Legal update

April 2017

Weinhold Legal

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Bills under discussion

Bill on insurance and reinsurance distribution

On 13 March 2017, the Czech Ministry of Finance submitted a draft law on insurance and reinsurance distribution to an interdepartmental comment procedure.

The bill transposes a Directive of the European Parliament and of the Council (EU) 2016/97 on insurance distribution published in the EU Official Journal on 20 January and which must be transposed into Czech law by 23 January 2018. If the bill successfully goes through the legislative process, it will fully replace Act No. 38/2004 Coll. on insurance intermediaries and on independent loss adjustors and on the amending of the Trade Licensing Act (the Act on Insurance Intermediaries and Loss Adjustors).

The bill adds a number of new features to Czech law, primarily:

- it expands regulation to direct insurance sales at insurance company branch offices;
- it introduces stricter rules of conduct for the distribution of life insurance products with what's known as an investment component;
- it strengthens the expertise and credibility requirements for persons intending to distribute insurance, including a requirement for continuous professional training of those already operating in the sector;
- it adds precision and clarity to the options and rules for the cross-border provision of insurance services, including the division of oversight powers between the home and host state;
- it establishes a new insurance company obligation to evaluate the suitability of insurance products offered to individual customer target groups.

The bill aims to standardise the regulatory principles of consumer protection on the financial market, ensure the same level of consumer protection for different methods of insurance distribution, strengthen the emphasis on the clarity and comparability of information on financial products (especially information on life insurance costs) and increase the demands for professionalism placed on persons operating in the industry. The proposed effective date of the law is 28 February 2018.

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Bill on damages in economic competition

On 14 March 2017, the Chamber of Deputies discussed a bill on the payment of damages in the area of economic competition in its first reading.

The bill is intended to transpose Directive of the European Parliament and of the Council No. 2014/104/EU of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

Among other matters, the bill introduces the rebuttable presumption of damage where economic competition has been restricted by a cartel. Thus, in proceedings for damages arising from anti-competitive behaviour, the defendant will have to prove that no damage was suffered.

The bill includes special treatment of the limitation period, which explicitly excludes certain provisions related to the limitation period in Act No. 89/2012 Coll., the Civil Code.

The bill also establishes the possibility that before initiating proceedings for damages caused by the curtailment of economic competition, the court will, at the suggestion of a party proving the credibility of her/her right to compensation, order identified persons to disclose documents requested by the injured party.

The proposed effective date is the first day of the calendar month following the month of its promulgation.

Recent case law

Legal interest in a determination of whether or not a company is the owner of certain assets

(Czech Supreme Court Judgment No. 29 Cdo 2792/2015 of 30 November 2016)

The proceedings involved a dispute between a minority shareholder (owning ~ 25% of company shares), as the plaintiff, and (i) the majority shareholder (owing ~ 75 % of company shares) and (ii) company, jointly as the defendant. As an aside, it should be noted the courts ruled on the given dispute in accordance with the legislation in force before the private law recodification in 2014. Therefore, some of the terminology used below, e.g. legal act, enterprise, is not up-to-date. Nonetheless, the findings of the Supreme Court in this dispute continue to be relevant.

The minority shareholder sued for the nullification of a purchase contract concluded between the company and the majority shareholder whose subject was the transfer of title to company land. This claim was based, inter alia, on the assertion that the price agreed in the purchase contract exceeded the usual price (identified in an expert opinion review as being more than three times less than the price agreed in the purchase contract).

The court of first instance dismissed the action and the appellate court upheld its decision; both courts concluded the minority shareholder had neither legal standing nor a pressing legal interest in the matter. To support its finding, the appellate court cited the fact that the purchase contract did not infringe the legal rights of the minority shareholder and its shareholder rights remained unchanged irrespective of the scope and structure of the company's assets. The appellate court deemed immaterial the minority shareholder's objection that as a result of the company's obligation to pay the purchase price and incur the related debt, the minority shareholder's right to a share in profit would be affected.

The minority shareholder filed an application for an appellate review of the appeal court's judgment in which it asserted its relations are affected by the uncertainty regarding the validity of the purchase contract for transfer of the respective land, given that it is a substantial company shareholder and the value of its stake is derived from the company's assets. The minority shareholder succeeded with this argument before the Supreme Court, which stipulated the following criteria for assessing the question of a company shareholder's (member's) legal standing and pressing legal interest in determining the invalidity of legal acts or determining whether or not the company is the owner of certain assets:

1) If a joint stock (or limited liability) company executes a contract for transfer or lease of an enterprise or for transfer of a substantive portion of a company's assets to a third party, then this is a legal act that could have a significant impact on the legal and proprietary position of the company and thus, by extension, the legal and proprietary position of its shareholders (members).

2) If the execution of such a contract has a significant impact on the legal and proprietary position of shareholders (members), then these shareholders (members) have legal standing in a proceeding on the nullification of such contract or a proceeding on a determination of title to the assets transferred under the said contract (or a determination of whether or not the right to lease an enterprise exists).

3) An assessment of whether the execution of such a contract significantly impacts the legal and proprietary position of a shareholder (member) and whether, therefore, the shareholder (member) may be accorded active legal standing in the above-mentioned proceedings is dependent on the circumstances of a given case.

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4) Moreover, if a shareholder (member) is shown to have active legal standing and does not have available another legal remedy via which to more effectively defend its rights infringed by such contract, then in effect it also has an exigent legal interest in a determination of whether the contract in question is invalid or a determination of title to the respective assets (or a determination of whether or not the right to lease an enterprise exists).

In the view of the Supreme Court, the foregoing findings apply analogously to situations in which a company acquires land (or other non-monetary assets) for a consideration that represents a significant portion of that company's assets.

Costs associated with removing defects in work

(Czech Supreme Court Judgment No. 23 Cdo 2618/2016 of 4 January 2017)

In this case, the Supreme Court dealt with a dispute concerning liability for defects in work and the party obliged to bear the costs of their removal

The plaintiff, as the supplier, executed a contract for work with the defendant, as the customer, for the building of a sewage system. This work was performed by the plaintiff and conveyed to the defendant. Subsequently, however, the work proved to suffer from defects causing the roadway above the sewage system to collapse. The defendant made a claim for these defects with the plaintiff within the agreed warranty period. The plaintiff rejected any liability for the defects, but nonetheless entered into an agreement to remove the defects with the defendant and, in fact, removed the defects. However, the plaintiff solicited reimbursement from the defendant of the costs associated with removing the defects, basing this claim on the assertion that by not reimbursing the incurred costs, the defendant would enjoy unjust enrichment at the plaintiff's expense.

The court of first instance dismissed the action, concluding the primary cause of the roadway collapse was the insufficiently compacted soil used to backfill the sewage system. In the view of the court of first instance, the plaintiff breached its obligation to warn the defendant that the soil to be used to backfill the sewage system under the contract for work was not fit for this purpose. As the plaintiff inadequately compacted the soil, the plaintiff conveyed work to the defendant that failed to meet the contractual requirements. Thus, the costs incurred by the plaintiff to remove the defects cannot constitute unjust enrichment, but rather represent costs borne by the plaintiff, as the supplier, which are associated with the removal of defects for which the plaintiff is liable. The appellate court upheld the judgment of the court of first instance, and went further in opining that the plaintiff removed defects that were under warranty and that occurred during the warranty period and that the defect in the form of a roadway collapse was the result of the improper backfilling of the sewage system. It went on to emphasise that if a customer requests the removal of a defect, then it is up to the supplier to decide how the repair should be carried out, though the supplier should proceed in a manner ensuring the defects are removed.

The plaintiff filed an application for an appellate review of the appeal court's decision. In it, the plaintiff repeated the assertion that the defendant was unjustly enriched by not having paid for the material that was used (beyond the scope of the original contract) to backfill the sewage excavation during the repair work. In this sense, the mere fact the soil was not changed could not constitute a defect because the work was consistent with the contractually stipulated outcome. According to the plaintiff, the institute of liability for defects cannot be used to solicit the supply of material that the original work did not include.

The Supreme Court responded to the plaintiff's assertions by noting the plaintiff was, in effect, arguing that the cost of the work would have been higher had the right soil been used. The Court added that the plaintiff cannot be entitled to reimbursement for the cost of material meant to replace material whose use was one of the reasons the damage (consisting in the fact that the ground above the sewage system collapsed) occurred if, as the supplier, it failed to warn the customer the material to be used was not fit for the contractually agreed purpose. In the Supreme Court's view, the defendant would only have gained unjust enrichment had the plaintiff itself suggested another effective manner of repairing the work for which it would not have been necessary to use new material, but the defendant, as the customer, nevertheless insisted on its use. If a certain defect removal method was agreed by the parties in a situation in which defect removal would not have otherwise been realistically possible, this cannot mean the customer should have paid the defect removal costs. As the method used to remove the defects was the only possible method for ensuring the work was as contractually agreed, the defendant could not have gained unjust enrichment through removal of the defects.

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