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# NEWS 7/2013

## News No. 7/2013

### Commercial Law News – invoice payment periods, interest rates on late payment etc.

On 28 June 2013 an **amendment to the Commercial Code** (Act no. 179/2013 Sb.) was published in the Collection of Laws which came into effect on **1 July 2013**. This amendment has been adopted in connection with European Parliament and Council Directive 2011/7/EU of 16 February 2011 on combating late payment in commercial transactions and governs, in particular, the questions of invoice payment terms in the business sphere. At the same time, on 1 July 2013 Government Decree no. 180/2013 Sb. became effective, amending Government Decree no. 142/1994 Sb.; this decree increases the interest on late payment and sets forth the extent and conditions for exercising the right to compensation for the minimum costs connected with enforcing claims. Below we present the most important changes:

- The amendment preserves the basic 30-day period for the payment of invoices. In business relations, this payment period may be extended up to 60 days; however, the payment period may only exceed 60 days if this is not grossly unfair on the creditor.
- In cases where the debtor is a public contractor, generally a 30-day payment period applies. An extended payment period may be agreed upon only if this is substantiated by the nature of the obligation; nevertheless, even in those cases the payment period may not exceed 60 days (the maximum non-extendible deadline). This regulation shall apply to relationships between the creditor and a subcontractor if the creditor fulfils an obligation towards a public contracting authority through the subcontractor.
- The maximum agreed time for the acceptance of goods is 30 days. It is only possible to accept goods after more than 30 days if this is not grossly unfair on the creditor.
- There is a new penalty for non-compliance with the invoice payment deadline – besides the interest on late payment, the creditor is now entitled to compensation for the minimum amount of costs connected with enforcing his claim. In this context, the amendment includes a delegating provision concerning the adoption of a decree to set forth the minimum costs connected with enforcing claims in business matters – see the new Government Decree no. 180/2013 Sb (below).
- The mechanisms against the misuse of unfair contractual terms and conditions have been adjusted; agreements concerning payment periods deviating from the set rules as well as agreements concerning interest on late payment are invalid if grossly unfair on the creditor.
- Agreements excluding interest on late payment as well as agreements excluding the right to compensation of costs connected with enforcing a claim that are considered to be grossly unfair are expressly prohibited.

The changes the amendment brings are reflected in and extend the list of mandatory provisions of the Commercial Code. Furthermore, there has been an upgrade to mandatory status for those provisions that set limits for contractual arrangements governing a maximum payment deadline, those provisions that stipulate who and under what conditions may plead the



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invalidity of contractual arrangements that are contrary to the legal regulations for late payment and those provisions that define grossly unfair conditions.

By Government Decree no. 180/2013 Sb. the interest rate for late payment is to change from the repo rate of the Czech National Bank + 7 percentage points to the repo rate of the Czech National Bank + 8 percentage points. The minimum lump-sum costs connected with enforcing claims have been set at CZK 1200.

Finally, we should point out that similar regulation has been included in the new Civil Code (Act no. 89/2012 Sb.), which becomes effective on 1 January 2014.

## **Employment law news – amendment to the Labour Code**

On 31 May 2013, the President of the Republic signed an amendment to Act no. 262/2006 Sb., the Labour Code (hereinafter referred to as the "Labour Code"). The amendment has been published in the Collection of Laws under no. 155/2013 Sb. and **came into effect on 1 August 2013.**

The amendment to the Labour Code brings two major changes. It has reintroduced an exception concerning the conclusion of fixed-term employment contracts without time limits in response to serious operational reasons on the part of the employer or in cases of work of a specific nature. Moreover, employees' fixed rest periods between two shifts have been changed. Below we present a brief description of these changes.

### **Repeated conclusion of fixed-term employment contracts (so-called "chaining")**

The amendment to the Labour Code re-enables the repeated conclusion of fixed-term employment contracts without any time limits for a certain category of employees if there is compliance with the set conditions. In fact, this is a "re-introduction of the exception" which was acceptable before 1 January 2011, within certain tightly-controlled rules. Thus the amendment responds to the needs of practice and shall, in particular, consider the specific conditions prevalent in certain sectors (building, agriculture), mainly in seasonal work, as well as other cases of serious operational reasons on the part of the employer or reasons originating in the specific nature of the work. Since 1 January 2012 there have been restrictions governing the conclusion of fixed-term employment contracts, according to which the duration of a fixed-term employment contract may not exceed 3 years and may be repeated a maximum of twice after the formation of the first employment relationship, there being no exceptions to this rule.

Henceforth the basic conditions for the possible "chaining" of fixed-term employment relationships, i.e. the conclusion of a fixed-term employment relationship beyond the scope of the above-mentioned time limits, are as follows:

- Serious operational reasons on the part of the employer or reasons consisting in the specific nature of the work
- On the above-mentioned grounds, the employer cannot reasonably be required to suggest that a permanent employment contract is concluded with the employee concerned



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- A reasonable approach is taken showing due regard to the above-mentioned grounds
- There is agreement between the employer and the trade union; if there is no trade union at the place of employment, such agreement can be replaced by an internal regulation.

The elements of the agreement with the trade union are set out in the Labour Code as follows: the agreement must include a detailed specification of the reasons stated by the employer, the rules of this different employment practice when entering and re-entering into fixed-term employment contracts, the category of employees employed by the employer to be affected by this different practice as well as the duration of such an agreement. An internal regulation must include all the elements as per the above-mentioned agreement.

## **Shortening of the rest period provided to employees**

The right of employees to a minimum uninterrupted rest period between two shifts has been changed. The amendment has shortened the uninterrupted rest period between two shifts (i.e. between the end of one shift and the beginning of the following shift) by 1 hour from the original 12 hours to 11 hours. In order to comply with EU directives, this shortening shall not apply to employees aged under 18 as a result of a change made by the Senate of the Czech Republic.

Even in this case the legislators have responded to the needs of practice since it was often difficult to comply with the rules concerning minimum uninterrupted rest periods between two shifts required by law, in particular in nonstop operations, and did not correspond with the needs of practice. However, there were already exemptions concerning minimum rest periods between two shifts in certain sectors before this amendment was adopted (transport, health, etc.)

## **Judicial decisions**

### **Business trips of foreigners with work permits**

On 22 August 2013, the Supreme Administrative Court issued a decision, file no. 1 As 67/2013, dealing with the possibility of sending on a temporary business trip an employee who is a foreigner with a Czech work permit. It follows from the decision that such foreigners can be sent on temporary business trips without having to obtain further permits from the Labour Office. The Supreme Administrative Court assessed the case of a foreigner, a Ukrainian citizen with a permit to work in Prague who performed work in Chomutov as part of a business trip.

### **Liability for outstanding VAT**

On 10 September 2013 the General Financial Directorate issued information on the guarantee for outstanding tax under Sec. 109 (2) (c) of the VAT Act., i.e. where the recipient of a taxable supply is liable for the outstanding VAT if the payment for the taxable supply is performed, in full or in part, via bank transfer to a bank account other than the account of the provider of the taxable supply as published by the tax administrator.



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Thenceforth, the period of time over which the tax administration will not call on the guarantor (i.e. the recipient of the supply), whose legal guarantee for payment of any outstanding tax arises under this provision, is extended to 31 December 2013.

In practice, the guarantee shall apply most probably after the aforementioned provision in the VAT Act is amended. The planned amendment is aimed to set forth the financial limit: the guarantee would apply only to payments for taxable supplies exceeding this limit. We will keep you informed of any further developments in this situation.

This information does not apply to guarantees for VAT arising on other grounds.

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