



Legal update

July 2023

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News in legislation

Amendment to the Act on Protection of Employees in the Event of Employer Insolvency

The Ministry of Labour and Social Affairs has prepared an amendment to Act No.118/2000 Coll., on the Protection of Employees in the Event of Employer Insolvency and on Amendments to Certain Acts, as amended (hereinafter referred to as "the Act") and Act No.435/2004 Coll., on Employment, as amended. The amendment entered into force on 1 July 2023 and brought many changes in the area of employee protection in a situation where the employer is unable to properly and timely satisfy the employee's wage claims, the so-called employer insolvency. The most important changes are discussed below.

When is an employer insolvent?

The amendment brought a number of changes and clarifications, especially in relation to changes in the field of insolvency law, including at the international level. However, the most important one is the **new definition of employer insolvency**, whereby an employer is now insolvent if: *"fails to satisfy employees' outstanding wage claims on the day following the date on which a moratorium was declared on it prior to the commencement of insolvency proceedings, or on the day following the date on which the commencement of insolvency proceedings was notified by a competent court in the Czech Republic, or, in the case of a multinational employer, also on the date from which it is deemed insolvent in another Member State of the European Union in accordance with a directly applicable provision of the European Union."* This is a significant departure from the previous wording of the Act, which considered the employer insolvent already on the day following the filing of the insolvency petition. According to the Explanatory Memorandum, this departure from the existing wording of the Act was made primarily to protect employers from abuse of the legislation and from possible bullying proposals by employees seeking satisfaction of their "wage claims".

Extension to employees of employment agencies

The new protection of employees in the event of the employer's insolvency will also apply to employees of employment agencies. This change occurred after the amended version of the Act repealed the provisions of Section 2(5), which defined the scope of application to this group of employees in a negative way.

Applicable period and time limit for requesting satisfaction of wage claims

Employees wishing to claim their wage entitlements will now have to take into account the **newly defined reference period, which will now be based on the date of the notice of the commencement of insolvency proceedings** and not on the date of filing the insolvency petition. The amended Act defines the decisive period as a calendar month:

- ▶ *„in which a pre-insolvency moratorium has been declared,*
- ▶ *in which the opening of insolvency proceedings was announced, or from which the multinational employer is deemed insolvent in another Member State of the European Union, as well as the 3 calendar months preceding that month and the 3 calendar months following that month."*

Hand in hand with the amendment of the newly defined decisive period goes the change in the legal regulation of the time limit for filing a request for satisfaction of wage claims by employees, which is thus based on the moment of notification of the commencement of insolvency proceedings. **Thus, the employee may now assert his or her wage claims no later than 5 months and 15 days following the date on which a**

The information in this bulletin is presented based on our best belief and knowledge at the time this text was put into print. However, specific information relating to the topics covered in this bulletin should be consulted before any decision is made on the basis of it.

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moratorium was declared prior to the commencement of insolvency proceedings or notification of the commencement of insolvency proceedings, or, in the case of a multinational employer, from the date of publication of the decision on the commencement of insolvency proceedings with the competent authority in another Member State of the European Union pursuant to a directly applicable European Union regulation, provided that the other conditions set out in this Act are met.

Maturity of wage claim

A very important change is also the new definition of a payable wage claim in the provisions of Section 3(1)(e) of the Act, which **now defines a payable wage claim as a wage claim that has not been satisfied by the payment deadline** under Act No. 262/2006 Coll., the Labour Code, as amended. This is a significant change in terms of satisfying the wage claim of employees, as the previous wording of the Act linked the due date of a wage claim to the "due date", which in practice led to a situation where it was possible to request satisfaction of a wage claim in case of insolvency of the employer for the month of February only from April, as the due date of the wage claim lasted in such a case the whole month of March. **The new procedure should thus significantly speed up the settlement of employees' wage claims.**

New negative scoping

The last important change introduced by **the amendment to the Act is the exclusion from protection in the event of insolvency of the employer of those employees who were members of the statutory body or persons who had a decisive influence on the employer's activities during the relevant period and had at least 25% ownership interest in the employer.** The amendment thus brought a tightening, since the previous version of the Act required at least 50% ownership interest in the relevant employer.

Changes in the Commercial Corporations Act

Act No. 416/2022 Coll., amending certain acts in connection with the use of digital tools and procedures in company law and the operation of public registers (the "**Amendment**"), entered into force on 1 July 2023. **The Amendment is a response to the need to transpose the EU Directive on digitisation, which sets as one of its objectives the possibility of establishing certain companies fully electronically.** The Amendment also introduces a number of changes to Act No. 90/2012 Coll., on Companies and Cooperatives (the "**CCC**"), which we will discuss in the following paragraphs.

Obstacles to the exercise of the functions of a member of an elected body

The previous wording of the CCC defined the obstacles to the performance of the function of a member of an elected body with reference to the definition of the conditions for the exercise of a trade and integrity under Act No. 455/1991 Coll., on Trade Enterprise, as amended. However, this changed as of 1 July 2023, when **the Amendment introduced into the CCC a separate regulation of obstacles to the performance of the function of a member of an elected body.** The amended version of the CCC thus redefines the following obstacles to the exercise of the function of a member of an elected body:

- ▶ prohibition to act as a member of a management, control or administrative body of a legal person imposed by a decision of a public authority of the Czech Republic, another state or an international organisation;
- ▶ prohibition to carry out activities related to business in the area of business or field of activity corresponding to the subject of business or activity of the business corporation imposed by a decision of a public authority of the Czech Republic or another state;
- ▶ final conviction for offences defined by law, unless the person

is regarded as not having been convicted;

- ▶ a decision declaring bankruptcy on the property of a person issued in the Czech Republic or a similar decision of a public authority of another state.

Information obligation

The very second paragraph of the amended provision of Section 46 of the CCC regulates the information obligation. Whoever is to become a member of an elected body of a business corporation shall, before his appointment or election, inform the founder or the business corporation itself whether:

- ▶ „not capable of holding office,
- ▶ *there are facts which could reasonably be expected to prevent him from exercising his functions,*
- ▶ *insolvency proceedings under another legal provision or similar proceedings have been initiated abroad in respect of his/her property or the property of a legal person in which he/she is or has been active in the last 3 years as a member of an elected body."*

According to the third paragraph of this provision, the obligation to inform also applies to a member of an elected body of a commercial corporation, who has to inform the commercial corporation of the above-defined fact that occurred during the performance of his/her function immediately after becoming aware of such fact.

Why is it worth paying attention to the CCC Amendment?

As we have already announced above, members of the elected body of a business corporation are burdened with the information obligation under the provisions of Section 46 of the amended CCC, therefore they are obliged to inform the relevant business corporation without delay about the occurrence of an obstacle to the performance of their function. According to the transitional provisions to the Amendment, the members of the elected body of the commercial corporation, for whom such an obstacle has arisen, are obliged to inform the commercial corporation **no later than 1 month after the Amendment comes into force** and from the very occurrence of such an obstacle, i.e. no later than 1 August 2023. However, for business corporations, this also means that **from the effective date of the Amendment to the CCC (1 July 2023) they have 2 months to replace any members of the elected body who have been prevented from exercising the functions of a member of the elected body, as the functions of such a member of the elected body will automatically cease by law on 1 October 2023.**

Records of excluded persons

The amendment brought another significant innovation, when the Register of Excluded Persons ("**the Register**") was newly established in the amended provisions of Section 70 et seq. of the CCC. **The Register is a non-public information system of the public administration, which is administered by the Ministry of Justice and in which persons who are prevented from performing the function of a member of an elected body are entered.** For example, the Register includes: information about the person, information about the relevant impediment to the exercise of the office and the duration of the impediment.

Only courts, notaries, bodies in a similar position in the Member States and EU institutions have access to the Register. However, any person has the possibility to apply to the Ministry of Justice for information on whether any data on him/her are or have been kept in the Register (§ 70e of the amended version of the CCC).

In addition, the Register is to be established in all EU and EEC countries and thus should significantly facilitate the exchange of information on persons who are prevented from performing the functions of a member of an elected body of a commercial corporation. Moreover, the register



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will effectively link data obtained from the criminal record, the offence register and the insolvency register.

In conclusion, we would like to point out that a clear benefit of this Evidence can also be seen in the fact that thanks to this Evidence, a mere inspection of the Evidence by a competent notary is now sufficient instead of the existing extract from the Criminal Register when registering a member of an elected body in the Commercial Register through a notary.

Case law

Possibility to request the cancellation of the entry of the reasons for removal from the position of the company's managing director

(Resolution of the Supreme Court of the Czech Republic Case No. 27 Cdo 1744/2022 of 25 January 2023)

In this decision, the Supreme Court of the Czech Republic dealt with the question whether the dismissed executive has the possibility to **request the deletion of the entry of the reasons that led to the dismissal of the executive from his position by the general meeting and which were entered in the "other facts" section of the Commercial Register.**

This issue came before the Supreme Court after the objections of the dismissed executive director against the entry of the reasons leading to his dismissal by the general meeting were rejected first by the Regional Court in Hradec Králové - Pardubice branch as the registry court and then by the High Court in Prague as the court of appeal on the grounds that "the petitioner cannot be considered a person entitled to file a petition" as he "does not meet any criteria defining a person entitled to file a petition". Both courts based their reasoning on the provisions of Section 11(3) of the Public Registers Act ("**the P.R.A.**"), which does not apply to facts that are not "decisive facts" within the meaning of Section 25(1)(j) of the P.R.A., and thus only a registered person may file an application for their deletion.

The Supreme Court took a different view of the matter and thus considered the whole case differently.

Different assessment by the Supreme Court

The appellant director argued before the Supreme Court as an appellant, in particular, the possibility of defending against the registration of other relevant facts by means of section 101(2) of the C.R.P. The appellant pointed out that, although this provision expressly allows a person entered in the public register to defend only against his deletion from the public register, he argued that if "another important fact is identified by the registered person as a decision to remove the managing director, resulting in his deletion, the removed managing director should have a right of defence against such entry in a similar way to that in the case of his deletion, i.e. the right to object to the entry". In this sense, the Supreme Court was right in treating the appellant's earlier objections to the registration precisely as a defence to the registration under section 101(2) of the P.R.A. and not, as the earlier courts had done, as a petition under section 11(3) of the P.R.A.

The Supreme Court subsequently based its argumentation on one of its earlier decisions, Case No. 27 Cdo 530/2020, of 17 August 2021, in which it concluded: *„The purpose of Section 101(2) of the Civil Code is to enable persons registered under another law in the public register to object to their deletion in the context of the registration of a registered person and thus to bring the registration into conformity with the actual state of affairs, not to grant such persons the possibility of opposing the correctness of all the facts registered. A teleological interpretation of section 101(2) of the P.R.A. therefore leads to the conclusion that*

persons entered in the public register under another law in the context of the registration of a registered person may, in the event of their deletion from the public register, seek to amend only the entry by which they themselves were deleted from the public register." The Supreme Court, however, could only proceed on the basis of this earlier decision of its own in terms of reasoning, because the Supreme Court ultimately concluded in the case then pending that the appellant, as a former shareholder and member of the statutory body of the registered company, was not a person entitled under section 101(2) of the Civil Code to apply to amend the registration of a liquidator of a company made pursuant to a final order of the Court of Registration made in proceedings instituted on the application of the registered company.

However, the Supreme Court could have fully completed this argumentation in the present case, since the appellant objected not to the deletion of his person as the company's managing director from the Commercial Register, but to the entry of the reasons for which he should have been removed from the position of managing director by the general meeting. A grammatical interpretation of Section 101(2) of the Civil Code would lead to the conclusion that this provision does not allow such a procedure. However, the Supreme Court concluded here that the grammatical interpretation is only a kind of initial approximation to the text of the legal norm and it is necessary to interpret the provision of Section 101(2) of the Civil Code teleologically and therefore in accordance with its purpose, which in the case of this provision is the possibility of defending against expulsion.

Conclusion resulting from the decision

In this decision, the Supreme Court thus concluded that the facts, the deletion of which was sought by the dismissed executive (the appellant), are closely related (and inextricably linked) to the deletion of the appellant's person as the executive of the company from the Commercial Register. **Therefore, if the dismissed managing director (the appellant) is entitled to request a change of the entry in the case of his deletion from the Commercial Register, he must also be entitled to request a change (deletion) of the entry of the reasons for which he was deleted from the Commercial Register, or in the case of removal from the position of managing director by the general meeting also the reasons for which he should have been removed.** The decision of the Supreme Court can thus be considered groundbreaking from the point of view of decision-making practice, at least in that the Supreme Court here, using argumentation from the greater to the lesser (argumentum a maiori ad minus), extended the possibility of proposing the deletion of other facts from the Commercial Register on the basis of Section 101(1)(a) of the Commercial Register. **Among other things, the conclusions of this court decision imply that the registry court is obliged to notify the managing director being deleted not only of the actual deletion of his person from the commercial register, but also of the possible entry of the reasons for which his position as managing director was to cease.**

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