unchallenged by the Supreme Court due to the inadmissibility of appeal) that the Uniform Rules for Contract Guarantees used in international trade are considered commercial practice in the meaning of the provision of § 730 of the Commercial Code and may only be applied in domestic relationships where their use is expressly stipulated in the letter of guarantee.

Termination of proceedings pursuant to Art. 27 of the Brussels I Regulation

(Czech Supreme Court Resolution of 24 August 2016, file No. 29 Cdo 5599/2015)

The Supreme Court dealt with a case in which a claimant (consumer) sued for financial payment in both the Czech and Slovak courts.

The Supreme Court worked from the wording of Regulation No. 1215/2012 (the Brussels I Regulation), which in the case of the execution of a consumer contract, affords consumers the right to choose the court having jurisdiction as either the court in the State in which the respondent has its permanent address or the court in the State in which the consumer has its permanent address. According to the Supreme Court, therefore, the lower instance courts erred when they halted the proceedings on the grounds of lack of jurisdiction of the Czech courts. Both the Czech and the Slovak courts had jurisdiction here and it was up to the claimant (consumer) to choose the court to which she would submit her lawsuit. If proceedings are started in the courts of multiple Member States dealing with the same matter and the same parties, the court at which proceedings began later is obliged (without a motion) to suspend the proceedings until such time as the jurisdiction of the court that first initiated proceedings is determined.

The Supreme Court also concluded the "Brussels I Regulation does not expressly require that a court express its lack of jurisdiction in a separate decision" and that CJEU case law does not give rise to such a requirement. What measures (leading to termination of proceedings) are to be taken by the Court in the Member State in which proceedings were begun later are therefore left to domestic law. Since under Czech law, *lis pendens* is an ineradicable obstacle to proceedings, the Czech courts are obliged to discontinue the proceedings. The courts are not obliged to include an explicit reference to the Brussels I Regulation in the statement of their decision on a declaration of lack of jurisdiction. The statement of the resolution to terminate proceedings pursuant to § 104(1) of the Civil Procedure Code fully suffices.

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