

Newsletter 2 | 2019



In shape

Keeping in shape is important. This does not only apply to our bodies, but also to our businesses or finances.

The so-called "debt relief amendment" of the Insolvency Act, the key part of which will be effective as of 1 June 2019, introduces new conditions for debt relief as one of the ways of resolving bankruptcy. Above all, the amendment should expand the circle of people who will be able to achieve debt relief. It should be mentioned that thanks to the amendment, some debtors will in all likelihood free themselves from their debts without repaying any of them.

In terms of businesses keeping in shape, the Ministry of Industry and Trade has launched an online "Guide for Entrepreneurs on Brexit Impacts" summarising the information and recommending measures for entrepreneurs who may be impacted by Brexit in various ways.

And if you want to keep physically in shape while also contributing to a good cause, we invite you to the traditional [Run and Help](#) charity run organised by our office.

Dominika Veselá | Principal Associate

News

Debt relief amendment to the Insolvency Act

The so-called "debt relief amendment" to the Insolvency Act was promulgated in the Collection of Laws as Act No. 31/2019 Coll. Its most important part regarding the availability of the institution of debt relief to a wider range of persons will come into effect on 1 June 2019.

In addition to the standard option, where the debtor fully satisfies all its creditors, the conditions of debt relief can newly be met in two other ways. These differ by the length of the debt relief process and the amount of debt that the debtors will have to repay.

For debt relief for three years, the debtor will have to repay at least 60% of its liabilities, while for debt relief for five years, the condition to repay 30% of unsecured debt will remain.

However, if the debtor fails to pay at least 30% of the debts over a 5-year period, the insolvency court will examine whether the debtor has breached the obligation to make every effort that could reasonably be required to fully satisfy its creditors' claims. The debtor can demonstrate this effort by showing that he or she is actively looking for a job or is not working within the so-called "black economy". However, the condition of paying 30% of the debts is in effect no longer relevant, and the will of the debtor to repay the debts will be decisive.

The debtor will have to repay a certain monthly minimum, which has not yet been regulated by law and which will consist of reimbursement of the costs of the insolvency administrator (approx. CZK 1,100 / month) and reimbursement for repayment of creditors in the same amount. A debtor who does not demonstrably have available approximately CZK 2,200 per month cannot enter the debt relief process at all.

Lukáš Zahrádka

CZ: The trust fund protector as its protective element

If you decide to establish a trust fund and entrust the management of the selected assets to a trustee, it is also important to consider setting up appropriate safeguards.

You should think about who will monitor the activities of the trustee, who has very broad authorisation under the law. One of the alternatives, which although not enshrined in the law is in our practice, is the establishment of so-called protectors or a council of protectors.

Protectors, as the name suggests, are tasked with performing a protective function. Which one? Primarily monitoring the purpose and compliance with asset usage rules in the trust fund by the trustee or trustees. According to the articles of the trust, selected acts of the trustee would require prior approval by the protector. Similarly, payments from the fund to the beneficiary can be controlled. If the establisher of the trust decides to appoint a protector or protectors, their roles and powers as well as rules for their appointment and recall must be anchored in the articles of the trust.

Stanislav Servus

EU: Facilitating the circulation of certain public documents in the EU

Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016, on promoting the free movement of citizens by simplifying the requirements for the submission of certain public documents in the European Union and amending Regulation (EU) No. 1024/2012 is effective in EU Member States as of 16 February 2019.

In accordance with this Regulation, public documents certifying certain facts do not have to be apostilled or officially translated. Article 2 of the Regulation deals with the scope of its application to public documents which relate mainly to personal facts (birth, death, name, marital status, registered partnership, parenthood, adoption, domicile, nationality, no criminal record). The obligation to apostille or officially translate other public documents remains unchanged.

As regards official translation, an administrative fee, which is much lower than the price of an official translation, can be requested for public documents by means of standardised forms which do not have to be subsequently translated.

Adam Oleš

In summary

EU: The end of intra-Union investment arbitration

On 15 January 2019, EU Member States undertook to abolish or not to execute arbitration awards issued based on intra-Union bilateral investment protection treaties, as the arbitration clauses of these contracts are contrary to EU law. New investment arbitrations will no longer be launched. (Eliška Miklíková)

CZ: Office for Personal Data Protection (OPDA) data protection impact assessment (DPIA)

The OPDA material of 8 February 2019 sets out the conditions for assessing whether a DPIA is necessary for personal data processing. Each processing needs to be assessed in light of the 10 criteria set out in the material and, depending on their level of risk, it will be determined whether a DPIA is required. (Veronika Odrobinová)

CZ: Guide to Brexit Impacts

The Ministry of Industry and Trade has published on its website <https://www.mpo.cz/cz/zahranicni-obchod/brexit/default.htm> a "Guide for Entrepreneurs on Brexit Impacts", which is updated continuously. The MIT has also set up a so-called Brexit line to support exporters (tel. 800 133 331). (Peter Perniš)

SK: Recovery of late payment interest

The Constitutional Court ruled on the unconstitutionality of provisions of the Enforcement Order prohibiting the execution of accessories for 3 years after the enforceability of the execution title. The accessories will therefore be enforceable even after the expiry of this period. (Petra Štrbová Marková)

CZ: Unlawfulness of withholding undisputed amount of excess VAT

In the context of a tax audit, the tax administrator may withhold only the disputed (audited) amount of the VAT deduction. The tax administrator cannot withhold an amount higher than the subject of the tax audit. According to the Constitutional Court, this procedure applied by the tax administrator and many liquidation procedures are unlawful. (Ondřej Šudoma)

EU: Electricity export charges are history

The Court of Justice of the EU has found that levying a system service charge on electricity transmission for crossing a state border has the same effect as a customs duty. Nor can such a charge be justified by ensuring the stability of electricity supplies in the national territory. (Annamária Tóthová)

CZ: Credit providers need to verify that the debtor will be able to repay

The Constitutional Court upheld a petition to stop execution for nullity of the credit agreement and conflict with good morals. It pointed out that the lender has a clear obligation to examine the consumer's ability to repay the planned loan, to which lenders should also be led by the general courts. (Jakub Verlík)

RUN and HELP 2019

For the fifth time, our office will join a charity run for Konto Bariéry, join us.

When: **30. 5. 2019 | 4 p.m.**

Where: Pobřežní 394/12, Praha 8, offices Eversheds Sutherland Dvořák Hager (2nd floor)

Registration: michaela.rutova@eversheds-sutherland.com

This year we run for Lucinka, for more information visit www.runandhelp.cz.

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