

Newsletter

The most important legal changes in the Czech and Slovak Republic

23. 4. 2020



Life in coronavirus time

The last weeks have changed our lives and work in ways we could barely have imagined at the end of February. Gradually, we are becoming accustomed to switching on our home computer instead of going to the office every day, holding meetings via video conference, and communications with business partners often revolving around a single topic.

The time has come for businesses to face unpleasant problems and challenges that are crucial to their survival and future activities. Many companies have been affected by the government emergency measures, be it changes or shutdowns, restricted labour movement, closing borders or falling demand. In response, we have set up expert teams to regularly monitor the latest government measures, inform you of newly adopted crisis legislation, answer urgent questions about your business and make practical recommendations. We are also happy to share our knowledge and experience with you in our practical guides and in a series of webinars.

However, lawyers are occupied with more than just coronavirus. It is certainly worth mentioning a major amendment to the Business Corporations Act, which can be regarded without hyperbole as the most fundamental legal act of the last three months, or news regarding the dismissal of senior employees and many other topics that we bring to you in the latest issue of this newsletter.

We wish you pleasant reading, good health and an early return to business as usual.

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CZ | Key laws to mitigate the impact of the coronavirus crisis on companies passed through the legislative process

The Chamber of Deputies approved the extension of the state of emergency until 30 April 2020.

At its most recent meeting, the Chamber of Deputies discussed another package of laws aimed at mitigating the effects of the closure of certain business and service operations, restricting the movement of people or closing borders. While some laws have already passed through the entire legislative process, other bills are not yet effective and will be discussed by the Senate in the coming days. (Status as at 15 April 2020).

The following laws have already come into effect

Act No. 161/2020 Coll., on Certain Adjustments in the Area of Employment in Connection with the Extraordinary Measures during the 2020 Epidemic and Amendment to the Employment Act.

The employment-related effects of the epidemic are addressed by the government-approved Antivirus programme, which compensates employers for the wages of employees who cannot work due to quarantine, closure of an establishment under government regulation, or due to related economic difficulties. Employers can thus receive a 60% or 80% contribution from the Antivirus programme (depending on the obstacle to work) to pay wage compensation, including the contributions that employers are obliged to pay to their employees.

The law expressly provides that companies applying for support from the Antivirus programme do not have to provide proof of indebtedness to the public budgets in respect of the payment of taxes and compulsory insurance contributions, and hence these employers will also receive a contribution.

At the same time, employers in the protected labour market (having more than 50% of employees with disabilities) can receive a contribution under the Employment Act to cover wage compensation paid to employees facing obstacles to work, which was not possible under the previous legislation.

Act No. 137/2020 Coll., on Certain Adjustments in the Area of Electronic Registration of Sales in Connection with the Declaration of a State of Emergency.

Businesses and other taxpayers affected by electronic registration of sales are not obliged to record their sales for the period of the state of emergency and for the following three months after it ends.

Act No. 177/2020 Coll., on Certain Loan Repayment Measures in Connection with the COVID-19 Pandemic.

The bill foresees a moratorium on the repayment of loans, cash loans or mortgages that are secured by real estate or provided for a specific purpose and will be binding on all banks and non-banking companies.

Debtors, whether businesses or natural persons, should be allowed to suspend the obligation to pay individual instalments for a period of three or six months if they express an interest in this, but until no later than 31 October 2020.

So far only approved laws

"Lex covid justice" – Act on Certain Measures to Mitigate the Effects of the SARS CoV-2 Coronavirus Epidemic on Persons Involved in Legal Proceedings, Injured Parties, Victims of Crimes and Legal Entities and on Amendment to the Insolvency Act and Code of Execution.

This package of legislative changes by the Ministry of Justice should protect businesses from insolvency by postponing the obligation to file an insolvency petition for the duration of the extraordinary measures and for six months afterwards, if the bankruptcy was caused by these extraordinary measures. In addition, the law should end protracted fruitless execution

procedures and suspend until the end of June, with some exceptions, the execution of movable assets and real estate. It should also allow for missed procedural deadlines in court proceedings to be forgiven or for debt relief conditions to be alleviated. At the same time, the term of office of statutory bodies should be extended.

Laws waiting for the signature of the president

Bill on Certain Measures to Mitigate the Impact of the SARS CoV-2 Coronavirus Epidemic on Tenants of Commercial Premises.

The purpose of the bill is to protect tenants of commercial premises who will have difficulty paying their rent due to lack of income. The current bill prevents landlords from unilaterally terminating a lease (the so-called moratorium) on the grounds that the tenant is in delay of payment of rent for the period of 12 March to 30 June 2020. The landlord will be restricted in terminating the lease in this way until 31 December 2020, while the tenant will be obliged to pay the outstanding rent by that date. However, other sanctions related to non-payment of rent (e.g. contractual penalties) do not apply to the moratorium.

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CZ | Adoption of a comprehensive amendment to the Business Corporations Act

The adopted amendment to the Business Corporations Act is undoubtedly the biggest change in the private law package effective since 2014. The amendment extends across the whole law and introduces a number of changes, most of which can be seen as very positive. The amendment comes into effect on 1 January 2021.

A new feature, welcomed by everyone, is the possibility to distribute profit based on the approved financial statements for the whole of the following accounting period and not only for the period of six months as has been the case so far. Companies will therefore have a significantly expanded timeframe in which profits may be distributed, which is only to be welcomed.

The amendment explicitly lays down the prohibition on the provision of free of charge performance to a partner or a close person, and the amendment further stipulates in which cases this prohibition will not apply (e.g. occasional reasonably sized gifts or donations made for public benefit purposes).

The obligation to notify is also extended to companies themselves. If a company intends to conclude a contract with an influential or controlling entity or a person controlled by the same controlling entity, the statutory body is obliged to inform the supervisory body, if any, or the supreme body. This does not apply to contracts concluded with a manager or another person within a group.

To date, all monetary contributions for limited liability companies have been deposited into a special account opened by the contribution administrator. In order to make the establishment of low-cap companies cheaper and faster, it will now be possible to pay a monetary contribution for a limited liability company in another manner if the amount of all non-monetary contributions does not exceed CZK 20,000. The aim is for one visit to a notary public to suffice for the establishment and formation of a company.

The amendment also explicitly allows the shareholder to be present at the general meeting together with one person designated by the shareholder, unless this is excluded by the memorandum of association. It can be assumed that this option will be used especially when discussing financial statements, when a shareholder wants to use the services of a specialist. In the case of a limited liability company moreover, the shareholder must prove that the present person is bound by confidentiality to the same extent as he is bound by it himself.

Another fundamental change is to the monistic structure of a joint-stock company, the statutory director being dissolved and the exercise of his or her powers being delegated to the managing board, which will not only be the statutory body of the company but will also provide business management and oversee the company's activities.

Like limited liability companies, joint-stock companies are granted the possibility to issue shares with "appointment rights", i.e. the right to appoint and remove one or more members of the board of directors. The total number of such members may not exceed the number of members appointed by the company's general meeting.

The amendment generally stipulates the obligation to adapt the company's founding deeds to the new legislation by 1 January 2022. An exception to this deadline applies, for example, to the rules on employee representation in the supervisory board, where a period of five years for implementing the relevant changes is regulated under specified conditions.

The amendment to the Business Corporations Act also includes changes to other laws, in particular the Act on Public Registers and the Civil Code.

[Jiří Kokeš](#) | Principal Associate | Prague

SK | The Supreme Court ruled on the G-component case

The first decision of the Supreme Court of the Slovak Republic in the G-component case, i.e. payments for access to the distribution system, was published at the beginning of the year [*Resolution of the Supreme Court of the Slovak Republic No. 3Obdo/18/2019*]. Surprisingly, the Supreme Court ruled in favour of the distribution company and annulled the decisions of the lower courts, which were in favour of the renewable electricity producer.

Since 2014, electricity producers have been obliged to pay the G-component based on Decree of the Regulatory Office for Network Industries No. 221/2013 Coll. (the "**Decree**"). In 2016, however, the Constitutional Court of the Slovak Republic ruled that the Decree is partially unconstitutional if it imposes on manufacturers the obligation to pay the G-component without a valid access agreement [*Judgment of the Constitutional Court of the Slovak Republic No. PL. ÚS 17/2014-132*].

However, the Supreme Court ruled that access and connection agreements entered into under the previous law [*Act No. 656/2004 Coll., on Energy*] remained in force even after the adoption of the new Energy Act [*Act No. 251/2012 Coll., on Energy*].

It is difficult to agree with the above conclusion. The legislation on access to the system has been substantially changed by the adoption of the new law. In our opinion, the changes preclude the above conclusion of the Supreme Court. Likewise, this view conflicts with that of the Constitutional Court, which clearly defined access to the system. As long as the access agreement does not include an electricity distribution obligation until the end of 2018, it is not possible to talk about an access agreement and to charge the G-component.

[Ján Macej](#) | Senior Associate | Bratislava

CZ | New rules governing the recall of senior employees

Pursuant to the Labour Code, the possibility of recalling a senior employee from a job position can be negotiated with senior employees at the two highest levels of the employer's organisational structure under the statutory body. According to current practice, however, the circle of executives with whom the possibility of recall can be arranged can be defined more broadly (up to all executives) in a collective or other agreement or in an internal regulation. Unfortunately, this is likely to change soon for employers. Pursuant to the so-called great amendment to the Labour Code (currently in the Chamber of Deputies of the Czech Republic), recall will only be possible for executives at the two highest levels under the statutory body; it will no longer be possible to extend this circle to other senior employees.

At the same time as the recall, the employer is obliged to propose a new job to the employee and to set a reasonable deadline for the employee to accept the proposal. The Supreme Court

of the Czech Republic has recently focused on the question of how long this period should be. Of course, this depends on the circumstances, but in a situation where the recalled employee, by virtue of his or her position, is aware of the vacancies with the employer, the employer may require him or her to make an immediate decision.

Courts are currently also analysing the question of whether the place of work is also a compulsory requirement for a job proposal. At this point, it is recommended that employers include all essential requirements under the employment contract, including the specification of the place of work, in the job proposal.

[Ondřej Beneš](#) | Senior Associate | Prague

In summary

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| CZ There is now an amendment in the legislative process that should significantly increase court fees, in some cases up to twice the amount. The amendment to the Act on Court Fees should come into effect on 1 July 2020. | Kateřina Demová
Senior Associate Prague |
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| CZ The government approved a new bill on collective actions. After further adjustments, the law should ultimately apply only to consumer disputes. It should be applicable from January 2022. | Vojtěch Faltus
Senior Associate Prague |
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| CZ Failure to meet health requirements for the performance of the work does not constitute a reason for the employer to terminate an employee who is physically fit to perform other types of agreed work if due to the agreed working conditions the employer can assign other work to an employee who is no longer physically fit to perform their original job in the long term. (NS 21 Cdo 670/2019) | Tomáš Jelínek
Senior Associate Prague |
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| CZ An amendment to the Road Transport Act, which aims to regulate Uber, was returned to the Chamber of Deputies. The company will now be in the position of a mediator of taxi services and must ensure that drivers hold an appropriate trade licence and keep records of their rides. The amendment also relaxes the conditions for taxi drivers in general. | Katarína Jendželovská
Senior Associate Prague |
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| CZ The decision on the costs of proceedings on the cancellation and settlement of co-ownership should be based on the fact that all the parties (co-owners) have the same procedural position in the proceedings. It therefore appears as a fair basis for the decision on costs that each party bears its own costs and is not required to bear the costs of another co-owner, unless there are specific reasons for doing so. (II. ÚS 572/19) | Jiří Koubek
Associate Prague |
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| SK Since 1 January 2020, the exemption from illegal employment has been extended for single-person limited liability companies having a sole shareholder. | Filip Kozoň
Associate Bratislava |
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| SK For the tax period from 1 January 2020, a reduced income tax rate of 15% will apply for the first time to sole traders and legal entities, provided their income does not exceed EUR 100,000 in the relevant tax period. | Kateřina Liebscherová
Senior Associate Bratislava |
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