



Legal update

August 2023

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The information in this bulletin is presented based on our best belief and knowledge at the time this text was put into print. However, specific information relating to the topics covered in this bulletin should be consulted before any decision is made on the basis of it.

Banking, Finance & Insurance:

Daniel Weinhold, Václav Štraser, Ondřej Tejnský

ESG – Environment, Social, (corporate) Governance:

Tereza Hošková

Mergers & Acquisitions:

Daniel Weinhold, Václav Štraser

Insolvency & Restructuring:

Zbyšek Kordač, Jakub Nedoma

IT, Media & Telecommunication:

Martin Lukáš, Jakub Nedoma, Michal Przewczek

Real Estate:

Pav Younis, Václav Štraser

Personal Data Protection:

Martin Lukáš, Tereza Hošková, Daša Aradská

Labour Law: Eva Procházková, Anna Bartůňková,

Daša Aradská, Ondřej Tejnský

Slovak Law:

Tomáš Čermák, Karin Konečná

Family Office:

Milan Polák, Zbyšek Kordač, Michaela Koblasová

Dispute Resolution: Milan Polák, Zbyšek Kordač,

Anna Bartůňková, Michaela Koblasová, Michal Švec

Competition law / EU law:

Tomáš Čermák

Start-ups, Venture Capital & Cryptocurrency: Pav Younis,

Martin Lukáš, Jakub Nedoma, Michal Švec, Ondřej Tejnský

Public Procurement & Public Sector:

Martin Lukáš, Tereza Hošková, Monika Švaříčková

News in legislation

Amendment to the AML Act

Bill amending Act No. 253/2008 Coll, on Certain Measures against the Legalization of the Proceeds of Crime and the Financing of Terrorism, as amended (hereinafter referred to as the "**AML Act**" and the "**Amendment**"), which was submitted to the Chamber of Deputies by the Government, aims to implement the measures contained in the Action Plan to the Report on the Second Round of the National Risk Assessment of Money Laundering and Terrorist Financing, to eliminate selected shortcomings identified in the evaluation by the Moneyval Committee of the Council of Europe and, last but not least, to eliminate the shortcomings of the AML Act that have manifested themselves in application practice.

The amendment regulates the following areas:

- i. the scope of obliged persons, i.e. persons who are subject to obligations under the AML Act,
- ii. explicitly defining dealers in precious stones and precious metals as obliged persons,
- iii. the possibility of failing to inspect a client where an investigation of a suspicious transaction could be frustrated is explicitly regulated,
- iv. the upper limit of the fine for persons responsible for violation of the AML Law is increased up to CZK 1,000,000,
- v. other amendments of a technical nature.

According to the amendment, the circle of obliged persons has been extended to include lottery and bingo operators in the form of internet games, as well as insolvency and restructuring administrators. For the former group, the reason for this is the increased risk of misuse of the user account that is set up as part of the registration for these games of chance for money laundering. The second group is newly included among the obliged persons because they deal with assets whose value can be substantial, and the proceeds of crime can both be included in the assets and be used to acquire assets from the assets as part of their monetisation.



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The proposed provisions of Section 9(b) would allow an obligated person to fail to conduct an audit of a client or a portion thereof if (a) the conduct of the audit or a portion thereof would frustrate or jeopardize an investigation of a suspicious transaction, or (b) the Financial Analysis Authority instructs the obligated person not to conduct the audit or a portion thereof because the conduct of the audit or a portion thereof would frustrate or jeopardize an investigation of a suspicious transaction or an ongoing criminal proceeding.

If the obliged person invokes the procedure under section 9b, it must at the same time notify the suspicious transaction to the Financial Analytical Authority and further inform the Authority of (i) the circumstances and reasons for not carrying out the audit or part of the audit, to the extent that it is possible to assess the appropriateness of the procedure, and (ii) the specific procedure within the audit or part of the audit that it has not carried out.

The amendment also proposes to include payments through virtual assets (e.g. bitcoins) among the definition of cash payments.

Due to the need to implement Moneyval's recommendations as soon as possible, the amendment is proposed to take effect on 1 January 2024.

News in case law

Effect of a change in the statutes on the length of the term of office of a member of an elected body; time limitation of the term of office

(Resolution of the Supreme Court of the Czech Republic Case No. 27 Cdo 1915/2022 of 17 May 2023)

In the present case, the Supreme Court dealt with (i) the question of the effect of a decision to amend the articles of association by extending the term of office of members of elected bodies on the length of the term

of office of existing members of elected bodies and (ii) whether the term of office of members of elected bodies can be agreed as unlimited in time.

The Supreme Court concluded that "***if the articles of association of a joint-stock company are amended by a decision of the general meeting, the amendment of the articles of association, consisting in the extension of the term of office of the members of its elected bodies, is effective against the current and future members of the elected bodies of the company from the moment when the general meeting decides on it, unless otherwise stated in the decision of the general meeting, the law or the articles of association.***" If the articles of association of a joint stock company are amended by a decision of the sole shareholder acting in the capacity of a general meeting, the amendment of the articles of association consisting in the extension of the term of office of the members of its elected bodies shall be effective in principle with respect to the existing and future members of the elected bodies of the company at the time when the decision of the sole shareholder of the company is made.

However, it cannot be forgotten that the relationship between a corporation and a member of its elected body is a contractual relationship that cannot arise without the consent of the member of the elected body. Where the term of office is extended by an amendment to the articles of incorporation, the consent given by the member at the time of his election is thereby exceeded. **The extension of the term of office therefore requires the consent of the member of the elected body to take effect, which may, however, be implied** (typically, for example, by continuing to hold office after the expiry of the original term of office).

Similar conclusions can be applied in the case of a shortened term of office. However, a shortening of the term of office cannot result in the retroactive termination of the office of a member of an elected body. **If the term of office is shortened in such a way that the effectiveness of the decision to shorten the term of office would cause some (or all) members**



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of the elected body to cease to hold office 'retroactively', such a decision has the effect of removing those members from office at the time when the decision to shorten the term of office takes effect (cf. the decision of the Supreme Court of the Czech Republic, Case No 27 Cdo 2554/2022 of 18 May 2023).

Finally, the Supreme Court stated that the regulation of the length of the term of office of the board of directors of a joint stock company is dispositive. If the general meeting can remove members of elected bodies from office at any time, even without giving reasons, **the Supreme Court found no reason why it should not be possible to stipulate in the articles of association that the term of office of members of elected bodies is unlimited.**

Appeal brought by an unauthorised person and action for annulment

(Resolution of the Supreme Court of the Czech Republic Case No. 29 ICdo 63/2023 of 26 May 2023)

The insolvency court by order stayed the insolvency proceedings conducted on the debtor's property on the ground that the insolvency petitioner (a creditor of the debtor) withdrew the insolvency petition before the decision on the debtor's bankruptcy was made. The debtor filed an appeal against this decision, but the Court of Appeal dismissed the appeal because the debtor, pursuant to Section 130(4) of the Insolvency Act, is not a person entitled to appeal against the order to discontinue insolvency proceedings due to the withdrawal of the insolvency petition, as he is not an insolvency petitioner.

The debtor brought an action for annulment against the decisions of the insolvency and appeal courts on the grounds that the insolvency court was presided over by a disqualified judge. However, the action was dismissed and the dismissal decision was confirmed by the High Court of Appeal in Prague. The debtor therefore appealed against the decision of the Court of Appeal.

In this case, the Supreme Court concluded that **"if an appeal against a decision of a court of first instance is filed by someone who is not entitled to appeal, the Court of Appeal shall dismiss it pursuant to Section 218(b) of the Civil Procedure Code, without regard to whether the case was decided at first instance by a disqualified judge. Accordingly, an action for a miscarriage of justice brought against such an order of the Court of Appeal cannot be upheld if the fact that the decision of the Court of First Instance appealed against was given by a disqualified judge is relied on as a ground of miscarriage of justice."**

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