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Austria

Inspection of the books by a retired limited partner

The Supreme Court (*Oberste Gerichtshof*) has changed its case-law on the right of a retired limited partner to inspect the books and accounts of a limited partnership. The information and control rights of a retired limited partner have to be asserted in non-contentious proceedings. Due to their flexibility, non-contentious proceedings are better suited to clarifying information claims. The Austrian Supreme Court had previously ruled that a retired partner has to assert such information and control rights in contentious proceedings.

What happened? A former limited partner and the heir of a former limited partner of a limited partnership requested that they be given access to the books and provided with information by the limited partnership (the defendant) by bringing an action in contentious proceedings. The defendant disputed the form of relief being sought, arguing that contentious proceedings were inadmissible.

Under Section 166 para. 1 of the Commercial Code (*UGB*), limited partners are entitled to receive the annual financial statements and verify their accuracy by inspecting the books of the limited partnership. If there is good cause, the right to information provided for in Section 166 para. 1 of the Commercial Code can be enhanced by the extraordinary control right enshrined in Section 166 para. 3 of the Commercial Code. In this respect, the court orders far-reaching rights regarding audits and inspections upon the application of a limited partner if there is an urgent need for immediate information and auditing and if the rights under para. 1 are insufficient. Whereas the claims of a limited partner with the status of shareholder are by operation of law to be heard in non-contentious proceedings with regard to the enforcement of the extraordinary right of control under Section 166 para. 3 of the Commercial Code, there is no such explicit regulation for Section 166 para. 1 of the Commercial Code. According to the settled case-law, however, claims under para. 1 are also to be pursued in non-contentious proceedings. All information and auditing rights expire after the person ceases to hold the position of partner, but according to the settled case-law, such rights remain in full force and effect for the retired partner insofar as they relate to the period during which he/she held the position of partner.

In reaching its decision in case 3 Ob 667/80, the Supreme Court stated that in contrast to a limited partner with the status of shareholder, there is no doubt that a retired limited partner can demand his statutory right to inspect the books of the limited partnership only in contentious proceedings. In that same decision, the Supreme Court made reference to two further decisions in which it was correct for the retired partner to take legal action in contentious proceedings to enforce his right of control. The Supreme Court based its decision on the German legal position. According to the case-law of the German Federal Supreme Court, the control rights of a retired limited partner have to be asserted exclusively in contentious proceedings.

After the court of first instance granted the form of order being sought, the court of appeal declared the judgment of the court of first instance null and void. Contrary to the opinion of the court of first instance and the settled case-law of the Supreme Court, the right of a retired limited partner to inspect the books must be asserted in non-con-

tentious proceedings. The Supreme Court as appellate court now shares this view and has consequently disregarded its own settled case-law on the issue.

It is clear from the Supreme Court's current legal reasoning that there is no reason to make a distinction between those who have already ceased to be partners and those who are still partners. This is because the person who has ceased to hold the position of partner is entitled to all information and control rights only with regard to his position as partner. Further, the opinion espoused in the literature cited by the Supreme Court is that a person's current status as partner is not a relevant criterion for distinguishing between contentious and non-contentious proceedings. Furthermore, the retired partner continues to be entitled to pursue claims resulting from membership after he ceases to be a partner in order to enforce a legal position based on the person's former status as partner. Therefore, the reference to non-contentious proceedings should also be justified for the retired limited partner. Not least because the information claim of a retired limited liability company partner also has to be pursued in non-contentious proceedings. However, this is due to an explicit legal basis which is lacking for the right of control of the retired limited partner under Section 166 of the Commercial Code.

Accordingly, the information and control rights of a retired partner under Section 166 of the Commercial Code must also be asserted in non-contentious proceedings. The only exception is if not only the control and monitoring rights of a partner are disputed as such, but also their factual and legal bases.

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Belarus

Debt recovery has become simpler

Introduction

On 1 January 2020, an automated information system for fulfilling monetary obligations ("**AIS FMO**") was launched in Belarus. The AIS FMO was established by Edict of the President of the Republic of Belarus No. 414 dated 16 October 2018 "On improving cashless payments" and the joint Resolution of the Council of Ministers of the Republic of Belarus and the National Bank of the Republic of Belarus No. 432/11 dated 28 June 2019 "On automated information system for fulfilling monetary obligations".

How AIS FMO works

The AIS FMO applies to debts that satisfy two conditions. Firstly, the debt is overdue. Secondly, the debt is based on a relevant enforcement document that has already come into force (e.g. writ of execution, resolution on the imposition of an administrative penalty, etc.).

The information on the debt is provided to the AIS FMO by the authorized body (e.g. tax authority, bailiff office, police, etc.). The AIS FMO then sends the relevant requests to all banks in Belarus to obtain information on the available funds on all accounts of a particular debtor. If funds are identified, the debit operations on the relevant accounts are temporarily suspended.

Upon receipt of the request from the AIS FMO, all banks are required to send information about the amount of available funds on the accounts of the debtor, if any. Then, the relevant amount of the debt is written off from one or more accounts (depending on the availability of funds) for the benefit of the creditor. After the debt is written off in full, the debit operations on all relevant accounts are reinstated.

The benefits of the AIS FMO could be described as follows. The entire procedure is very quick, taking about half an hour. It automates the collection process in an indisputable manner from the accounts of the debtor at various banks. Besides, it prevents the same monetary obligation being written off twice.

Summary

The AIS FMO significantly simplifies the debt collection procedure. In the past, the main concern of a creditor was actual enforcement of the court decision since a debtor had the opportunity to "conceal" its funds by spreading them out in accounts held with different banks. The introduction of the AIS FMO makes such concealment practically impossible and thus makes the debt recovery procedure less problematic.

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Bulgaria

Amendments to the Code of Civil Procedure

The Bulgarian Parliament recently adopted amendments to the Code of Civil Procedure. The amendments aim to enhance the protection of consumers in civil proceedings.

The amendments introduce an obligation for the courts in civil procedures to review and identify ex officio unfair clauses in consumer contracts. The following changes were introduced with respect to fast track cases (the so-called payment order procedure):

- Claims against consumers must be filed together with the respective consumer contract. This is not the case with ordinary fast track proceedings where the claim does not have to be supported by documents.
- Generally, requests for payment orders against consumers must be filed with the court that has jurisdiction for the area where a consumer has his/her current address. Only if a consumer does not have a current address can the claim be filed with the court that has jurisdiction for the area where the consumer has his/her permanent address.
- Courts are required to review the consumer contracts and will reject claims that are based on unfair clauses.
- Where the claim is honoured, debtors will have one month in which to meet their obligations (as opposed to two weeks prior to the amendment).
- The time limit for objecting against issued payment orders has also been extended from two weeks to one month.
- Additional provisions were introduced that are favorable to consumers in relation to the suspension of enforcement procedures in certain cases.

New obligations imposed on electronic platforms for short-term accommodation

Amendments to the Bulgarian Tourism Act, published in December 2019, imposed new obligations in relation to short-term leases (accommodation) via electronic platforms. The online operators (connecting tourists and property owners) will be required to ensure that the properties available on their platforms are categorized or registered. In case of non-compliance with this obligation, platform operators can be fined up to EUR 5,000 and the platform can be shut down temporarily by court order.

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Czech Republic

Collective actions in the Czech Republic: a new draft law

There has been intense debate in recent years regarding the need to introduce the possibility of bringing collective (class) actions in the Czech Republic. In relation to a proposed EU regulation, the Czech government and lawmakers have also started to prepare a draft of a new domestic law. If passed by the Parliament, the new draft law will become a significant tool for class actions and will spur many businesses on to renew their internal compliance guidelines.

The new proposed legislation at both the EU level and in the Czech Republic will be briefly considered below. Both new draft laws will bring significant challenges for lawyers and their clients.

European initiative and the new Czech draft law

At the initiative of the Czech European Commissioner Věra Jourová, a proposal for a new directive on representative actions for the protection of the collective interests of consumers (the "**Directive**") was submitted on 11 April 2018. This new Directive aims to introduce the collective protection of consumer rights and was supported by the Member States and the Council of the European Union. The European Parliament is currently discussing its final adoption of the Directive.

In reaction to the Directive, the Czech Ministry of Justice submitted a proposal for its own new regulation of collective actions, now under the name of the Collective Proceedings Act. This proposal triggered a wave of discussions and the draft law is still going through the legislative process.

Interestingly, the European Directive and the Czech draft Collective Proceedings Act differ initially in terms of their respective scopes. While the Directive focuses primarily on consumer protection, the Czech draft law is intended to have a more general impact, regulating for example disputes about compensation for damage under the Business Corporations Act, i.e. collective disputes between businesses. However, the government has recently withdrawn this concept, modified the draft law and limited the proposed law only to consumers, similar to the Directive.

Nevertheless, the draft Collective Proceedings Act is still being discussed and can be significantly modified during the later stages of the legislative process.

Key goal of the new draft law

Most importantly, the new Collective Proceedings Act will enable groups to bring collective civil actions in certain cases, unify regulations that are at present fragmented, and relieve the Czech judicial system from the need to consider the same claims again and again.

The Czech law does not comprehensively regulate collective actions for the enforcement of private claims. Such protection can be found in part in the Civil Code and the Code of Civil Procedure and also to some extent in the Consumer Protection Act, where associations or professional organizations with a legitimate interest in the protection of consumers are entitled to bring an action before a court in certain cases.

Collective action and types of collective proceedings

The essential instrument of the Collective Proceedings Act is a collective action. A wide range

of parties will be able to make use of these new proceedings, such as a group (i.e. multiple persons with similar rights arising from the same factual or legal event), group members, group representatives, group administrators and interest groups.

The two main types of proceedings defined in the proposed law are opt-in proceedings and opt-out proceedings.

The opt-in proceedings are the basic and universal type of proceedings. To initiate opt-in proceedings, the applicant must satisfy the basic requirement of obtaining the written consent of at least 10 members of the group (therefore, the group must consist of at least 10 members). Furthermore, the collective proceedings must be an economically appropriate way of dealing with the dispute, considering the number of members of the group and the rights and legitimate interests of the members. There also must not be any other collective proceedings on the same matter.

The opt-out proceedings can be used if there is a clearly defined group of persons whose members have negligible claims that cannot be effectively recovered by the members individually. The applicant must provide proof that it has obtained the written consent of at least 100 members of the group for the initiation of the proceedings and, again, there must not be any other collective proceedings on the same matter. The Collective Proceedings Act also defines the solvency condition for opt-out proceedings (applicants need sufficient funds to fulfil their eventual obligations, such as the costs of the collective proceedings).

Proposed procedure under the Collective Proceedings Act

Aside from the conditions mentioned above, only a member of the group or non-profit legal person with the written consent of the group (at least 10 or 100 in the case of the opt-in or opt-out respectively) can initiate the collective proceedings at court. In opt-out proceedings, a non-profit legal person may also bring a collective action. Therefore, apart from the general requirements for court actions regulated under the Code of Civil Procedure, the collective court action has to meet further specific requirements under the Collective Proceedings Act.

The court case is initiated by proceedings on the admissibility of a collective action, in which the court must decide whether the conditions for starting proceedings have been met on the merits of the case. The collective proceedings on the merits will be initiated by publication of a final and conclusive resolution on the admissibility of the collective action in the register of collective actions, which is also to be newly established. The period for submitting an application or a notice of withdrawal, respectively, will begin depending on the type of proceedings; opt-in or opt-out.

The application is a new instrument, within opt-in proceedings stated above. Its main purpose is to enable the person applying to become a member of the group. The applicant is required to keep a list of members and submit it to the court. Upon submission of the list, the court is required to establish a collective proceedings plan that will also be published in the register of collective actions. In the collective proceedings plan, the court sets the dates of hearings, during which the participating group members can express and exercise their rights.

The collective proceedings may be terminated by a settlement between the parties; otherwise, a decision on the merits will be delivered, which will subsequently be published in the register of collective actions. An appeal, as a legal remedy against a decision on the merits, will also be available to the parties to the case.

New challenges for business; new opportunities for consumers

The forthcoming Collective Proceedings Act could lessen the burden on the strained judicial system and strengthen the collective protection of consumer rights. However, it will also bring a number of difficulties for businesses that will need to prepare for the new legal environment, including its specific challenges.

The new draft law can be changed and modified. Of course, the final version of the Directive may also have an impact on the Czech law. After the draft is passed in the Czech Parliament, it will be necessary to review the issue once more and consider all relevant impacts and risks.

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Hungary

Major changes to the Hungarian Anti-Money Laundering Act

Following the transposition of Directive (EU) 2018/843, Hungary's Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing (AML Act) was amended significantly with effect from 10 January 2020. The changes affect a wide variety of service providers, including credit and financial services institutions, real estate agencies, providers of accounting services, tax advisors, attorneys, public notaries, fiduciary managers and providers engaged in virtual currency services.

These providers will have to update their internal policies (or implement and submit new ones to the relevant supervisory authority if they start operating after 10 January). Fortunately, the National Tax and Customs Administration is expected to issue guidelines and sample policies in late February, which will probably help most service providers adjust to the new regulations.

To keep pace with rising transaction values, the limits that service providers are obliged to apply in customer identification processes have been increased (e.g. a one-off transaction is only subject to review if the amount in question is at least HUF 4,500,000 (EUR 13,430) instead of the previous HUF 3,600,000 (EUR 10,750)).

Besides the many changes not detailed here, one important obligation that applies to all service providers has remained the same: the ultimate beneficial owners of clients that are legal persons must be recorded in a central government database (once it is set up at a later date). However, the AML Act should be applied in combination with Hungary's Act LII of 2017 on the implementation of the financial and asset restricting sanctions declared by the European Union and the United Nations Security Council, as this act imposes further obligations on entities that are subject to the AML Act.

Introducing Hungary's Register of Architectural Works

Early 2020 saw the official launch of a national Register of Architectural Works (see here). The purpose of this database is to keep a record of construction works that involve copyrighted designs and to inform the public of the identity of such copyright owners.

If an architectural work (design) is created after 31 December 2019, the required data pertaining to the economic rights of the designer must be submitted to the register within 30 days of the designer's delivery of the engineering documents to the client. Although the use of the system is mandatory, designers will not be entitled to any economic rights simply by registering their designs.

Because the system is new, it is not possible to comment on it yet but hopefully the Register will in future help to protect the copyrights of designers, as the legal protection of copyright works is presently far less transparent than that of other intellectual property.

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CERHA HEMPEL CEE NEWSLETTER *Romania*

Abuse of a dominant position on the oncological products market in Romania

After conducting an assessment of the Romanian pharmaceutical market, the Romanian Competition Council (RCC) has concluded that the degree of penetration of cheap generic drugs in Romania is comparatively lower than it is in other EU member states, although such drugs are at least 35% cheaper than their innovative variants.

A French manufacturer on the Romanian market was fined EUR 12,857,897 for its abuse of a dominant position on the market for oncological products in Romania. The following irregularities were identified by the RCC:

For the period 2017-2019, the manufacturer in question, which produces drugs containing Rituximab and Trastuzumab used in the treatment of chronic lymphocytic leukaemia, breast cancer, ovarian cancer, renal cancer, etc., implemented a commercial strategy aiming to eliminate competition in public tenders and delaying the entry of similar drugs on the market, mainly when participating in centralized public procurement in the national oncology program and in 47 public procurements at hospital level.

Although the manufacturer was selling such drugs to its distributors to avoid a monopoly, the price offered to distributors was higher than the price used in public procurement tenders and by acting in this way (i) it eliminated competition (including that of its distributors) in public tenders, and (ii) it delayed and hindered access to similar drugs competing with its products, which could have been provided by its competitors (including its distributors). The national budget allocated for the national oncology program was affected, whereas biosimilar alternatives could have been bought with savings of approx. EUR 7.1 million to the budget for the national oncology program. The French manufacturer was fined EUR 9.47 million for anti-competitive behaviour.

For the period 2017-2019, the same manufacturer, which also produces drugs containing Erlotinib used in the treatment of lung and pancreatic cancer, implemented a commercial strategy aiming to prevent the sale of cheaper, competing drugs containing the same substance.

The manufacturer referred patients to its products through its Patient Card and its Call Centre and covered the price difference with additional amounts from the state budget, by limiting other patients' access to the drug. An additional LEI 2 million was allocated for the price settlement of the respective drugs. The manufacturer was fined EUR 3,387,688 for behaving in this way.

The President of the RCC pointed out the need to focus on the development and introduction of new and more efficient drugs on the Romanian market, which may bring improvements to patients.

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CERHA HEMPEL CEE NEWSLETTER *Slovakia*

Tax advantages for small and medium-sized enterprises in Slovakia

As the taxation system is a key element for the competitiveness of the national economy, the Slovak legislator has reduced the income tax rate to 15% for all entrepreneurs with an annual income of up to EUR 100,000. Entrepreneurs with an annual income exceeding that threshold are subject to a tax rate of 21% if they are companies and 25% if they are sole traders.

By dividing taxpayers into two groups based on their annual income and favouring those with a lower income, the legislator has highlighted its desire to increase the liquidity of small firms, while expecting them to invest such liquidity in their further development.

This aim finds its deeper explanation in the actual situation of the Slovak economy, which has as its main actors big companies with foreign participation. Due to their ownership structures, the profits made by these companies are often destined to be distributed abroad instead of being invested within the country.

Small enterprises in Slovakia are usually Slovak natural persons or companies with Slovak participation, which are more likely to invest their profits in Slovakia. Stimulating the growth of this group of entrepreneurs should increase those profits which will be invested in Slovakia, and this should contribute to the general economic growth of the country.

One answer to be expected in response to this legislative change could be that medium-sized businesses will attempt to reallocate certain activities by splitting them among two or more companies. Each of these companies would have an income not higher than EUR 100,000 and therefore would fall within the category of enterprises benefitting from the newly introduced tax advantages.

This kind of reaction should not be expected from big corporations with huge incomes which, to apply this scheme, would need to split their activities among dozens of companies with related administrative costs and burdens. However, medium-sized businesses may be interested in adopting such measures. This is not explicitly prohibited despite being a clear circumvention of the law.

Even if the risk of circumvention is not completely covered by the new legislation, this tax measure may generally be regarded as being positive for the Slovak economy as a whole.

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