

Legal Update

November 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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Legislative amendments

Amendment of Act No. 435/2004 Coll. on employment

An act amending Act No. 435/2004 Coll. on employment, as amended, and Act No. 251/2005 Coll. on the labour inspection, in the wording of Act No. 93/2017 Coll., was promulgated in the Collection of Laws on 6 October 2017 in section 111 under number 327/2017 Coll.

The stated main goal of this amendment is to address clearly the employment of persons with disabilities in the context of the labour market, including the provision of allowances to employers employing persons with disabilities.

The amendment replaces an administratively demanding and inflexible system for defining individual sheltered jobs by recognising instead the specific employer as an employer in a sheltered labour market. This will be newly implemented on the basis of an agreement on the recognition of an employer as an employer in a sheltered labour market concluded between the employer and the Labour Office. This agreement will include, inter alia, the employer's obligation to submit an annual report on its activities to the Labour Office in the structure required by the Employment Act.

Employers with whom the Labour Office concludes an agreement on the recognition of an employer as an employer on a sheltered labour market will also be provided with an allowance to support the employment of persons with disabilities, but now this will be formulated as an allowance in support of the employment of persons with disabilities in a sheltered labour market. Similarly, the Labour Office may continue to provide an allowance to cover operating costs, which will no longer be tied to a sheltered job, but will now be tied to the costs incurred in connection with employing persons with disabilities. For the purpose of separating and conceptually differentiating between free and sheltered labour markets, the allowance to be provided to employers to create a job for a person with a disability will now be designated as such.

Currently, for the purposes of meeting the obligation to employ persons with disabilities, the number of which is calculated by reference to the total number of employees, employers with more than 50% of employees in sheltered jobs who are persons with disabilities, or self-employed individuals who are persons with disabilities who have no employees, may provide employers with their products and services or perform awarded contracts in a calendar year up to an amount of 36-times the average wage in the national economy for the first to the third quarters of the prior calendar year for every adjusted employee with a disability employed in the prior year. The amendment reduces the previous 36-times provided performance to 28-times the average wage in the national economy for the first to the third quarters of the previous calendar year for every adjusted employee with a disability employed in the prior calendar year.

The amendment and above changes will enter into effective 1 January, 2018.

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Recent case law

The right of parties in civil proceedings to act before a court in their mother tongue does not extend to written communications from the court to the parties and vice-versa

(Municipal Court in Prague Decision No. 19 Co 218/2013 of 11. 9. 2013)

At its meeting of 18 October 2017, the Civil and Commercial Committee of the Supreme Court approved Municipal Court in Prague Ruling No. 19 Co 218/2013 of 11 September 2013 for publication in the Collection of Rulings and Opinions of the Supreme Court (the "Collection"), which has been supplemented, inter alia, by some lower court rulings. In this ruling, the Municipal Court formulated a legal opinion interpreting the provision of § 18(1), second sentence, of the Civil Procedure Code, and did so such that no court obligation to provide a translation of a ruling it has issued into a language that a party in proceedings who does not know Czech is able to understand can be inferred.

The Supreme Court thus standardised the previously inconsistent practice which, in some cases, enabled parties in proceedings who do not know Czech to respond to civil courts with filings in languages other than Czech and thus inferred the obligation of Czech civil courts to translate documents delivered to the given parties into a language they know. With its decision to publish the foregoing ruling, the Supreme Court sided with the legal opinion that the right of parties in proceedings to have civil proceedings conducted in their mother tongue is limited only to oral court proceedings and does not apply to correspondence with the parties.

It should be noted that, in contrast to the above, for criminal proceedings the accused must still be provided with written translations of the listed rulings set out in § 28(2) of Act No. 141/1961 Coll., the Criminal Code, as amended. This constitutes fulfilment of the principle of "in favour of the defence", as in contrast to the equal position of all parties in civil proceedings, the accused in criminal proceedings is in a "weakened position" and therefore enjoys a set of entitlements that the counterparty (plaintiff) cannot invoke.

A business share in a limited liability company in the community property of spouses and its settlement

(Czech Supreme Court Resolution No. 22 Cdo 3192/2015 of 30 May 2017)

The Czech Supreme Court based this resolution on settled court rulings, which says a court may only deal with those assets and investments comprising part of statutory community property of spouses, which the parties have introduced as the subject of proceedings within a deadline of three years from the dissolution of the community property. This rule prevents situations in which, after the three-year deadline has

elapsed, parties would demand the settlement of things, values or commitments that had not been a subject of the proceedings until that time and with respect to which no facts had been asserted nor any evidence introduced.

In the Supreme Court's view, a difference must be drawn between the expenditure of funds from community property to acquire a business share in a limited liability company and the provision of such funds to a company. If community property funds are spent to acquire a business share in a company, the acquired asset comprising the spouse's participation in the business company becomes a part of the community property of the spouses and only this participation representing an asset can be subject to settlement in the case of dissolution of the community property. In the event of settlement, however, it is necessary to take into account community property receivables from a business company, where these receivables represent a third-party obligation to the spouse who provided the loan which, in the event of the dissolution of community property, must be settled. Whether or not the business share in the company to which the loan was provided is a part of community property is irrelevant; it is a community property receivable from a third party.

The Supreme Court stated in earlier case law that if one spouse acquires a business share in a limited liability company using funds from community property during the marriage, then the asset thus acquired enters into the community property. In the context of the subsequent settlement of community property, then, this community asset is assigned to the party who is the partner in this business company. A business share in a limited liability company thus may only be assigned to the spouse who is a partner in this company in the scope of that spouse's business share. Where both spouses are partners in the same business company, both shares may not be assigned to one of the spouses in the settlement process. A spouse assigned both spouses' shares in this way would then be obliged, in the context of the settlement share, to pay the other spouse half of the price of his/her business share, though the participation of the other spouse in the business company would not be dissolved.

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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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