

## CZ: Noisy neighbours in office buildings

I recently represented a client who is planning to relocate his offices in the centre of Prague. One of the reasons for the move was the repeated disturbance by one of the neighbouring tenants in the old office building, which the landlord was not motivated to resolve. How can one ensure that a landlord is motivated to do something?

Of course the best solution is to anticipate this problem when signing the lease agreement. I definitely recommend agreeing on special operating rules outside the framework of the building's operating rules. In addition to the landlord's general obligation to ensure peace and quiet in the building, I also recommend considering an express prohibition on holding any training and/or entertainment events at specific times of day.

A breach of these special operating rules should then be accompanied by a contractual penalty or the right of the tenant to demand a discount on the rent.

The amount of the penalty or discount does not have to be excessively high. In practice the landlord will not want to pay even one crown (or euro) more and will thus be motivated to resolve any problems with you and to keep an eye on the behaviour of other tenants in the building.

Lukáš Zahrádka

## CZ: Return of the pre-emptive right

The Chamber of Deputies has approved an amendment that will reintroduce into the Civil Code the pre-emptive right of co-owners to transferred shares in real estate. The amendment must still pass through the Senate and be signed by the President, but in all likelihood a victorious campaign has just been launched.

Opponents and proponents of bringing back the pre-emptive right have been quarrelling for a long time.

Those arguing for the reintroduction of the right cite the opportunity to influence who will become a new co-owner. This is because a change in the owner of the share in real estate can fundamentally influence the way in which the whole property is used and managed. They also claim that a contractual pre-emptive right is not enough, as both parties must agree on it.

On the other side, however, the argument goes that this constitutes unwarranted state intervention in the free disposition of assets, which only adds to owners' worries and needlessly prolongs the process of selling shares in real estate. They also point to the fact that this amendment is not even in accordance with the concept of the Civil Code.

Regardless of which side one takes in the debate, there is one fact that is difficult to argue about: The stability of the legal framework is crucial. And it is certainly not to its benefit if legislation as fundamental as the Civil Code is haphazardly amended less than three years after it came into effect.

Tomáš Mls



**CZ: Acquisition of property from a non-owner: The Supreme Court vs the Constitutional Court**

The New Civil Code protects the proprietary rights of people who bought real estate in good faith from a person registered in the Land Registry even in cases where the actual legal status is different and the seller did not in fact own the real estate.

The old Civil Code, however, did not contain this rule, which led to a rift in opinion between the Supreme Court and the Constitutional Court, as both courts had for a long time adopted different approaches to resolving cases falling within the period prior to 31 December 2013. The Constitutional Court protected the buyer who acquired proprietary rights in good faith based on the entry in the Land Registry in cases when the previous purchase agreement ceased to exist as a result of withdrawal or was null and void. And it proceeded in the same way even in cases when the seller was in fact merely a co-owner and therefore could not transfer that part of the real estate that did not belong to him.

The Supreme Court countered that the statutory list of ways of acquiring proprietary rights is complete and definitive, that acquisition from a non-owner is not one of them, and that the case law is not permitted to create new ways of acquisition. It thus refused to protect the proprietary rights of the acquirer in good faith and preferred to protect the proprietary rights of the actual original owner.

This conflict of opinion was definitively cleared up by the recent judgment ref. no. 31 Cdo 353/2016, in which the Supreme Court backed the view of the Constitutional Court. Therefore even according to the legislation effective until 31 December 2013 it should be possible to acquire (in good faith) proprietary rights to real estate from a non-owner registered in the Land Registry.

Jakub Verlík

**SK: Posting employees to construction sites in Germany? Register at SOKA-BAU**

Employers who post employees to construction sites in Germany are obliged to register and to pay contributions to a German authority by the name of SOKA-BAU, whose role is to manage and supervise the holiday and wage compensation scheme of employees working in the construction industry.

The contribution which employers posting employees abroad must pay each month is 14.5% of the sum of gross monthly wages of all posted employees. SOKA-BAU will subsequently pay wage compensation to the employees for holiday from these contributions. In addition to paying monthly contributions, the employer is obliged to submit regular monthly reports to SOKA-BAU about the current status of its posted employees (e.g. data on the amount of paid-out wages for holiday, the number of days of paid and unpaid holiday, etc.), based on which SOKA-BAU will update the record of the employees' claims.

If an employee ends construction work in Germany, he or she can ask SOKA-BAU for reimbursement of unused holiday.

The employer also has another obligation in this connection, i.e. to submit the following documents in German in case of an inspection: contracts of employment, records of working time, payslips – wage settlement and confirmation of actual payment of wages.

For a breach of this obligation the employer sending employees abroad may be fined up to EUR 500,000.

Natália Jánošková

**Dvořák Hager & Partners  
Czech Republic**

Oasis Florenc, Pobřežní 394/12  
186 00 Prague 8  
Czech Republic

tel.: +420 255 706 500  
fax: +420 255 706 550  
e-mail: praha@dhplegal.com

**Dvořák Hager & Partners  
Slovakia**

Cintorínska ul. 3/a  
811 08 Bratislava  
Slovakia

tel.: +421 2 32 78 64 – 11  
fax: +421 2 32 78 64 – 41  
e-mail: bratislava@dhplegal.com