LEGAL NEWS
OCTOBER 2022

HAVEN
ADVOKÁTNÍ KANCELÁŘ

Dear clients, let us to introduce several news from Czech legislation and judicial decisions appeared during October 2022 and previous months. We will inform you about next changes soon.

Public administration

+ Compulsory establishment of data mailboxes

On 1st January 2023, an amendment to the Act on Electronic Acts and Authorised Conversion of Documents will enter into force, making it mandatory to establish data mailboxes for all entities listed in the register of persons.

Although there are still ongoing debates about whether a data mailbox will eventually be established for all natural persons, it is already certain that data mailboxes will be compulsorily established for all sole proprietors and legal entities that are registered in the statutory register (e.g. associations or associations of unit owners). Data mailboxes will be set up automatically for the obliged entities and the access data will be sent to them by letter. Data mailboxes will then be made available automatically to entities that do not take over the access data and never log in.

If the obligation eventually applies to all natural persons who have a qualified means of electronic identification (e.g. a bank identity), access data will not be sent to them because they will continue to log in to the data mailbox using a means of electronic communication.

+ Illegal publication of councillors' property declarations

On 25th October 2022, the Constitutional Court (ÚS) ruled in ruling No. IV ÚS 579/22 that the Ministry of Justice should not have continued to publish the property declarations of municipal and regional councillors after the Constitutional Court's former ruling which declared this practice as unconstitutional. If the Ministry did so, even in a situation where the former ruling of the ÚS was not yet enforceable, it acted unconstitutionally. Consequently, the councillors concerned are entitled to compensation for non-pecuniary damage caused by the incorrect official procedure.

Commercial law

+ Amendment to the Act on the Registration of Beneficial Owners

On 1st October 2022, a significant amendment to the Act on the Registration of Beneficial Owners came into force.

The amendment extended the existing legal obligation to register the beneficial owner also to churches, religious societies, trade unions or associations of unit owners. The very definition of the beneficial owner has also changed. The amendment therefore also affects entities already registered, which have to check whether they are not required to change their registration as a result of the new definition of beneficial owner. On the positive side, data on the vast majority of registered entities (even those to which the obligation applies only from 1st October 2022) will be entered in the register automatically.

For the rest, the first registration will be exempt from the fee.

+ Damage caused to an entrepreneur by a breach of a non-compete by his representative

In its judgment of 26th July 2022, Case No. 21 Cdo 1316/2021, the Supreme Court (NS) dealt with the issue of violation of the prohibition of competition by an entrepreneur's representative who is also his employee.

The NS concluded that the claims of the entrepreneur in such a case are assessed according to the general regulation of representation contained in the Civil Code (OZ). According to the OZ, the entrepreneur has two options for responding to a breach of the non-compete – either he can claim that the conduct should not be attributed to him at all and should be attributed to the employee who represented him, or he can proceed to claim compensation for the damage caused by the conduct of the employee who represented him. If the entrepreneur chooses to claim damages, it is possible to proceed under the Labour Code, provided that the damage was caused by a culpable breach of duty in the performance of representative´s work tasks or in direct connection with it.

In addition to the above, the conduct may be attributed to the employee-agent within three months from the date on which the entrepreneur became aware of the conduct, but no later than one year from the date on which the conduct objectively occurred. The NS added that the right to compensation for damage caused to an entrepreneur by a breach of the non-competition clause by his representative does not expire if the period laid down for claiming imputation of the conduct to the employee-representative expires in vain.

+ Blocking mergers of undertakings not meeting the turnover conditions

In its first ever decision (the *Illumina & Grail* case), the European Commission has blocked a merger between two US companies operating in the European market, even though they did not meet the turnover conditions for notification of the merger.

However, the companies were still major players in the biotechnology market. Although the merging companies did not have to notify the merger to the Commission, the Member States referred the transaction to the Commission under European competition law because they considered that the transaction affected trade between Member States and threatened to distort competition significantly. The European Commission upheld the Member States by pointing out that, despite the proposed measures, the merger could lead to the cutting off other firms from the technologies provided by one of the merging companies.

Taxes

+ Repair of a destroyed building or construction of a new one?

The Supreme Administrative Court (NSS) dealt with a case in which the issue was whether a building had been destroyed by fire and the construction work was therefore

aimed at building a new building, or whether the construction work carried out had to be considered only as a repair of a building which had not been destroyed by fire.

The tax administrator assessed the matter as the construction of a new building and therefore imposed corporate income tax on the taxpayer (which viewed the matter as the repair of a burnt-out building, the costs of which it had included in tax deductible expenses on a one-off basis), because the taxpayer should have claimed the payment for the construction work as tax depreciation.

In its judgment of 14th September 2022, No. 7 Afs 132/2022-22, the NSS sided with the tax administrator's opinion. According to the NSS, a construction is created at the moment when it is built at least to a stage from which all further construction work is directed towards the completion of the thing so determined in kind and individually. This occurs in the case of above-ground buildings when the layout of at least the first floor is already clearly and unmistakably visible. Similarly, the extinction of a building as a thing occurs in the case of above-ground buildings when the layout of at least the first floor of the original building is no longer visible (i.e. usually by the destruction of the perimeter masonry below the level of the ceiling above the first floor, usually with the simultaneous removal of the masonry of the partitions). The decisive factor in assessing the demise of the original building is therefore what has been removed, not what has been newly built.

In the event of complete destruction of the perimeter walls, as in the present case, it is undoubted, according to the NSS, that the original building has been destroyed.

Procedural law

+ Proof of transfer of the promissory note to the series in enforcement proceedings

If the enforced obligation passes or is transferred to another during the enforcement proceedings, this must be proved in the enforcement proceedings by a document issued or certified by a state authority or a notary, unless it follows directly from a legal regulation.

The NS has now ruled in its resolution of 26th July 2022, Case No. 20 Cdo 1415/2022, that if the condition for the transfer of a bill of exchange to a rank is, in addition to the endorsement, its delivery to the transferee, the document issued or certified by a state authority or notary must also prove the delivery of the bill of exchange to the transferee. Mere verification of the signature of the endorser (the existing transferor) on the bill of exchange is not sufficient.

+ Legal succession of the defendant against whom the irreplaceable performance is recovered

In its resolution of 29th June 2022, Case No. 25 Cdo 1328/2021, the NS confirmed that if the subject matter of the proceedings is a claim whose satisfaction can be achieved only by the defendant personally (e.g. creation of a work of art, performance of another activity by the defendant personally, refraining from a certain act, compensation for non-pecuniary damage caused by interference with personality rights, etc.), the obligation ceases upon the death of the defendant debtor.

However, in relation to compensation for non-pecuniary damage caused by interference with personality rights, the above can only be applied to moral compensation. Therefore, if the applicant seeks monetary compensation for the damage, that obligation is transferred to the defendant's successor in title.

+ Serving a summons for imprisonment

In its ruling of 11 October 2022, Case No. II ÚS 1693/22, the ÚS emphasised that the service of documents in criminal proceedings must generally be carried out in a predictable manner.

In the present case, the complainant could legitimately have expected that the summons would be sent to the address to which he had been repeatedly and successfully served with documents in the recent past, not to the address he had given at the hearing in 2018. Thus, the summons to voluntarily enter into prison was not properly served on the complainant.

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