

Legal Update

June 2017

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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Bills Under Discussion

Draft law on public benefit status

On 26 May 2017, Parliamentary Bulletin No. 1005, a draft law on public benefit status and on the amending of related laws, had its 2nd reading in the Chamber of Deputies.

The bill was designed to enhance non-profit sector transparency and credibility by introducing the institute of public benefit status. Modelled on foreign legislation, public benefit status should become a sign of prestige for a legal entity.

A publicly beneficial legal entity (irrespective of its legal form) that carries out activity contributing to the attainment of the common good in accordance with its mission should have the right to enter public benefit status in the public registry. According to the bill, such an entity must prove that only persons of good repute have substantial influence in its decision-making, that its assets were acquired from honest sources and that it efficiently utilises its assets for a publicly beneficial purpose. The granting and revocation of public benefit status should be decided by the courts.

The bill also amends other laws, e.g. the Act on Court Fees, with the aim of technically harmonising the new and existing legislation.

The law's proposed effective date is 1 January 2018. However, an extensive amendment submitted in the 2nd reading was designed to abolish public benefit status and remove its treatment from the Civil Code to obviate the need for administrative confirmation of public benefit status.

Recent Case Law

Credit fraud using an employer's card for the benefit of a third party

(Czech Supreme Court Judgment No. 21 Cdo 3034/2016 of 25 January 2017)

The Supreme Court heard the final appeal of an employer in a case of the determination of the invalidity of immediate employment termination.

Without the knowledge or consent of the employer, an employee, used a credit card entrusted to him by the employer for the purpose of covering work-related expenses to pay the restaurant bill of a third party.

The appellate court ruled that the employee violated a work obligation by paying the "cheque of a person having no relationship to the defendant" using the defendant's credit card. It stressed, however, that given the total paid amount of CZK 3,117 and the participation of six persons in the given event, payment for one person represents a "relatively low amount", which even the defendant "apparently did not consider to constitute material damage", as the employer did not give the applicant "sufficient opportunity" to explain the situation and did not require repayment of the amount from him, also that the employer "only" issued the instructions for credit card use "verbally, vaguely and in a very limited extent", and therefore the applicant cannot be faulted for "[having] an understanding of the instructions that does not necessarily correlate with their content as understood by the defendant", as the applicant "could have had the impression a team event could be paid for using the credit card". The appellate court thus concluded the applicant's conduct did not constitute a gross violation of his work obligations, but

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not give the applicant "sufficient opportunity" to explain the situation and did not require repayment of the amount from him, also that the employer "only" issued the instructions for credit card use "verbally, vaguely and in a very limited extent", and therefore the applicant cannot be faulted for "[having] an understanding of the instructions that does not

necessarily correlate with their content as understood by the defendant", as the applicant "could have had the impression a team event could be paid for using the credit card". The appellate court thus concluded the applicant's conduct did not constitute a gross violation of his work obligations, but

only a less serious violation of work obligations that could and should have been addressed by the defendant in the form of a written "warning" with reference to the possibility of termination.

Nonetheless, the Supreme Court concluded that an assault on the property of an employer, whether direct (e.g. through theft, damage, misuse etc.) or indirect (e.g. through an attempt to use the employer's property without corresponding consideration), constitutes a material enough circumstance that it alone will generally suffice to conclude that an especially gross violation of an obligation has occurred.

When it assessed the severity of the violation of a work obligation by the applicant, the appellate court should have taken into account the fact that in his conduct, i.e. misuse of a credit card by paying the restaurant cheque of a friend of the defendant's employee who took part in a celebration on the occasion of the termination of the employment of the defendant's employee, the applicant made a direct assault on the property of his employer in his capacity as a senior employee who should have ensured adherence to legal and internal regulations and taken measures to protect the employer's property. The nature of the applicant's conduct is not altered by the relatively small amount of the damage that was caused and whose repayment the defendant did not seek from the applicant, as substantially more important than the amount of the damage caused to the defendant and the circumstance of whether the defendant sought repayment from the applicant, is the breach of the necessary mutual trust in relations between the applicant and the defendant and the doubt cast on the applicant's reliability in respect of the defendant's property.

According to the Supreme Court, the employee thus misconstrued one of his basic obligations, i.e. to properly manage resources entrusted to him by the employer and guard and protect the employer's property from damage, loss, destruction and misuse. The Supreme Court therefore vacated the lower court judgments finding the immediate termination of employment to be invalid and referred the case back to the first-instance court for further proceedings.

Certainty of a contractual fine

(Czech Supreme Court Judgment No. 23 Cdo 3196/2016 25 January 2017)

The Supreme Court dealt with the question of whether an agreed contractual fine is certain and valid even if it has been agreed for breach of obligations comprising a coherent and identifiable set of obligations, though the violation of individual obligations has not been contractually specified.

A contract of mandate was concluded between the applicant, as mandant, and the defendant, as mandatory. In the contract, the parties agreed that if the building society (as mandant) ascertains

that the mandatory has breached any of the obligations stipulated in the contract or an obligation ensuing from the description of his position within the organizational structure, the mandant may (repeatedly) impose a contractual fine of up to CZK 20,000 on the mandatory for each individual case of breach of an obligation set out by the mandatory in this contract or in the description of the position in the organizational structure. The appellate court found the arrangement concerning the contractual fine to be uncertain and thus invalid pursuant to § 37 of the Civil Code (in effect until 31 December 2013), as it stipulates no specific mandatory obligation whose breach could result in the imposition of a contractual fine or one where, without a more detailed description, the contractual fine was tied to all agreed defendant obligations without comparing their significance or severity. Therefore, the reasonableness of a contractual fine cannot be assessed based on such an arrangement.

However, the Supreme Court stated in its judgment that the requirement for certainty of defined obligations secured by a contractual fine is met not only if the secured obligations are explicitly enumerated, but also where a contractual fine is agreed for breach of obligations comprising a coherent and identifiable set of obligations, though the violation of individual obligations is not specified in the contract.

The Supreme Court thus concluded that the opinion of the appellate court contradicts established decision-making practice of the final court of appeal, which has settled on the legal opinion that the requirement for certainty of defined obligations secured by a contractual fine is met not only if the secured obligations are explicitly enumerated, but also where the contractual fine is agreed for the case of breach of obligations comprising a coherent and identifiable set of obligations, though the violation of individual obligations is not specified in the contract.

The Supreme Court therefore vacated the judgment of the appellate court and referred the case back for further proceedings.

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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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