

Newsletter



Return of the “bad son” in the form of a statutory pre-emptive right

From 1 January 2018, the institution of general statutory pre-emptive right to immovable property in co-ownership returns to the Czech legal order, and the law again stipulates that where a co-owner transfers their co-ownership share in immovable property, other co-owners have the pre-emptive right, unless it is a transfer to a close person (relative in a direct line, sibling, husband, partner, etc.), even in the case of a transfer not subject to consideration (i.e., a donation).

The institution of the general legal pre-emptive right for co-ownership, which was cancelled in its original form as at 1 January 2015, returns to the Czech legal order as a result of the first amendment to the Civil Code. As already indicated above, it will only apply to immovable property and not to movable property. It should be noted that the pre-emptive right applies only to transfers of co-ownership shares, not to passage of co-ownership shares (e.g., in inheritance proceedings or in the case of transformation of the co-owner under a merger or division).

This is thus a known situation, where a co-owner transfers their co-ownership share in immovable property and it is not a transfer to a close person, the co-owner will be obliged to make a written offer to the other co-owners for the purchase of that property under conditions under which the co-owner would offer that property to a potential buyer. If the other co-owner accepts the offer, the share passes to that co-owner. Where there are several co-owners and unless they agree on the exercise of their pre-emptive rights otherwise, they have the right to purchase the share proportionally according to the size of their shares. In the case of a transfer not subject to consideration, the co-owner(s) must pay the transferor the usual price of the transferred share in immovable property.

In the event of a violation of the pre-emptive right, the co-owner whose pre-emptive right has been violated may require the acquirer of the co-ownership share to transfer the co-ownership share to that co-owner for the relevant consideration. If the transferee fails to do so, co-owners may claim their rights before court. It is therefore advisable that potential purchasers from the seller and any other co-owners request confirmation that the share in question had already been offered to them to comply with the pre-emptive right.

For completeness, it should be noted that a co-owner may waive their pre-emptive right in advance. This waiver of the pre-emptive right also applies to the co-owner's legal successors. In the case of immovable property entered on a public list (e.g., the Land Register), the waiver of that right is entered on this list. This solution would be suitable for large residential complexes with garage parking space in the form of a co-ownership share in immovable property.

In conclusion, the return of this institution can make more difficult, for example, sale of apartments in large cities an important part of which is a garage parking space, which is typically represented by a co-ownership share in a non-

residential unit. In such cases, the aforementioned waiver of the pre-emptive right of all co-owners of this non-residential unit would be appropriate.

Mgr. Jiří Marek, LL.B., Senior Associate
Mgr. Tomáš Zwinger, Associate



New obligation to register trust funds

A new register of trust funds has been in place since 1 January 2018, and it will be administered by courts maintaining the Commercial Register. Domestic and foreign trust funds are to be registered in the new register. Trust funds established before 1 January 2018 have to be registered by 1 July 2018.

Fundamental changes in the regulation of trust funds, based on an amendment to the Civil Code and the Act on Public Registers of Legal and Natural Persons, have been in effect since 1 January 2018. The latter will now be titled “Act on Public Registers of Legal and Natural Persons and on Records of Trust Funds”. The amendment is a response to requirements of the EU’s AML Directive, which aims, among other things, to increase the transparency of ownership relations of trust funds. The most important changes are summarized below.

In the first place, a register of trust funds is established. Domestic trust funds and foreign trust funds, i.e., trust funds or similar facilities governed by laws of another country but operating in the territory of the Czech Republic, have to be recorded in this register.

A major change associated with registration of trust funds is the fact that a trust fund is now established only upon registration in the register. Previously, establishment of a trust fund was tied to the moment when a trustee accepted a mandate to administer a trust fund. Likewise, an appointment or other designation of the person who is to receive the benefits from a trust fund established for a private purpose (the beneficiary) is only effective on the day of registration of the beneficiary in the register of trust funds.

A motion to register a trust fund in the register of trust funds may be filed by the trustee with the regional court in the district of which the general court of the trustee is located, or through a notary. It should be noted here that proceedings in matters of motion, change or deletion of a trust fund from the register of trust funds are exempt from court fees. However, where the entry is made through a notary, notary fees apply.

It should be noted in connection with registration that trust funds established before 1 January 2018 have to be registered in the register of trust funds by 1 July 2018. Where a motion for registration is not filed within that time limit, administration of the trust fund will be terminated and the trustee is to hand over the property to the person entitled to it. The aforementioned time limit also applies to registration of beneficiaries who had been appointed or otherwise designated before 1 January 2018. If a beneficiary is not registered within that time limit, the effects of their appointment or other designation will expire.

Information to be registered in the register of trust funds includes, in particular, designation, purpose, date of establishment and termination of the trust fund, identification number, information about the trustee(s), including the manner

of their acting, information about the founder, the beneficiary or, where applicable, about another person entitled to oversee trust fund administration. However, information about the founder, the beneficiary and the person entitled to exercise oversight is not listed in a regular copy of entry in the register of trust funds and is not published, unless consent has been given for disclosure.

Finally, it should also be noted that trust funds registered in the register of trust funds are obliged to, like legal entities entered in the Commercial Register, enter their beneficial owners in the register of beneficial owners, which was also launched on 1 January 2018 and which we informed you of in the previous issue of our Newsletter. However, in contrast to legal entities, which have to do so by 1 January 2019, trust funds have a longer period, until 1 January 2021.

Mgr. Jiří Marek, LL.B., Senior Associate
Mgr. Tomáš Zwinger, Associate



Legislative news

Let's look at the following selected legislative news:

Amendment to the Payment System Act

A new Payment System Act became effective on 13 January 2018, and it reflects the obligation to transpose the EU's Payment Services Directive (PSD 2). The most significant changes brought about by this amendment concern strengthening of rights of payment service users and the resulting new obligations for payment service providers, the area of online payment security, and modern payment procedures through mobile or internet applications. For example, the regulation introduced an obligation of 'strong authentication'. This institution consists of an obligation to verify the identity of the payer in two steps, which must combine at least two of the following verification methods: authentication through information known only to the user (i.e., credentials, typically a PIN or a similar detail), and something the user possesses (typically a mobile phone to which a SMS is sent with a unique verification code), or possibly biometric user data using modern technologies (fingerprint, iris scan or a "selfie").

Changes in personal income tax

Withholding tax on negligible income

Since 1 January 2018, new rules apply to taxing income from small scale employment, i.e., up to CZK 2,500 a month. Under the new legislation, withholding tax is to apply to such "negligible income" and taxpayers do not have to state such incomes in their tax returns. This change is directed primarily at small incomes that taxpayers receive in addition to income from their employer (for example, remuneration of a member of the electoral committee, remuneration for the performance of an office, etc.).

Changes in flat rate limits

Another change is a reduction in the limits for flat-rate expenses, i.e., expenses as a percentage of the total income (the upper limit of which is now mandatory CZK 1 million). The limits for flat-rate expenses for 2018 are as follows:

- in the case of the 80% flat rate, expenses can be claimed in the amount up to CZK 800 thousand—this applies to income from agricultural production, forestry and water management, and income from craft trade;
- in the case of the 60% flat rate, expenses can be claimed in the amount up to CZK 600 thousand—this applies to income from trade activities;
- in the case of the 40% flat rate, expenses can be claimed in the amount up to CZK 400 thousand—this applies to income from independent activities (e.g. doctors, tax advisors, interpreters, experts, lawyers, etc.);
- in the case of the 30% flat rate, expenses can be claimed in the amount up to CZK 300 thousand—this applies to income from rental of property included in commercial property (e.g., rental of a land or house).

