

# Legal update

November 2016

## 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

### Bill amending the Public Auctions Act

On 12 October 2016, the Ministry for Local Development submitted a bill to the Government amending Act No. 26/2000 Coll. on public auctions, as amended.

The purpose of the draft law is an update to accord with current Civil Code terminology. The bill also eliminates periodical advertising as the method for publishing information about a real estate auction; instead, publishing on the territorial authority's official notice board will suffice. The bill provides for a longer delay between the appraisal date of the property to be auctioned and the date of the first auction - nine months instead of six. The auction security may not be provided via wire transfer. The law will newly contain a section providing for the imposition of a fine of up to CZK 100,000 for breach of a statutory obligation of the auctioneer when executing a public auction.

The decree regulating the procedure for a public auction is repealed, though the majority of the substantive and procedural requirements pertaining to auction participants, auctioneers and the general public have been taken up in the new law. The proposed effective date is 1 July 2017.

### Bill amending the Insolvency Act

On 6 October 2016, the Ministry of Justice submitted a bill to the Government amending Act No. 182/2006 Coll. on bankruptcy and settlement (the Insolvency Act), as amended.

The purpose of the draft law is to address excessive indebtedness of some persons leading to what is known as a "debt trap" by opening up the institute of debt relief to a broader group of debtors and eliminating the repayment limit of 30% of creditor claims over 5 years as de facto obstacles to accessing debt relief. The draft law also creates conditions for: a) ensuring greater creditor satisfaction in the case of debt relief by adhering to a payment schedule, b) bolstering the educational effect of debt relief and c) optimizing the legislation concerning debt relief as regards spousal assets. The proposed effective date is 1 January 2018.

### Bill amending the Employment Act

On 16 September 2016, the Chamber of Deputies submitted Parliamentary Bulletin No. 911 to the Government, which is a bill amending Act No. 435/2004 Coll. on employment.

The draft law deals, inter alia, with agreements on work performed outside employment that should prevent individuals from being included and kept in the registry of job seekers. It also introduces a change in the treatment of permits to perform placement services and tightens the relationship of labour agencies with their responsible representative. In addition, there will be a minor amendment of the Labour Code in respect of the circumvention of temporary agency work laws

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and the Labour Inspection Act, introducing new offences. The proposed effective date is fifteen days after promulgation.

## Recent case law

### **Transfer of rights and obligations ensuing from labour relations to a new leaseholder - tenants of commercial premises can inherit their predecessors' staff**

*(Czech Supreme Court Judgment of 14 July 2016, No. 21 Cdo 3712/2015)*

In its judgment of 14 July 2016, No. 21 Cdo 3712/2015, the Supreme Court opined on the transfer of labour rights and obligations to a new tenant. In this case, the lessor, BOHEMIA-SEN s.r.o., issued a notice of termination of the respondent's lease of commercial premises in the AFI Palác Pardubice shopping centre, in which the respondent operated a café. Subsequent to the lease termination, a contract to lease these commercial premises was executed between the lessor and LINPITRI a.s., which continued to operate the café.

Through these legal steps, the part of the respondent's activity comprising the café operation in the AFI Palác Pardubice shopping centre was transferred to LINPITRI a.s., resulting in the transfer of labour rights and obligations between the respondent and the claimant, which performed work in the café, to LINPITRI a.s., as the successor employer, pursuant to the provisions of § 338(2)(3) of the Labour Code, irrespective of whether the respondent turned the commercial premises over to the lessor completely empty, i.e. without fixtures, fittings or other things serving to operate the café, which did not constitute part of the commercial premises lease.

The Court thus concluded that the transfer of all or part of an employer's activities or tasks to another employer, resulting in the transfer of labour rights and obligations, occurs even where the lease of the commercial premises of the former employer is terminated and a new lease with a new tenant who performs the same or similar tasks is executed; whether or not the commercial premises are leased empty is immaterial.

### **Invalidity of a non-compete clause**

*(Czech Supreme Court Judgment of 19 February 2016, No. 21 Cdo 4393/2015)*

In its judgment of 19 February 2016, No. 21 Cdo 4393/2015, the Supreme Court found a non-compete clause to be invalid because an employee's and employer's obligations thereunder are mutually conditional and inseparable - even where the agreed contractual fine is not a substantive (essential) requirement of the agreement, it must be concluded based on the nature of the agreement and the purpose for which the

fine is established that the agreed contractual fine is inseparable from the rest of the non-compete clause's content and that the invalidity of the agreement on the contractual fine means the invalidity of the entire non-compete clause agreement.

Care must therefore be taken when setting up a contractual fine in a non-compete clause. If, for example, a fine is agreed in an unreasonable amount, the invalidity of the entire non-compete clause may be inferred.

### **Binding nature of a job offer via e-mail**

*(Czech Supreme Court Judgment of 19 February 2016, No. 21 Cdo 3411/2014)*

In this case, the court of final appeal concurred with the opinion that the respondent's electronic offer of employment ("offer letter") did not constitute an expression of will, whereby the respondent would propose the claimant enter into a contract that would bind the parties to execute an employment contract "in the future". In fact, as the Courts rightly stated the offer failed, among other things, to include all the essential elements of an employment contract (pursuant to the provision of § 34[1] of the Labour Code).

The given dispute arose and was adjudicated under the law valid prior to the effective date of new Civil Code No. 89/2012 Coll., which stipulates that a future employment contract shall be in written form; an e-mail without an electronic signature fails to meet this requirement. Pursuant to the law valid as of 1 January 2014, however, these findings of the Court do not stand. A draft future contract is valid even when sent in a simple e-mail with a general specification of the contract content.

Therefore, we strongly recommend considering to whom (and with what content) an offer letter or any other offer is sent, ideally with a proviso that it does not represent a final contract draft or with a stipulated probation period.

### **Liability for damage of an authority issuing an invitation to tender**

*(Czech Supreme Court Judgment of 26 July 2016, No. 25 Cdo 1409/2015)*

In this judgment of 26 July 2016, No. 25 Cdo 1409/2015, the Czech Supreme Court found that an authority issuing an invitation to tender is liable for the correctness and completeness of the tender specification, and must therefore proceed with due caution and care in its preparation. In a situation where, at the time a tender specification is published, there exists an objective fact that is disregarded in the formulated requirements, and tenderers participate in the tender in good faith in the correctness of the documentation based on whose content they have acted, this constitutes a failure on the part of the contract-awarding authority. If a tenderer's bid met the tender procedure requirements and was complete, then in the event of early termination of the tender procedure due to a failure of the contract-awarding authority in its preparation of the tender specification (resulting in the tender not being

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completed), the candidate's costs of participating in the tender were incurred unnecessarily and thus constitute genuine damage. In terms of causation, whether or not the respective tenderer was selected as the winner and actually won the public contract is not decisive.

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We hope you will find *Legal Update* to be a useful source of information. We are always interested in your opinion about our newsletter and any comments you may have regarding its content, format and frequency.

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