Legal Update

September 2019

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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Legislative Amendments

Amendment to the Capital Markets Undertakings Act and other acts

Act No. 204/2019 Coll., amending the Act on Capital Markets Undertakings and other acts, was promulgated in the Collection of Laws on 22 August 2019. The Act transposes Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the promotion of long-term shareholder involvement. According to the Explanatory Memorandum, the Directive aims to ensure long-term shareholder participation in companies whose shares or equivalent securities representing a share in the issuer are admitted to trading on a European regulated market.

The legislation gives the above-mentioned companies the right to know their shareholders and, through a network of intermediaries (in the Czech Republic, these are investment firms, credit institutions and central securities depositories), to know who its shareholders are at a given date. In addition, listed companies are required by law to draw up a remuneration policy and to issue a remuneration report for each financial year; both of these documents are subject to General Meeting approval.

Newly, so-called significant transactions with related parties (i.e. contracts resulting in alienation or acquisition of assets by the issuer of more than 10% of assets or an increase in the issuer's debts of more than 10% of assets) are also regulated where there is an increased risk of damage to the interests, in particular, of a shareholder who is not a related party (e.g. a minority shareholder). Significant transactions are subject to General Meeting approval, with some exceptions, and a company is required to disclose such significant transaction information on its website.

The Act also introduces new obligations for certain investors and other selected entities, e.g. the obligation of the institutional investor and the asset manager to develop an engagement policy regarding the exercise of voting rights, the obligation of the institutional investor to disclose its investment strategy, the asset manager's obligation to inform the institutional investor of the compliance of its investment strategy with the asset management plan or the information duties of the advisor regarding voting.

The amendment comes into effect on 1 October 2019.

Recent Case Law

Reciprocal right of first refusal

(Supreme Court Judgment No. 22 Cdo 2979/2018 of 27 March 2019)

In this case, the Supreme Court dealt with the question of whether the reciprocal right of first refusal of a landowner and the owner of a building established on such land also applies to a co-ownership interest.

The aim of the reciprocal right of first refusal is to unite the ownership of land and buildings established thereon. Since the statutory provisions on reciprocal right of first refusal restrict the contractual freedom of both owners, it must be interpreted narrowly; the regulation of the reciprocal right of first refusal is then not universally applied in the case of co-ownership, but only in cases when the purchase of a co-ownership interest under a reciprocal right of first refusal unifies the ownership of the land and the structure established on it; one example might be a situation in which the owner of land is also the co-owner of ¾ of the structure on it, and the co-owner of the other 1/4 of the structure intends to sell his/her share to a third party; in such a case, the reciprocal right of first refusal of the land owner and the owner of the building established on it and the right of first refusal tied to the co-ownership are both applied.

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Power of attorney

(Supreme Court Resolution No. 20 Cdo 1299/2019 of 21 May 2019)

In this dispute, a judgment ordered the release of a legitimately specified machine, where prior to the commencement of execution proceedings the two parties had entered into negotiations on the voluntary release of the subject of execution, whereupon its release did not occur as the obliged party refused to recognise the power of attorney because it lacked notarization.

The Civil Code lays down the rule that anyone who invokes a private document must prove its authenticity and accuracy. For this reason, the Supreme Court ruled that if neither the principal nor the agent prove the authenticity and accuracy of a power of attorney, a third party has the right to demand proof that such a power of attorney exists and where no such proof is submitted to this third party, it shall not be obliged to discharge its debt to the agent. It is therefore incumbent upon the agent or principal to prove the power of attorney is authentic and accurate; the third party need not take any action.

Shareholder register

(Supreme Court Judgment No. 27 Cdo 660/2018 of 4 June 2019)

Here, the Supreme Court dealt with a case in which joint stock companies are not familiar with all their shareholders in connection with an earlier issue of certificated bearer shares that were transformed into certificated registered shares as of 1 January 2014, whereas such joint stock companies are obliged to maintain a shareholder register. In the Supreme Court's view, the obligation to maintain a shareholder register remains, even if not all its shareholders are known to the company.

The shareholders who had not submitted their shares to the company within the statutory period could not exercise the rights attached to the shares for the duration of the delay. The joint stock company thus maintains the shareholder register to the extent that it includes all shareholders entitled to exercise the rights attached to the shares.

Although a joint stock company is obliged to issue a copy of the shareholder register to a shareholder on request, if all shareholders have failed to fulfil the above obligation to submit the shares to the company, the company will only issue such register to the extent that the information contained in the shareholder register is known to it.

Interpretation of the designation “older generation” in the context of unfair competition

(Supreme Court Judgment No. 23 Cdo 5955/2017 of 29 May 2019)

In this case, the respondent company described the applicants’ products in an advertisement as “great axes of the older generation” and its own competing products as “high-end axes of the new generation”. The subject of the lawsuit was, inter alia, whether such conduct fulfils the general clause on unfair competition or is an act constituting disparagement of a competitor.

The Supreme Court found that the designation “new generation” is linked to the concept of a product technically or technologically improved, innovated or perfected in contrast to products produced earlier, that is to say, “older generation” products. The purpose of placing new products on the market is to replace older products with new ones of higher quality. Consequently, if a competitor uses the designation “older generation” and “newer generation” when comparing two products, it gives the average consumer the impression that one of the products is backward, thereby causing harm to the competitor concerned. In this specific case, it is absolutely irrelevant that the “older generation” product was also positively evaluated, and it is immaterial that the “older generation” product can be evaluated by individual consumers over time; the viewpoint of the average consumer is always decisive.

Limitation of the amount of damages for things brought in

(Czech Supreme Court Judgment No. 25 Cdo 3580/2018)

The treatment of compensation of damage for things brought in can be found in § 2946 et seq. of the Civil Code; in accordance with this provision, the operator of accommodation services is obliged to compensate damage to a thing brought by a guest into premises reserved for accommodation or to stored things brought in for the accommodated guest. However, the amount of this compensation is limited to one hundred times the daily price of the accommodation.

Since the law fails to specify what is meant precisely by 100 times the daily price of accommodation, the Supreme Court dealt here with the interpretation of this provision.

In the view of the Supreme Court, this limit applies to total damage to all property of the guest, not to each damaged thing individually. If more than one person is accommodated in the same lodgings, the basis for calculating the limit of compensation for damage to the property of each of these persons is the daily price for these lodgings divided by the number of persons accommodated therein, if no other way of determining the price can be inferred (e.g. where the price of accommodation is different for a child). If the injured party has paid for accommodation for other persons, this amount cannot be included in the above limit.

At the same time, the Supreme Court found the appellate court to have erred when it considered a stay lasting from the 4th to the 6th of September as a three-day stay. In the Supreme Court's view, in such a case, it should be taken into account that the arrival and departure dates do not cover an entire day, and it stated that such a stay must be regarded as a two-day stay.

We very much hope you will find Legal Update a useful source of information. We’re interested in your feedback on this newsletter, in particular its content, format and frequency.

Please e-mail any comments to simon.zlotir@weinholdlegal.com or contact your usual partner or manager.