



Legal update

July 2021

Weinhold Legal

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The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics listed in this bulletin should be consulted before any investment decisions are made.

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News in legislation

Amendment in respect of further computerization of public authorities' procedures

On 9 July 2021, Act No. 261/2021 Coll. was published amending certain acts in connection with the further computerization of public authorities' procedures, which brings important changes **effective, with a few exceptions, from 1 February 2022.**

Act No. 85/1990 Coll., on the Right to Petition, as amended, introduces a tool for the compilation of electronic petitions. Through this tool, it will be possible to draw up an electronic petition, affix signatures and deliver it to a public authority. Citizens' signatures on the petition will be replaced by a declaration of support for the petition certified by the citizen using a means of the electronic identification system. The data held in the petition tool on the petition and the number of signatures on the petition will be publicly available, and the petitioner will be able to obtain an electronic extract.

Act No. 365/2000 Coll., on public administration information systems and on amendments to certain other acts, as amended, has also been amended. The amendments concern, in particular, the requirements for the use of cloud computing by public administration bodies. Cloud computing is newly defined as ensuring the operation of a public administration information system or a part thereof using remote access to a shared technical or software resource that is made available by a cloud computing provider and configurable by the administrator of the public administration information system.

The amendment to Act No. 300/2008 Coll., on Electronic Acts and Authorized Conversion of Documents, as amended, unifies the moment of delivery of private and public documents. The moment of delivery of a private-law document will therefore be the moment when the person who, concerning the scope of their authorization, has access to the delivered document logs into the data box. If that person does not log in to the data box within 10 days of the date on which the document was delivered to the data box, the document shall be deemed to have been delivered on the last day of that period.

The amendment will also change the automatic establishment of data boxes. A data box will be automatically established for a natural person immediately after that person first uses an electronic identification device issued under a qualified electronic identification system against a person who provides proof of identity under the law governing electronic identification.

Last but not least, Act No. 111/2009 Coll., on the Basic Registers, as amended, was amended. The Act newly supplements how private data users can use data from the public administration information system and sets out the conditions for sharing data between basic registers, between basic registers and agency information systems, and between individual agency information systems using the basic register information system and the shared service information system. The authorization of a public authority to draw data from the basic registers and the agency information systems will depend on the registration of the agenda and the competence of the specific public authority.

New occupational safety regulation concerning technical equipment operation

On 30 June 2021, Act No. 250/2021 Coll., on occupational safety in connection with the operation of reserved technical equipment and on amendments to related acts, was adopted and is set to take effect on 1 July 2022.



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The Act regulates the issue of the safe operation of reserved technical equipment, defined as pressure, lifting, electrical or gas equipment which, in operation, by its nature or accumulated energy, as a result of improper use, the occurrence of operational risks causing dangerous situations or failure to comply with the conditions of safe operation, poses a serious risk to the life, health, and safety of natural persons.

The Act defines the basic requirements and obligations of legal entities, entrepreneurs, and natural persons regarding the activities within the scope of repair, maintenance, revision activities, and testing of reserved technical equipment, including the requirement for their safe operation and the reporting of an accident in connection with the operation of reserved technical equipment, resulting in property damage seemingly exceeding CZK 5,000,000. The Act sets out requirements, in particular, for the professional competence of persons and the acquisition of authorization to operate on reserved technical equipment.

The controlling body is the State Labour Inspection Office and the authorized organization, which is currently the Technical Inspectorate of the Czech Republic.

Current case law

Shareholders' agreements and guidelines for business management

(Judgment of the Supreme Court of the Czech Republic of 16 March 2021, Case No. 27 Cdo 1873/2019)

The plaintiff entered into a shareholders' agreement and voting rights agreement with the defendants (the „Shareholder Agreement“), which included a provision for the allocation of the right to nominate members of the board of directors. The shareholders were obliged under the agreement to ensure that their nominated directors agreed on the amount of funding required and to deliver to the parties a written request for funding together with a draft loan agreement. Any breach of the obligation was affirmed by a contractual penalty of CZK 1,000,000. The subject matter of the litigation was the claim for payment of the contractual penalty.

The courts of lower instance found the stipulation in the shareholders' agreement to be invalid for contravention of Section 194(4) of Act No. 531/1991 Coll., the Commercial Code („the Commercial Code“), which prohibited giving instructions on business management to the board of directors of a joint-stock company. The scope of business management includes, in particular, decisions on the company's operations and related internal matters. However, the prohibition on giving instructions on business management to the board of directors does not apply to strategic decisions of the company. The Supreme Court notes that in some cases, the question of securing funds may „go beyond ordinary business management“, e.g., when financing major new projects, and thus be a strategic decision. The Supreme Court also recalls the principle of interpretation that does not lead to the conclusion that the legal transaction is void if such an interpretation is possible.

In conclusion, the Supreme Court held that an agreement binding shareholders to instruct the board of directors on business management would be invalid, but shareholders may validly agree to intercede with board members for a particular resolution of a particular matter falling within the scope of business management.

Similarly, it is permissible for shareholders to commit to a particular outcome, e.g., that the board of directors will take a particular decision

on a particular matter. In this case, there would then be an assumption of responsibility for a particular outcome.

Since the Court of Appeal did not assess whether the above-mentioned provision of the shareholder's agreement could be regarded as a commitment to a direct agreement or as a „guarantee of a result“ and no conclusion could be drawn as to the nature of the article of the shareholders' agreement in question, the Supreme Court overturned the decisions of both the Court of First Instance and the Court of Appeal and remitted the case back to the Court of First Instance.

Termination of pregnant employee's employment during probationary period

(Judgment of the Supreme Court of the Czech Republic of 16 March 2021, Case No. 21 Cdo 2410/2020)

The employer terminated the employment of a pregnant employee during her probationary period under Section 66 of Act No. 262/2006 Coll., the Labour Code, as amended (the „Labour Code“) „without giving any reason“. The employee sought a declaration that the termination of her employment was invalid on the grounds of discriminatory conduct. The Court of First Instance dismissed the action, and the Court of Appeal upheld its decision. However, the Supreme Court annulled both decisions and remitted the case back to the court of the first instance.

The Supreme Court stated that it is possible to terminate the employment relationship with a pregnant employee during her probationary period, as Section 53(1) of the Labour Code on the prohibition of termination by the employer during the protection period does not apply to the termination of employment during the probationary period, however, this conduct must also be assessed in terms of discrimination and equal treatment.

It is therefore possible to terminate a probationary employment relationship with a pregnant employee, but only if it is for reasons unrelated to her pregnancy.

The Supreme Court further found that it is possible to validly negotiate a probationary period even if the employee performed the same type of work for the same employer based on work performance agreement or a work activity agreement, and even more so for an employment relationship with a different type of work.

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