EVERSHEDS SUTHERLAND

Legal News

Overview of important legislative changes in the Czech Republic and Slovakia and how to start a business in Latvia

December 2021

Surfin'in CZ SK

Even though the Czech Republic and Slovakia are among the few landlocked countries in Europe, our lifes have been shaped by waves for almost two years now. Like surfers in Hawaii, we wait anxiously to see if another wave is coming and discuss whether it is the third, fourth or even fifth. Unfortunately, we are not talking about sun, sand and ocean waves, but COVID, which unfortunately still accompanies us. While the seafaring nations at sea have learned to deal with imponderables and adapt to the sea, inland people prefer to plan their lives and keep them under control. With COVID, however, planning and control have become a thing of the past. Often, on Wednesday, you don't know what will apply on Monday, whether certain sectors will go into lockdown and for how long, whether you have to or are allowed to test employees, whether your planned business trip can still go ahead or you have to go into quarantine, whether the PCR test is valid for 48 or 72 hours, etc. As a lawyer with insight into a wide variety of business sectors, one can see a few commonalities. Businesses need to make decisions quickly and adapt to the ever-changing situation. Therefore, lawyers are also expected to be flexible and have a short response time. Instead of the longer-planned meeting in a suit or costume at the law firm, managers spontaneously meet virtually in their living room, and no one is surprised about creative T-shirts, children and pets in the background anymore. In addition to the sometimes chaotic short-term business, however, it can be observed that companies are sticking to their longer-term plans such as company acquisitions, construction projects, factory expansions, market entries and so on. Despite all the frustration about the umpteenth wave including the lockdown, we all assume that the last wave will subside at some point. But before that comes Christmas. We wish you health, peace, relaxation and a good start into the year 2022.

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Major changes in the rules for offsetting the oldest debt

On 1 July 2021, Act No. 192/2021 Coll., amending, *inter alia*, Act No. 89/2012 Coll., Civil Code, as amended (the " **Amendment**" and the "**Civil Code**"), entered into force. Among other things, the amendment changes Section 1932 of the Civil Code, which determines the order of the debtor's payment of individual components of the debt in a situation where this issue is not contractually regulated or determined by the debtor.

The amendment brings two changes in this regard:

First change – greater creditor protection

According to the current regulation, *if the debtor is to pay interest and costs associated with the enforcement of the receivable on the principal, the payment is calculated first on the costs already determined, then on default interest, then on interest, and finally on the principal*. By law, the debtor was entitled to unilaterally determine that it would pay the principal first, in which case interest and costs already determined also bore interest. This regulation was perceived as very benevolent, as it favoured the debtor at the expense of the creditor, especially in the case of long-term loans. In practice, this advantage was usually addressed by a specific contractual arrangement. However, if the parties to the contract did not remember such a situation, the rules of the Civil Code were followed.

The Amendment addresses this situation by making the debtor's choice of which debt component will be repaid preferentially subject to the creditor's consent. This, of course, applies unless otherwise agreed between the parties in this regard.

Second change – greater consumer protection

The Amendment also introduces special rules in consumer relations. The current regulation favoured the debtor's payment of interest first over payment of the principal. If the debtor was in arrears, this created a risk of an excessive increase in accessories, often leading to an inability to repay the debt principal. **The Amendment provides greater protection for consumers as potentially more vulnerable debtors, by prioritising payment of the principal first**. It is based on the assumption that the debtor-consumer should be able to stop the increase in debt by repaying the principal at a certain point. An agreement with a consumer that violates this rule will be void.

Our recommendation

The new rules introduced by the Amendment must be taken into account both in the payment of debts and in the preparation of contractual documentation. If the consumer is a party to the contract, one will need to pay attention to the correct way of offsetting payments in accordance with the law.

Jiří Brabec | Associate

New rules for the minimum wage in international transport (Mobility Package)

By 2 February 2022 at the latest, the EU Member States must implement the new EU directive in the field of international road transport, which, among other things, fundamentally changes the rules for calculating the minimum wage for drivers or certain information obligations of carriers.

For Czech carriers, it is important that in the so-called bilateral transport of goods or in mere transit through another EU country the minimum wage rules of this state do not apply. On the other hand, carriers will have some new obligations for which it is high time to prepare.

Ondřej Šudoma | Associate

Break time and entitlement to pay

The Court of Justice of the EU heard the case of a Czech firefighter whose employer had ordered him to interrupt his lunchbreak and be ready to work on call within two minutes (he was equipped with a walkie-talkie for this purpose). The employee demanded payment of wages for these breaks. The employer did not consider the lunchbreak to be working hours and did not pay the employee's salary during this time. The Court of Justice of the EU concluded that an employee is entitled to remuneration for this period, as the restrictions imposed on breaks are such as to objectively and significantly affect the employee's ability to freely use the time during which his or her professional services are not required as he or she sees fit. Therefore, if the employer imposes similarly restrictive limitations on employees (whether for breaks or on-call time), it should always carefully consider whether these hours should be classified as working hours.

Ondřej Beneš | Senior Associate

Parent company's liability for a subsidiary's breach of competition law

The Court of Justice of the European Union delivered a judgment in early October ruling on a preliminary question from the Provincial Court of Barcelona concerning the extension of liability for infringements of Article 101 TFEU (prohibition of agreements that eliminate/restrict/disrupt competition) from a parent company to a subsidiary. The CJEU defined an "undertaking" within the meaning of Article 101 TFEU as an economic unit which, although legally composed of several entities with separate legal personalities, is a single entity within which there is joint and several liability between the various entities. This means that if two conditions are met, i.e. (i) there is at least one entity within the group that has infringed Article 101 TFEU and this has been decided by the Commission or a national court, and (ii) the parent company carries out activities related to the subsidiary, the responsibility of any entity in the group can be attributed, and not – as has been the case so far – only to the parent company for the activities of its subsidiary.

Barbora Bugová | Junior Associate

Length of enforcement proceedings and calculating debt recovery

On 1 January 2022, an amendment to the Code of Enforcement will enter into force, which will bring changes for both debtors and creditors. One of the most fundamental changes is the limitation of the length of the enforcement proceedings to six years. If the amount sufficient to cover the costs of enforcement is not recovered during this period, recovery can continue only if the creditor makes a deposit.

The change in the method of calculating the amount to be recovered is designed to prevent the increase of the debt. It will preferentially be paid on the costs of enforcement and on the principal, and only then on interest, interest on arrears and the costs of the entitled party.

Paulína Macháčová | Associate

Increase in the minimum wage to CZK 16,200

From 1 January 2022, there will be a further increase in the minimum wage by CZK 1,000, which will reach CZK 16,200 per month and should thus be around 41% of the average wage in 2022. Along with the minimum wage, the lowest guaranteed wages increase in eight groups of jobs, graded mainly according to their complexity and responsibility, and range from CZK 16,200 to CZK 32,400. Simultaneously with the minimum wage increase, there will be a corresponding increase in other indicators that are linked to it, such as the minimum amount of supplement for work in a difficult health environment, the minimum assessment base for health insurance or the maximum amount of tuition fees.

Radek Matouš | Partner

In brief

New rules for delivery to data boxes

From 1 January 2022, the new regulation will apply to private messages sent via a data box. Newly, only a natural person and not a legal person should be able to make delivery inaccessible, and the fiction of delivery will apply (the same as for messages sent by state authorities).

Katarína Jendželovská
Associate

Notarial deeds can now be drawn up remotely

On 1 September 2021, an amendment to the Notarial Code came into force, which allows notarial deeds to be drawn up "remotely" by videoconference or for a notary to verify the authenticity of an electronic signature.

Michal Růžička
Senior Associate

Claims that can be settled at any time in insolvency proceedings

Creditors' claims arising from contracts may be claims on assets that can be satisfied in full at any time after the insolvency decision, only if the claim is a contract concluded at the earliest after the commencement of insolvency proceedings or the announcement of a moratorium.

Tomáš Jelínek
Senior Associate

Slovakia | Bratislava

Restrictions on disposable plastic products

In November 2021, an amendment to the Waste Act was adopted, which introduced measures to reduce the consumption of certain disposable plastic products. Below we bring you an overview of some of the new obligations that await us.

Restrictions on consumption

For example, from 1 December 2021, a producer of disposable plastic beverage glasses and food containers who provides them to the final consumer for the consumption of food and beverages at a place other than the point of sale is obliged to:

a) provide them for a fee; it must inform the final consumer of this,

b) offer the final consumer a reusable alternative, or

c) offer a biodegradable alternative.

In addition to the above restrictions, the amendment also contains an explicit ban on providing the final consumer with disposable plastic products. It is prohibited to provide disposable plastic products in permanent public and fast-food establishments as well as at public events if food and beverages are to be consumed at the point of sale.

In this context, an obligation has been introduced for organisers of public events to ensure that the subsequent separate collection of biodegradable products is carried out.

To reduce consumption, new requirements are also set for the plastic products themselves:

a) from 3 June 2024, plastic caps will have to be attached to the beverage packaging (e.g. beverage bottles),

b) from 1 January 2025, PET beverage bottles will have to contain at least 25% recycled plastics,

c) from 1 January 2030, all beverage packaging (i.e. not only PET bottles) will have to contain at least 30% recycled plastics.

Labelling of disposable plastic products

To increase awareness of the composition of selected products, manufacturers of beverage glasses, sanitary napkins, tampons, wet wipes and tobacco products with filters are obliged to label the product with information about the presence of plastics and its negative effects on the environment, as well as the most appropriate ways of handling the product or disposal methods that need to be avoided.

Extended responsibility for manufacturers of special plastic products

From 1 January 2023, additional obligations will be added to manufacturers of disposable plastic products, such as lightweight plastic bags, food containers, beverage packaging and the like. For example, they will be obliged to bear the costs associated with cleaning the environment contaminated with waste from these products, unless they have been disposed of in local waste collection systems. From 1 December 2026, these extended obligations will also apply to manufacturers of wet wipes, balloons and tobacco products.

As a result of the amendment, the extended responsibility will also apply to producers of tobacco products and fishing tackle.

Katarína Brath Liebscherová | Senior Associate

Support for the construction of renewable sources

Reforms and investments in renewable energy sources are planned in the Recovery and Resilience Plan of the Slovak Republic. The reforms are primarily intended to bring energy efficiency adjustments to reduce consumption and increase the share of green energy, as well as to facilitate the connection of renewable energy sources ("RES") and the adoption of support and investment schemes for new and modernised RES.

As part of investments in the construction of new RES, the construction of facilities with an output of 10 kW to 50 MW (excluding hydropower plants) with a total volume of new connected RES of 120 MW is expected by 2026. Subsidies will be allocated based on auctions, with the main criterion being the cost per MWh of electricity produced. In total, subsidies of EUR 103 million are expected.

At the same time, it is planned to support the modernisation (so-called repowering) of biogas plants and hydropower plants in the amount of EUR 62 million. The same amount will support energy storage facilities (battery storage), including solutions based on the use of hydrogen and increasing the regulation frequency of hydropower plants.

Annamária Tóthová | Partner

Do executive directors and board of directors have to decide on redundancy?

The most common reason for dismissal is redundancy. If the employer wants to fire an employee for redundancy, it must first make a so-called decision on organisational change. It will revoke a certain job position, or even multiple positions. Subsequently, the company will terminate the employee due to organisational changes.

In practice, these decisions on organisational changes are made by HR managers or other authorised management employees. They will then sign the notice of termination and ensure its delivery to the employees.

However, this practice was challenged by the courts, including the Supreme Court of the Slovak Republic, which considered it incorrect. In their opinion, the decision to revoke the job position should be made within the company's business management. This is provided by the executive directors of a limited liability company, i.e. their majority, or the board of directors of a joint-stock company. Other people do not have the authority to make decisions about organisational changes.

This issue eventually came before the Constitutional Court, which confirmed in two recent decisions that a majority of executive directors or the board of directors do not have to decide on the revocation of a job position. The decision on organisational change is therefore not a decision that would require the consent of the business management (e.g. a majority of executive directors or the board of directors).

If the employer wants to revoke the employee's job position due to redundancy, the decision on the organisational change can be made by the responsible manager and the consent of the business management is not required.

Ján Macej | Senior Associate

Latvia

Starting business in Latvia

Most businesses in Latvia are conducted in the form of a capital company. There are two general types of capital companies in Latvia – limited liability companies, in Latvian *"sabiedrība ar ierobežotu atbildību"* abbreviated as *"SIA"*, and joint stock companies, in Latvian "*akciju sabiedrība"* abbreviated as *"AS"*. Other forms of business include different types of personal liability of the founders and members (partnerships). It is also possible to establish branches, representative offices and permanent establishments in Latvia.

Both limited liability companies and joint stock companies are considered independent legal entities, which are liable for their obligations with all their property. The minimum share capital of a limited liability company in Latvia is EUR 2,800, for joint stock companies it is EUR 35,000. Upon incorporation of an entity, its governing bodies have to be elected – for a limited liability company – at least one board member, for joint stock companies – at least one board member and at least three supervisory board members. Board members have to be natural persons and there are no specific nationality or residency requirements for board members.

Limited liability companies can be established to carry out most types of business activities, however exceptions may apply. Joint stock companies may also pursue various business activities, including regulated business activities such as insurance or financial services.

In some cases, it may be easier and more convenient to establish a branch, representative office or a permanent establishment in Latvia. A branch is an organisationally independent part of the company, which is separated from the principal company, either territorially or otherwise. The branch performs commercial activities in the name of the merchant and is registered with the Commercial Register.

Representative offices are established for the purposes of market research, information exchange and creating business opportunities, however they are not considered a legal entity and do not have the right to conduct commercial activities in Latvia.

Permanent establishment is a separate taxpaying entity registered with the local tax authority (State revenue service) for the purpose of application of all taxes.

It is important to choose a unique name for the company and to maintain a registered address in Latvia. The company name may include the country name "Latvia" and must specify the legal form. Only letters of the Latvian or Latin alphabet may be included in the writing of a company name. Name reservation is not available.

Note that the Latvian Commercial Register will not allow registration if there is already a company registered with such name.

AML requirements must be observed upon registering a company in Latvia. Companies in Latvia are obliged to submit to the Commercial Register information on their ultimate beneficial owners (and documentary evidence supporting such information). Note that information on the beneficial owners has to be updated upon changes in the company, such as changes to the management board or the shareholders.

Upon preparation of the incorporation documents, such as incorporation resolution, articles of association, shareholders' register, and other documents, the documents are signed and filed with the Commercial Register. Upon filing of the documents, the registration process takes three business days.

Elīna Vilde | Senior Associate
Anete Marhele | Senior Associate

About Eversheds Sutherland Bitāns

Eversheds Sutherland Bitāns in Latvia is part of the global Eversheds Sutherland network and provides legal assistance in all areas of commercial law. As a local TOP 3 law practice, Eversheds Sutherland Bitāns renders legal advice and solutions to a wide client base ranging from small and mid-sized businesses to the largest multi-nationals as well as public sector institutions, organisations and SOEs.

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