



Legal update

July 2022

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 decisions are made.

Banking, Finance & Insurance:

Daniel Weinhold, Václav Štraser

Mergers and acquisitions:

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Insolvency and Restructuring:

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IT, Media & Telecommunication:

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Real estate:

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Personal Data Protection:

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Labour law:

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Slovak law:

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Dispute resolution:

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Competition law / EU law:

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Start-ups and Venture Capital:

Pav Younis, Martin Lukáš, Jakub Nedoma

Public procurement & Public sector:

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News in Legislation

Amendment to the Cyber Security Act

On 20 July 2022, the Senate of the Parliament of the Czech Republic approved a government bill amending Act No. 181/2014 Coll., on Cyber Security. The aim of the amendment is mainly to terminologically link the Czech legal system to the Cyber Security Act and to set a deadline for issuing a decision in the procedure after the application for authorisation has been submitted. The amendment establishes the national cybersecurity certification authority, which is the National Office for Cyber and Information Security, as the central authority of the state administration. Furthermore, the amendment adds new offences which can be divided into two categories according to the upper limit of the amount of the potential fine. More serious violations can be fined up to CZK 5,000,000, while less serious ones can be fined only up to CZK 1,000,000. The amendment, which was supposed to be implemented by the Member States by 28 June 2021, is thus more than a year late in being signed by the President of the Republic. In view of this fact, it is proposed that the amendment should enter into force on the day following the date of its promulgation in order to reduce the delay in adaptation as much as possible.

News in Case Law

Removal of a managing director from office for breach of duty in the performance of his duties

(Order of the Supreme Court File No.27 Cdo 1175/2021, of 29th March 2022)

The appellant sought annulment of the resolution of the general meeting by which she was removed from her position as managing director. The Court of First Instance granted her application, since, in its legal opinion, the vote on the removal of the appellant from the office of managing director could not be considered valid under section 173(1)(c) of the Business Corporations Act, since the agenda set out in the invitation to the general meeting stated only that it was to be an 'ordinary' vote on the removal of the appellant from the office of managing director. However, the Court of Appeal dismissed the appellant's application for annulment of the resolution of the general meeting on the removal on the ground that if the managing director is removed for breach of duty in the performance of her duties, then only 'removal of the managing director' and her name in the invitation to the general meeting is sufficient.

The appellant filed an appeal against this decision, on the basis of which the Supreme Court ruled that if the invitation to the general meeting states that the agenda will include the "removal of the managing director" without specifying the specific reason for the removal, and if the draft resolution of the general meeting corresponds to this, the shareholders may reasonably expect that the general meeting will decide only on the "removal of the managing director" (without further details).

Furthermore, the Supreme Court addressed the necessity to inform the shareholders that the removal of the managing director is due to a breach of duties in the performance of his/her duties and to specifically define the reason for this breach. On this issue, the Court stated that it is necessary to state in the invitation to the general meeting that the removal is for breach of duty, including a (specific) definition of the duty breached. This is in order to enable the shareholders to secure the necessary information in good time, to verify the merits of the proposal and to consider whether and how to express their views on it at the general meeting and whether to vote in favour of it.

However, it is important that if the dismissed managing director is also a shareholder, this fact, within the meaning of Section 169(3) in conjunction with Section 173(1)(c) of the Business Corporations Act, also affects the assessment of the quorum of the general meeting and the number of votes required for the adoption of the proposed resolution, which may be a circumstance affecting the decision of the shareholders whether to attend and vote at the general meeting.



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Unless the invitation letter states that the managing director is to be removed from office for breach of duty in the performance of his or her duties, including a (specific) statement of the duty he or she was to breach in the performance of his or her duties, the managing director cannot be removed from office at the general meeting for breach of duty in the performance of his or her duties.

For these reasons, the court concluded that in this case the general meeting could decide on the removal of the appellant from her position as managing director (without specification), but not on the grounds of breach of duty in the performance of his duties under the terms of section 173(1)(c) of the Business Corporations Act

Although the Supreme Court's decision may at first sight seem too formalistic, it must be seen that the issue in the case at hand was whether a shareholder would be able to exercise his voting rights under section 173(1)(c), i.e. in a situation where a shareholder who was also a managing director was to be removed from his position as a member of the company's body for breach of duty in the performance of his duties. It was therefore not just an 'ordinary' removal of a managing director from office, where the question of the exercise of voting rights would not be addressed.

Exclusion from holding the office of a member of the statutory body of a business corporation

(Order of the Supreme Court File No. 27 Cdo 1831/2021, of 30th March 2022)

In these proceedings, the petitioner, as a shareholder, sought the expulsion of a member of the company's board of directors (hereinafter referred to as "the expelled member") from his office on the grounds of repeated and serious breaches of the duty to act with due care in the performance of his duties as a member of the board of directors. According to the petitioner, the expelled member committed these breaches of duty primarily by entering into contracts on behalf of the company with "persons close to him" without notifying the board of directors or the supervisory board (pursuant to the conflict of interest rules), and by entering into such contracts without proper discussion and approval by the board of directors under the rules of business conduct. Specifically, these were a settlement agreement and a netting agreement that the expelled member had entered into with another company of which he himself was a shareholder and director, and a consultancy agreement that the expelled member had entered into with his wife on behalf of the company. Finally, the expelled member was alleged to have breached his duties by concluding contracts on behalf of the company with persons who were not sufficiently qualified or authorised to carry out the activity in question.

The Court of First Instance upheld the appellant's argument that the expelled member had repeatedly and seriously breached the duty of care over the last three years and therefore granted the motion to expel him from his position as a member of the Board of Directors. However, the Court of Appeal dismissed the petitioner's motion. It argued that, although the mere failure to comply with the notification obligation constitutes a breach of the statutory body member's duty, if that conduct did not lead to damage, it cannot constitute a serious breach of the statutory body member's duty. Furthermore, the Court of Appeal stated that the business judgment rule applies to business decisions and not to breaches of the notification obligation in the case of a conflict of interest or to breaches of the duty of collective decision-making of the statutory body of a corporation.

The Supreme Court then ruled that the law distinguishes two basic cases when a member of the statutory body may be expelled from holding office. Firstly, there is the situation where the performance of the office of a member of the statutory body (if other statutory conditions are met) has led to the bankruptcy of the business corporation (Section 64 of the

Business Corporations Act). Furthermore, it is a situation where a member of the statutory body has repeatedly and seriously violated the care of a good manager or other care associated with the exercise of his/her office under another legal regulation during the last three years (Section 65(1) of the Business Corporations Act). Neither of these facts is - according to the express wording of the law - linked to the fact that the breach of selected (statutory) duties of the expelled member of the statutory body must have caused damage to the property of the corporation. Therefore, if the Court of Appeal in the present case proceeded on the basis that only such a breach of due care of a director or other care connected with the performance of his or her duties under another legal regulation, which leads to damage to the property of the corporation, is serious (within the meaning of section 65 of the Business Corporations Act), its assessment of this legal issue is incorrect.

Furthermore, the Supreme Court stated that a (serious) breach of due care (for which a member of the statutory body may be expelled from office pursuant to section 65(1) of the Business Corporations Act) may consist in a number of various actions of a member of the statutory body, which do not necessarily have to be taken directly in the course of business decision-making (for example, when dealing with business partners). The standard of care of a good manager does not only apply to the actions of a member of the statutory body on behalf of the business corporation externally or to decision-making within the framework of business management, but also applies to acts of (internal) administration of the business corporation.

Application for deletion of data from the full extract from the Commercial Register

(Order of the Supreme Court File No. 27 Cdo 2703/2021, of 23rd March 2022)

In these proceedings, the appellant sought the deletion of her "personal" details from the full extract of the company register of the company, which was struck off the register in 2020. The appellant argued in the proceedings before the General Courts that these personal data were easily traceable and, given that the company in question had been liquidated and ceased its activities, the appellant saw no reason for their further disclosure. The courts dismissed the application and the Supreme Court also dismissed the appeal on the ground that a fact which had been entered in the commercial register could not subsequently be deleted from the 'history' of the commercial register, i.e. in such a way that the fact would not appear even in the 'full extract' from the commercial register, since otherwise it would be meaningless to obtain a full extract from the commercial register.

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