

Legal Update

August 2018

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

Amendment of the Freedom of Information Act and the Contracts Register Act

A bill amending the Freedom of Information Act and the Contracts Register Act was submitted to the Chamber of Deputies as Parliamentary Bulletin No. 50 on 5 January 2018. The bill was submitted by a group of legislators from the Czech Pirate Party. The Government has taken a neutral standpoint on the bill.

The bill's declared goal is to bring legal certainty to the question of which private-law entities will be obliged parties pursuant to Act No. 106/1999 Coll. on freedom of access to information (the Freedom of Information Act) and to ensure that all government-run organisations enter contracts in a register in accordance with Act No. 340/2015 Coll. on special requirements for the effectiveness of certain contracts, the publication of these contracts and on a register of contracts (the Contracts Register Act). Should the bill be adopted as submitted, then not only government-run entities but also county- and municipality-run entities will be subject to the Freedom of Information Act and Contracts Register Act.

The bill amending the Freedom of Information Act was drafted in response to Constitutional Court Finding No. IV. ÚS 1146/16 of 20 June 2017, which stated that legal entities subject to private law do not come under the term public institution in the meaning of § 2(1) of the Freedom of Information Act. In the above-mentioned finding, the Constitutional Court nonetheless stated that nothing prevents legislators from revising the category of private-law entities subject to the publication obligation. In its finding, the Constitutional Court diverged from earlier Supreme Administrative Court Decision No. 2 As 155/2015 of 16 March 2016 under which the term public institution additionally applies to entities of a private-law nature in which government or other public influence prevails. According to the Supreme Administrative Court, effective corporate governance is thus the deciding criterion for application of the Freedom of Information Act to private-law entities.

Based on the foregoing, the amendment adds the following sentence to the provision of § 2(1) of the Freedom of Information Act: "*Obligated entities are also legal persons in which the State, a regional self-governing unit or another obliged entity is a majority shareholder or in which it alone, or together with other obliged entities, can directly or indirectly exercise decisive influence.*" It has also been proposed that a subsection 5 be added to the provision of § 2 based on which the fact a given person is an obliged entity pursuant to the Freedom of Information Act would be entered in a public register.

The Contracts Register Act amendment is designed to eliminate exceptions that exclude some state-owned enterprises from its scope.

The amendment proposes the addition of a criterion for determining if a legal person is subject to the obligation to publish in the Contracts Register. Legal persons in which the State or a regional self-governing unit alone, or together with other regional self-governing units, directly or indirectly exercises decisive influence should now also be subject to the Contracts Register Act.

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Should the amendment be adopted, the exemption for contracts in which at least one party is a joint stock company whose shares have been accepted for trading on a regulated market will no longer be included among exemptions from the Contracts Register disclosure obligation. The exemption for collective agreements will also be eliminated. The amendment's last item should eliminate the special treatment of validity without the publication of contracts executed by legal persons established for the purpose of satisfying needs of an industrial or commercial nature or for the purpose of research, development or testing.

Recent Case Law

Compensation of damage, Bankruptcy trustee

(Czech Supreme Court Judgment No. 29 Cdo 2737/2014 of 31 January 2017)

In this case, the applicant sued the defendant bankruptcy trustee for reimbursement of the costs of proceedings brought against it unsuccessfully by the bankruptcy trustee in the course of bankruptcy proceedings. The applicant's claim was not paid in the course of the bankruptcy proceedings as there were insufficient bankruptcy assets to cover them. In the applicant's view, this occurred because the bankruptcy trustee had not performed its role with due diligence and had failed to observe the preventive duty to avoid damage. The applicant held that the bankruptcy trustee had breached its obligation to exercise due diligence when it initiated litigation concerning payment of a claim in bankruptcy proceedings in full awareness that the claim was uncertain and that the costs associated with its enforcement would not be covered by the bankruptcy estate and that this situation did not warrant payment of an advance by the bankruptcy creditors to cover these costs.

The Supreme Court concurred with the lower instance courts in its decision, stating that a bankruptcy trustee has not breached its obligation to execute its role with due diligence if it fails, before entering into litigation with a person it has reason to believe is a debtor in bankruptcy, to request (due to the inadequacy of the bankruptcy estate) that bankruptcy creditors pay an advance to cover the reimbursement of proceedings costs that could be remitted to the account of the bankruptcy estate of the debtor in bankruptcy, were the bankruptcy trustee to lose the litigation.

Trademarks, Protection of a (company's) trade name

(Judgment of the Grand Chamber of the Civil and Commercial Division of the Supreme Court No. 31 Cdo 3375/2015 of 8 March 2017)

In this case, the Supreme Court dealt with the question of whether the right to a trademark can prevent a counterparty from exercising rights to a business firm by imposing an obligation on the other party to refrain from using the registered trademark. In this case, a court had already ruled

that use of the trademark constituted unfair competition and a violation of the right to the business firm, though the trademark had not yet been stricken.

The Supreme Court ruled that an obligation to refrain from using a registered trademark may be imposed, inter alia, in the form of an interim order.

The Supreme Court added that rights arising from a registered trademark and the right to a business firm are of equal standing assuming that the exercising of a right arising from a registered trademark is in line with business practices, good morals and economic competition. Naturally, this does not apply to cases of anti-competitive conduct.

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Please e-mail your comments to jakub.kolda@weinholdlegal.com or fax them care of Jakub Kolda to +420 225 385 444, or contact your usual partner/manager.