Legal Update

July 2018

Weinhold Legal

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Legislative amendments

Amendment of the directive on the posting of workers in the framework of the provision of services

The 29th of May saw the approval of a draft Directive of the European Parliament and of the Council amending Directive of the European Parliament and of the Council 96/71/ES of 16 December 1996 on the posting of workers in the framework of the provision of services, which applies to all workers with the exception of drivers.

The draft Directive is designed to enable companies to render services in other Member States with a guarantee that workers should be compensated in the same manner as local workers doing the same work in the same place.

Specifically, the draft Directive proposes that posted workers who are temporarily seconded from their usual place of work in the Member State to which they have been posted to another place of work obtain at least the same contributions or expense reimbursements to cover travel expenses and room and board for employees on business trips as are paid to local workers in the given Member State. According to the draft Directive, this should also apply to costs incurred for a posted employee who must travel to their usual place of work and/or from the place in the Member State to which they have been posted.

The draft Directive additionally addresses the issue of posting workers for a period of longer than 12 months. Here, the draft Directive stipulates that, in the case of a posting of longer than 12 months, host countries should ensure that undertakings posting workers to their territory guarantee all the applicable working conditions that are mandatory for workers in the Member State in which the work is performed, regardless of the law applicable to the employment relationship. Moreover, a Member State in which a service is rendered can, on the basis of a justified notification from the service provider, extend the time period in which mandatory working conditions are ensured by another 6 months to a total of 18 months.

Pursuant to the draft Directive, Member States will have two years from the Directive's effective date to adopt and promulgate the legal and administrative regulations required to bring domestic legislation into compliance with the requirements stipulated in the Directive.

Recent case law

Dissolution of a business company

(Czech Supreme Court Ruling No. 27 Cdo 1135/2017 of 28 February 2018)

In this proceeding, the petitioner sought the annulment of a Regional Court in Ostrava resolution on the dissolution of a company with liquidation and appointing of a company liquidator. The reason the court ruled to dissolve the company was the insufficient number of company executives entered in the Commercial Register.

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It its petition, the petitioner asserted that the reason owing to which the company was dissolved by the court had ceased to exist, as new company executives had been entered in the Commercial Register subsequent to the court's decision on the company's dissolution.

In agreement with the court of first instance, the appeal court rejected the petitioner's petition, explaining that it could not grant the petition to initiate a proceeding because a court decision to dissolve a business company may only be reversed by means other than ordinary or extraordinary remedies where so stipulated by law.

Citing the Civil Code's explanatory memorandum, the appeal court further stated that the procedure pursuant to § 170 of the Civil Code (whose application the petitioner sought and which provides for a change in a decision on corporate dissolution with liquidation, if the purpose of the liquidation has not yet occurred) may only be applied to the voluntary dissolution of a legal entity with liquidation.

The petitioner filed a petition for an appellate review of the appeal court decision and asserted that the provision of § 170 of the Civil Code does not differentiate between a decision on corporate dissolution with liquidation effected by its members or one effected by a public authority (i.e. a court) when it stipulates that such a decision may only be amended by the party that decided on the corporate dissolution with liquidation. In the view of the applicant for the appellate review, the court was therefore authorised to amend its decision on corporate dissolution with liquidation pursuant to § 170 of the Civil Code, if the reason owing to which the business company was dissolved ceased to exist (upon the entry of the new executives), if the purpose of the liquidation was not yet fulfilled and if such a change to the decision would not violate the rights or legally protected interests of the company members or of third parties.

Contrary to the petitioner's view, however, the Supreme Court agreed with the findings of the lower instance courts and stated that it would be possible to grant a petition to change or annul a court decision (on corporate dissolution with liquidation) only if the reason for dissolving the company would be eliminated before the court decision on corporate dissolution with liquidation was made.

In accordance with the Supreme Court's view, it can be concluded that the provision of § 170 of the Civil Code only provides for the changing (revoking) of a decision on corporate dissolution with liquidation where such decision was adopted by the given legal entity's members or competent statutory body, i.e. only in the case of so-called voluntary corporate dissolution with liquidation. Where a special law does not otherwise stipulate, a decision on corporate dissolution with liquidation may only be amended (annulled) on the basis of ordinary or extraordinary remedies.

Absence of a notarised signature on a purchase agreement for the sale of real estate

(Czech Supreme Court Judgment No. 21 Cdo 3066/2017 of 28 March 2018)

In this judgment the Supreme Court dealt with the question of whether a notarised signature of a contractual party is a required feature of a purchase agreement based on which title to real estate is transferred and which, at the same time, serves as the legal document based on which the respective right is entered in the Real Estate Register.

The High Court in Prague, acting as the court of appeal in this case, expressed the opinion that it cannot generally be overlooked as long as a purchase agreement fails to include a formal feature consisting in the notarized signature of a party, i.e. the seller, as a result of which it is executed at variance with the provision of § 561(1) of the Civil Code and, pursuant to § 17(1)(a) of the Real Estate Register Act, lacks the particulars of a document for entry in the Real Estate Register.

The Supreme Court, as the court of final appeal, disagreed with the opinion of the High Court in Prague. In the Supreme Court's view, the notarised signature of a contractual party is not in fact a requisite feature of a purchase agreement based on which title to real estate is transferred and which at the same time serves as the legal document underlying entry of the respective right in the Real Estate Register. In the absence of a notarised signature on a private document, it is the view of the Supreme Court that the cadastre office (or, in a proceeding to replace a cadastre office decision, the competent court) shall proceed pursuant to § 62 and § 64 of the Cadastre Regulation and thus carry out necessary measures to establish the authenticity of a handwritten signature.

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