Legal Update

February 2018

Weinhold Legal

Contents

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Legislative Amendments

Draft Act on Insurance and Reinsurance Distribution

On 4 January 2018, the Czech Government submitted a draft Act on Insurance and Reinsurance Distribution to the Chamber of Deputies. The bill had its first reading on 25 January 2018 and is now under discussion in parliamentary committees.

The Ministry of Finance submitted the bill to the Government in the preparatory phase of the legislative process and has stated that the aim of the legislation is to improve the clarity and comparability of information on financial products and increase the professional requirements for persons operating in the insurance industry. The bill also represents a direct response to Directive No. 2016/97 EU of 20 January 2016 on insurance distribution. The Act should replace Act No. 38/2004 Coll. on insurance brokers and insurance adjustors (the "**IBA**").

The Act should not apply to the mere provision of general information about insurance or reinsurance, or similar information about insurance companies, reinsurers or insurance brokers assuming the provision of such information is not designed to help in the execution or amending of an insurance or reinsurance policy or the negotiating of an insurance settlement. According to the explanatory memorandum, the provision of such information in the context of other activities (e.g. legal, tax-advisory etc.) will thus be exempt from the Act.

The Act introduces a rather detailed treatment of the pre-contractual information obligation pertaining, inter alia, to other information about an insurance company, insurance and insurance brokers.

On the other hand, some areas such as fleet insurance – the brokering of insurance most often provided by used car lots, automobile rental agencies, banks insuring payment cards, etc. – would not be exempt from the Act.

What is probably the greatest change as compared to the current legislation is the introduction of new mechanisms for imposing penalties. This is designed to remedy shortcomings in the IBA, as this Act has no penalty provisions that may be invoked to effectively penalise a breach of the obligation to act with due professional care using two of the most stringent available punishments – cancellation of registration or a financial penalty.

The proposed effective date is 23 February 2018.

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Recent Case Law

Liability of a legal entity for an administrative offence

(Supreme Administrative Court Judgment No. 9 As 213/2016-60 of 3 October 2017)

In a cassation complaint filed by a postal services provider (the "**Provider**"), the Czech Supreme Administrative Court dealt with the case of an employee who had thrown out postal consignments and direct mail advertising and letters. The Czech Telecommunications Office stated this constituted a violation of the obligation to handle postal consignments only as necessary and in a manner consonant with the provision of postal services (§ 7[1] of Act No. 29/2000 Coll. on postal services), and imposed a financial penalty on the Provider.

In the cassation complaint, the Provider sought a reversal of the decision to impose a fine, disagreeing with the assertion that the situation had not involved excessive behaviour of its employee, but a deliberate effort to conceal a violation of her work obligations. Its objection was that this activity not only was not a part of her assigned work tasks, but was in direct opposition to them, i.e. was an effort to conceal her failure to perform them. The employee's conduct saw her act not in the applicant's interests, but in her own. The applicant further argued that if the act was, in effect, perpetrated against the interests of a legal entity or to its detriment, the delictual liability of such injured party cannot be inferred, only that of the acting person.

The Supreme Administrative Court accepted the plaintiff's arguments and vacated the court's decision. Central to an assessment of whether a legal entity is liable for the commission of an administrative offence connected with the conduct of its employee (or member of a statutory body) is whether legal obligations were violated in connection with a local, temporal and material link to the activity of the legal entity, i.e. whether, from an objective and subjective point of view, the employee was pursuing the fulfilment of her work tasks when she performed the activity that gave rise to the unlawful situation. If not, then it is the view of the Supreme Administrative Court that the legal entity is not liable for the excessive behaviour of its employee.

Liability of an apartment owner for damage incurred by a third party

(Supreme Court Judgment No. 25 Cdo 450/2016 of 27 September 2017)

Here, the Czech Supreme Court dealt with a petitioner's application for an appellate review of a denial of her action seeking payment of a monetary amount.

The case concerned the bursting of a toilet inflow pipe in a housing unit owned by the respondent, who was renting the apartment to a tenant. As a result of water leaking through the floor (and the ceiling of the petitioner's apartment below), objects in the petitioner's apartment were damaged.

Among the petitioner's key arguments was her assertion that the bursting of the toilet pipe constituted a violation of an objective status (the apartment was not fit for normal use), and the respondent thus breached the landlord obligation set out in § 687 of Act No. 40/1964 Coll., the Civil Code (the "**Civil Code**"). The respondent, as the landlord, should have handed over the apartment in a state fit for ordinary use; in the opinion of the appellant, therefore, the breach of this obligation establishes liability for the damage suffered by the petitioner.

The Supreme Court stated that it is generally true a breach of a landlord's obligation to hand over and maintain an apartment in a state fit for regular use can represent the violation of a legal obligation pursuant to § 420(1) of the Civil Code, and this further applies to a person that is not a contractual party in a landlord-tenant relationship. However, it is the Supreme Court's view that the matter under review does not constitute such a case.

In the Supreme Court's opinion, the tenant should have seen to it the apartment was kept in good order, in particular he should have borne the costs of minor repairs in the apartment connected with its use and costs connected with regular upkeep. Thus, the obligation to maintain the toilet inflow pipe in a condition preventing its rupture fell to the tenant, not the respondent, as landlord.

Consequently, the landlord was not liable for damage caused by breach of a legal obligation. It is, moreover, the Supreme Court's opinion that no violation of a preventive obligation occurred in the given case, as the apartment had been duly maintained by the landlord given the options available to him within the landlord-tenant relationship. No obligation to foresee every future possibility of damage inheres in the obligation to prevent possible damage. An accident happens to whomever it happens; nonetheless, random damage does not impact the individual in whose property the accidental cause of the damage arose, but rather the individual whose property suffered the damage.

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