HAVEN
ADVOKÁTNÍ KANCELÁŘ

LEGAL NEWS OCTOBER 2020

Dear clients, let us to introduce several news from Czech legislation and judicial decisions appeared during October 2020 and previous months. We will inform you about next changes soon.

Commercial Law

+ The effectiveness of the major amendment to the Business Corporations Act is approaching

Due to another epidemiological measures one of the most important topic has been overshadowed. In January 2021, the Act No. 33/2020 Coll. amending the Business Corporations Act, is coming into force with major amendments, which should the business partners be prepared of. Because of those changes, the Act imposes the latest possibility of the constituent documents' adaptation – they need to be revised. It should not be forgotten that the founder members often replaced the constituent document's provisions with literal citation of the Act which will no longer be valid from 2021. We recommend you revise and compare these documents with the new provisions. It also should be emphasized that the Act brings many changes which would like to some of the business partners use (e. g. extension of rights and obligations that can be incorporated into a share in a business corporation). The amendment also extends the scope of details entered in the Commercial Register. These must be registered no later than 30. 6. 2021.

Personal Data Protection

+ The highest fine of the ÚOOÚ history

The Office For Personal Data Protection (ÚOOÚ) sanctioned a company engaged in the sale of used cars with a fine of 6 000 000 CZK for unrequested commercial messages (spams), which were sent also to recipients who did not give their consent. The ÚOOÚ in this connection also points out that the data controller must be able to prove that the subject of personal data gave its unequivocal consent to the sending of commercial messages.

From case-law

+ Entitlement to deduct VAT on a forced investment

In the judgment from 12. 9. 2020 the Court of Justice of the EU (CJEU) in case *Mitteldeutsche Harstein-Industrie AG* (C-528/19) answered an preliminary question, whether the company is entitled to deduct VAT in the case of road construction work carried out for the benefit of the municipality. In this case, the company wanted to open its quarry, which the German offices allowed under condition of road construction, which belongs to the municipality, to the quarry. Its construction was essential for the operation of the quarry. According to CJEU, it is not decisive that the road will also be free of charge accessible by public, because it was constructed primarily for the needs of the quarry operator. Therefore, according to CJEU, the company has from the works made on the road construction the entitlement to deduct VAT to the extent that the work was necessary to ensure economic activity. The CJEU does not consider the operation of quarry as a consideration for the construction works on the municipal road.

+ 10 years as an evidently disproportionate length of proceedings

The Constitutional Court (ÚS) upheld in its judgment from 19. 10. 2020, ref. III. ÚS 208/20, the constitutional complaint, in which the complainant sought the annulment of an interim measure consisting in the restriction of the right to dispose of immovable property owned by the complainant. The court ordered this interim measure in 2009 and although the ÚS did not find any procedural delays, in the its judgment ruled the fact that the proceedings (and therefore the interim measure) have been ongoing for 10 years and such a duration of the interim measure is evidently disproportionate and annulled the interim measure.

Because of the following development of the epidemical situation in the Czech Republic, we would like to inform you about next government's measures put in place to mitigate the epidemic.

+ Amendment to the Act of Investment Incentives

Chamber of Deputies of the Czech Republic adopted a bill of the Act of Investment Incentives' amendment. The aim of this act is to stimulate private investments worth up to 60billions CZK because of the measures, which could otherwise be affected by the epidemiological situation. Investment incentives are provided in the form of a "promise" – i. e. that the support is granted by the decision in a binding manner, however, it is usually drawn only after the so-called general conditions have been met. The general conditions are different according to the type of supported investment and are linked mainly to to the investment of the minimum value in tangible and intangible fixed assets, to the creation of a minimum number of new jobs and, more recently, to the condition of higher added value. These general conditions must be always met within 3 years of the issuance of the commitment decision. In case that the investor does not meet the conditions within 3 years from the issuance of the decision of the promise, the decision of the promise ceases to be valid according to law; in such a case, the beneficiary cannot draw on the investment incentives and, if some form of incentive has already been paid to it, it must repay all the aid drawn. Therefore, it is proposed to reintroduce the possibility of extending the deadline for fulfilling the general conditions in justified cases, as a measure to mitigate the impact of the epidemic on the beneficiaries of investment incentives.

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Lex covid justice II.

As a result of the current measures, the Ministry of Justice of the Czech Republic prepared an amendment of an act called *lex covid justice II.*, which tries to mitigate the worst effects of coronavirus on business in the Czech Republic, namely bankruptcies of entrepreneurs. The Chamber of Deputies adopted the bill of the statute on 23. 10. 2020. The statute extends the range of facts significant for the non-cancellation of the approved debt relief, more likely extends the possibility to suspend the implementation of the reorganization plan without the threat of turning the reorganization into bankruptcy. The entrepreneurs who are in trouble because of the coronavirus, the obligation to file for insolvency is postponed. The institute of the so-called extraordinary moratorium is also being renewed, with a new deadline of 30. 6. 2021. The current moratoria are extended automatically by 3 months by law

Following measures

It should be emphasized that the regime A of the Antivirus program has been extended until the end of this year as a result of the government's decision from 14. 10. 2020. We have also already informed you that it is assumed that Antivirus builds on kurzarbeit established by law. The Ministry of Finances of the Czech Republic adopted another **liberation tax package**, which forgives the payment of certain advances (e. g. VAT on the gratuitous supply of selected medical goods and services). Also the interest on late VAT in September, October and November 2020 and the advances on income tax due in the period from 15. 10. 2020 to 15. 12. 2020, the tax subject may ask the tax administrator to delay the further payments. The condition of the pardon is an notification to the tax office that most of the income of the tax payer came from defined activities. Tax returns and control reports need to be filed in the standard deadline. The government also extended some grant programs (mainly **Covid rent, Covid Bus and Covid Sport II**). Another grant problem for entrepreneurs in in the food industry. On 16. 10. 2020 the government adopted new bill of the **Act on the compensation bonus for self-employed persons and partners of small s.r.o.** The compensation bonus will be 500 CZK per day in the period from 5. 10. 2020 to 4. 11. 2020 (15 000 CZK in total). For the bonus are entitled only those entrepreneurs who do business mainly in area, which was banned or restricted by the government. The so-called "agreement employers" will also receive the compensation bonus.

Do not hesitate to contact us with any particular question.

We will inform you about next legal news.

YOU'RE NOT ALONE

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