LABOUR CODE AMENDMENT BRINGS IN CHANGES IN EMPLOYMENT RELATIONS AND M&A TRANSACTIONS

The long-awaited Labour Code Amendment, which was enacted in the summer of this year, brings in a number of changes that extend beyond the field of employment. The modifications to the Labour Code will come into effect in two tranches: changes unrelated to a calendar year or public budgets have already been in effect since 30 July 2020, whereas other changes will apply from 1 January 2021.

The main changes already in force, which we view as key, include the introduction of more specific conditions for the automatic transfer of employees, which will also impact M&A transactions, and new rules on delivering notices.

Key areas affected by the amendment

Effective 30 July 2020:

- Delivery of notices
- Transfer of rights and obligations
- Secondment of employees to the Czech Republic

Effective 1 January 2021:

- Changes to annual leave
- Introduction of job-sharing
- Paid leave for children's camp leaders
- Rules on compensation for damage and non-material loss

AUTOMATIC TRANSFER OF EMPLOYEES

The precise rules brought in to regulate the transfer of employment rights and obligations (Section 338 *et seq.* of the Labour Code) are, in our opinion, a much-needed amendment. The transfer of rights and obligations enables the affected employees to continue in their employment. In other words, it prevents the need for employees to have their employment contracts terminated with the outgoing employer and for a new employment contract to be signed with the incoming employer. The main purpose of this legislative tool is to protect the employment relationships of those employees whose activities are – for various reasons – transferred to another employer.

With regard to automatic transfer of employees, the amendment comes in response to EU legislation and the case law of the European Court of Justice, which have established narrower rules on the transfer of employers' activities than were specified in the Labour Code prior to its amendment. In practice, this posed significant issues concerning its interpretation. Whereas, prior to the amendment, automatic transfers could be applied to most cases of outsourcing, insourcing or changes of contractor, thus causing paradoxical and often unresolvable situations, automatic transfers will now apply only if all of the following conditions are met:

- The activities are carried out in the same or a similar manner and scope after having been transferred;
- The activities do not wholly or mainly consist in the supply of goods;

- Immediately before the activities are transferred, there is a group of employees which has been deliberately organised by the employer to carry out the activities on an exclusive or prevalent basis;
- The activities are not intended as short-term activities and do not consist in a one-time task; and
- Assets, or the right to use assets, are being transferred, where the nature of the activities means that those assets are essential for the performance of the activities, or a significant part of the employees deployed by the outgoing employer for those activities are being transferred, where those activities are substantially dependent on the employees rather than on assets.

The above criteria will not have to be met where a special law explicitly provides for the transfer of rights and obligations (e.g. in the event of a merger or transfer of business).

SECTION 51A – NOTICE OF TERMINATION IN CONNECTION WITH THE TRANSFER OF RIGHTS AND OBLIGATIONS

Before the amendment, the Labour Code permitted employees affected by any transfer of rights and obligations to terminate their employment almost immediately if they did not wish for their employment to be transferred to the incoming employer. In practice, the absence of any deadline for employees to hand in their notice to the employer in connection with a transfer was cause for considerable uncertainty, both for the incoming employer and for the M&A transaction as such, as it was not clear until the last minute which employees affected by the transfer of rights and obligations would indeed have their employment transferred to the incoming employer.

In this context, the amendment introduces a 15-day time limit, commencing the day on which the affected employee is properly informed about the transfer. Therefore, if the employer complies with its statutory duty to inform the employees about the transfer at least 30 days in advance, the last employees should be expected to hand in their notice no later than 15 days before the effective date of the transfer.

The new provisions also address what should happen if employees have not been informed of the transfer of rights and obligations at all, if they were belatedly informed and/or if they did not receive all the information required by law. Here, the amendment introduces a special 15-day notice period after the transfer of rights and obligations itself and allows employees to hand in their notice for up to two months after the effective date of the transfer.

DELIVERY OF NOTICES

The Labour Code sets outs specific rules on delivering certain notices, in particular notices regarding the creation, modification and termination of employment. Before the amendment, there were a number of practical issues concerning the delivery of notices, as employers first had to prove that a particular notice could not be delivered to employees either by hand at their workplace, at their place of residence or wherever else they could be found, or by means of electronic communications networks or services. Only after all of these options were exhausted could the employer deliver the notice to employees by post. The amendment introduces a new procedure whereby, in the first place, the employer can deliver the notice to employees by hand at the workplace or, where this is not possible, the employer can then use any of the other avenues through which the employee can be reached (by postal service, by electronic communications networks or services, or by data box) without any order of priority established between them.

Another welcome modification that addresses certain practical issues associated with delivering notices by post (in particular termination notices) is the possibility for the employer to send the notice to the address previously notified by the employee to the employer in writing. In this way, the employees will be primarily responsible for keeping this address correct and up-to-date, otherwise they will run the risk of the notice being delivered to the wrong address, thus preventing them (e.g. due to the expiry of the statutory period) from contesting the content of the notice. Similarly, the amendment extends the time limit that notices may be kept by post offices or municipal authorities in case of failure to deliver a notice to the employee by post. The original time limit of 10 business days has been

extended to 15 calendar days, in line with the time limit determined in the postal terms and conditions of Czech Post. Once this time limit expires, the notice will be deemed delivered with all consequences related thereto.

ADDITIONAL MODIFICATIONS INTRODUCED BY THE AMENDMENT

As the modifications brought about by the amendment are extensive, we are currently preparing a webinar for you, where we will guide you through the key modifications and answer your questions.

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