

August 2013



LEGAL UPDATE

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.

For further information, please contact your usual partner/manager or:

Banking and Financial Services:
Pavel Jendrulek

Mergers & Acquisitions:
Daniel Weinhold, Dušan Kmočh

Litigation / Arbitration:
Milan Polák, Ondřej Havránek

Information Technology and Intellectual Property:
Martin Lukáš

Competition Law / EU Law:
Thilo Hoffmann, David Emr

Labour Law:
Milan Polák

Real Estate:
Pav Younis

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LEGISLATION EFFECTIVE FROM 1 AUGUST 2014

MINIMUM WAGE FROM 1 AUGUST 2013

The minimum wage is the lowest amount that may legally be paid to an employee. While the Labour Code (Act No. 262/2006 Coll.) establishes basic rules governing the minimum wage, Government Regulation No. 567/2006 Coll. provides more detailed regulation of the minimum wage, minimum guaranteed wage levels, the definition of a difficult work environment and the wage premium for work done in difficult conditions lays down the basic minimum wage amount, other minimum wage amounts associated with limited employee work and the conditions for providing a minimum wage.

Government Regulation No. 210/2013 Coll. changed the abovementioned Minimum Wage Regulation. Effective 1 August 2013, the basic minimum wage for a 40-hour workweek increases to CZK 8,500 a month or CZK 50/60 an hour. For employees on a disability pension, the regulation maintains the minimum wage level for disabled employees with at the level effective from 1 January 2013.

LEGISLATION EFFECTIVE FROM 1 JANUARY 2014

NEW CZECH CITIZENSHIP ACT

New Act No. 186/2013 Coll. on Czech citizenship and the amending of certain acts was promulgated in the Collection of Laws on 2 August 2013.

The new law brings revolutionary changes to the legal treatment of the loss of Czech citizenship and provides for the easy re-acquisition of Czech citizenship by former citizens.

From 1 January 2014, Czech law will no longer contain a provision whereby Czech citizens automatically lose their Czech

citizenship upon the acquisition of a foreign citizenship and the law will place no restrictions on dual citizenship. The only legal way to lose Czech citizenship after 1 January 2014 will be to issue a declaration renouncing it.

The new law also provides for a simplified method (in the form of a declaration) of obtaining Czech citizenship for individuals who lost their Czech or Czechoslovak citizenship while previous legislation was in effect.

BILLS UNDER DISCUSSION

AMENDMENT OF THE INSOLVENCY ACT AND ACT ON INSOLVENCY ADMINISTRATORS

On 5 March 2013, the Government submitted a groundbreaking bill amending Act No. 182/2006 Coll. on bankruptcy and settlement (the Insolvency Act) and Act No. 312/2006 Coll. on insolvency administrators to the Chamber of Deputies of Czech Parliament, which approved the bill on 8 August 2013.

The objective of the proposed legislation is not only to reflect changes arising from private law recodification, but also to comprehensively revise problem areas in existing insolvency proceedings legislation.

A key change introduced by the amendment is a clear definition of the problematic relationship between insolvency proceedings and enforcement or execution proceedings. Under current law, after an insolvency proceeding has begun the enforcement of a decision or execution against a debtor's property may still be ordered, but not carried out. This rule remains in effect, but with the qualification that execution or enforcement of a decision cannot be ordered or initiated as of the moment bankruptcy is declared by a court. This increases debtor protection somewhat and strengthens the principle



that receivables of all creditors should be proportionally satisfied in insolvency proceedings. Linked to this is the principle that a bankruptcy ruling interrupts all legal and arbitration proceedings concerning receivables associated with a bankrupt's estate and now, too, receivables not satisfied in insolvency proceedings.

A second major change is in the insolvency administrator appointment method. Instead of the nomination system, a rotation system will be used. Thus, the administrator will be chosen in order according to a list maintained by the court over which the court will have no influence. This change should contribute to greater transparency of administrator appointments and prevent corrupt practices among insolvency administrators and administration court chairs.

The amendment includes a new institute of joint spousal debt relief, which should ease the situation for many underwater households. Each spouse will be able to achieve exemption from having to pay the other's debts, though they must file a joint petition seeking permission for debt relief. This petition will contain an explicit declaration from both spouses that they agree to all their property being deemed communal property for the purposes of approval for debt relief through the monetisation of their estate. If only one of the spouses were to file a petition for debt relief, then only that spouse's liabilities would be discharged.

Other areas of change that the bill introduces pertain, among others, to the issue of creditors bodies and the procedural position of certain creditors.

The amendment should enter into force on 1 January 2014.

RECENT CASE LAW

THE PROPERTY REGISTER AND LIABILITY FOR DAMAGE

(Czech Supreme Court Ruling No. 30 Cdo 1737/2012 dated 25 June 2013)

The applicant was seeking compensation for damages from the state (as compensation for non-pecuniary damages), which she was alleged to have suffered as a result of an improper official procedure consisting in the excessive length of proceedings to correct errors in the property register and the ongoing existence of a duplicate entry of title to land.

The cause of the original dispute in an administrative proceeding was a petition filed by the applicant addressed to the competent cadastral office for the correction of incorrect data in the register and elimination of a duplicate entry of title to land. However, the property register refused to make the correction, citing two binding documents each of which attested to ownership of the land by another person. Unsuccessful in the administrative proceeding, the applicant was left with no choice but to pursue litigation.

The Supreme Court, as the final court of appeal, concluded that if a cadastral office is supplied with multiple binding documents, and each attests to ownership by a different person of the same land, then it is the office's duty to execute the duplicate entry of title to such property and, at the same time, to inform the persons identified as the owners in the conflicting documents. The office should also instruct these persons on the possibility of filing a petition for declaratory action in a civil court. The office would then only be authorized to strike the duplicate entry of title based on a notification of one or both of the recorded owners supported by a concurring declaration on acknowledgement of title or a unilateral declaration on acknowledgement of title or a valid court ruling on the determination of ownership.

ON CIRCUMSTANCES EXCLUDING DEBTOR DELAY PURSUANT TO THE COMMERCIAL CODE

(Czech Supreme Court Ruling No. 32 Cdo 1861/2012 dated 24 June 2013)

The core of the given dispute was the customer's claim to a contractual fine for late performance of a contract for work due to the supplier's delay in securing a building permit. The customer's claim was based on a contractual arrangement stipulating that the work was to be performed and delivered by an agreed deadline, and that all documentation and necessary permits (building permits included) would be secured by the same deadline.

However, the supplier refused to pay the contractual fine, claiming it could not perform its contractual obligation before receiving the relevant building permits. Otherwise, performance would have been in violation of public law and the supplier would have been liable for a regulatory offence. In return, the supplier sued the customer for payment of the outstanding amount for the work and a contractual fine for payment arrears.

The Supreme Court did not side with the supplier. Indeed, it confirmed that if a party has a dischargeable contractual obligation ensuing from the Commercial Code, then it is bound by such obligation.

Pursuant to the Commercial Code, debtor (supplier) arrears always objectively arise if the debtor fails to perform its obligation in a due and timely manner. Arrears do not arise only where the debtor could not perform its obligation due to a creditor delay. Thus, if performance is prevented by other circumstances, the debtor is in arrears irrespective of whether or not these circumstances arose on the part of the debtor and whether or not they could have been avoided or influenced by the debtor.

According to this ruling, if a contractual obligation to perform exists and the debtor fails to perform such obligation in a due and timely manner, the debtor's delay may only be excluded by a creditor delay, and no other circumstance.



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