

a&d advocate

Distraintment must be commensurate

An amendment to distraintment rules simplifies the ordering of distraintments and transfers an administrative activity which nowadays burdens the courts to distraintors. This should lead to the more effective and speedier enforcement of receivables and increased protection of creditors from non-payers. At the same time the change brings new possibilities of protection against chicanery enforcements. The amendment becomes effective on 1 November 2009.

The main purpose of this amendment is to allow distraintors to deal with undisputed matters and issues of an organisational nature (e.g., removal of deficiencies in the petition). Disputed issues in the enforcement proceedings will remain to be decided by courts. A part of the administrative agenda of the courts that has so far impeded the enforcement process will thereby be removed.

(Read more on page 2)



■ FOCAL POINT:
Distraintment must be commensurate



■ No need to individually issue a power of attorney for representation at a general meeting



■ Protection in the case of loss of payment card and account statements without charge

■ Apply discounts on social security insurance contributions

Apply discounts on social security insurance contributions

Since 1 August 2009 an amendment to the social security act has been in effect which allows an employer to apply discounts on social security

insurance contributions and state employment policy contributions. The aim is to reduce the costs of labour force in the case of employees with lower or average income and contribute to the maintenance of employment. This temporary measure is limited

to the end of 2010 and can be first applied in August 2009. However, the change also affects the first half of 2009. For this period the employer can apply a lump-sum extraordinary insurance discount.

[You can learn more about the labour law here](#)



Distraintment must be commensurate

(Follow from frontpage)

The act will newly formulate a commensurateness of the distraintment as the distrainer will be allowed to distraint property only to the extent of the enforced receivable. In future, it will not be possible to distraint, i.e., take-over in retention, a property of a value higher than the value of a due amount. The amendment also implements priority of the manner of the distraintment, e.g., if the debtor has enough money on his account, the distrainer will not be able to choose a different manner of distraintment than the priority one.

The debtor will now have the possibility to deposit security collateral and attain an adjournment of the distraintment. In this way the protection of the debtor who disputes a certain circumstance decisive for the distraintment's execution will be increased. At the same time the creditor's protection will also be increased as it is secured, in the case the petition for suspension of the enforcement is rejected, that his receivable will be covered from the deposited security collateral.

The act also enables the debtor, based on the approval of the distrainer, beneficiary and registered creditors, to sell a part of his property if the sale is to be used to cover his debts. The debtor can thus actively access the sale of part of the property and avert the sale of parts of his property by the distrainer according to the distrainer's own choice.



Strengthening of the protection of third person's rights is ensured by the so-called deletion of a thing from the list of things determined for the distraintment. If the distrainer included a thing belonging to a third person in the list, this person can file a petition for deletion of the thing. The distrainer adopts a decision regarding the deletion from the list and he deletes the thing always when the beneficiary agrees to it. If the distrainer does not comply with the petition for deletion, it is possible to file an action to exempt with the court. Until the moment the distrainer makes a decision on the petition for deletion of the thing out of the list, or as the case may be, during the term of the proceedings on the action to exempt, the listed things cannot be sold.

An obligation to register advertisements of auctions, notifications of an auction year and enable a distant access to this information in the central register of the distraintments is newly implemented. The data are to become publicly available and allow to third persons to take part in auctions.

ARTICLES

Protection in the case of loss of payment card and account statements without charge

■ A new act on the payment system should become effective as of November 2009 which in a number of aspects will strengthen a client's position. For example, when losing a payment card, the liability for abuse of the card shall be borne by its provider immediately from the moment of reporting the loss. The client will also be entitled to the provision of the account statement free of charge at least once a month whereas it is sufficient if the statement is provided in electronic form. Providers of these services, i.e., banks and payment cards issuers, will have to reflect the above-mentioned specialties in their business terms and conditions.

[You can learn more about the banking sector here](#)



ARTICLES

No need to individually issue a power of attorney for representation at a general meeting

■ Recently, the Supreme Court clarified one of the issues of representation of a shareholder at a company general meeting, in particular the matter of issuance of a power of attorney for representation at more than one general meeting of the same company. Some courts of lower instance noted that this procedure is in conflict with legal regulations.

The Supreme Court stated that it was acceptable that the power of attorney was issued for representation at more than one general meeting of the particular company on the condition that this power of attorney is limited to the exercising of shareholders' rights connected to participation at the general meeting and does not give authorisation to all acts on behalf of the shareholder. Thus, the decision simplifies the procedure in exercising shareholder's rights.

[Do you want to know more?](#)

advocate



Act on significant market force

■ On 9 September the Chamber of Deputies passed a draft of the act on significant market force. If the draft is signed by the president or his potential veto is defeated by the Chamber of Deputies, the new act will be declared in the collection of laws. Big consumers will then have three months to adapt to the new act and not risk a fine. This is a revolutionary legislation change in the area of retail sale.

The aim of the act is to avert abuse of significant market force, i.e., enforcement of unilaterally advantageous business terms and conditions by consumers. Pursuant to the draft law each consumer with net turnover exceeding CZK 5 billion per year has significant market force. Changes implemented by the Senate restricted the effect of this act only to agricultural and food products. The act, which will especially affect market chains, imposes extensive obligations and we will deal only with some of them.



For example, the consumer must prepare business terms and conditions with specific prerequisites (conditions of sale, price conditions, payment conditions, etc.) and present them to a consumer who will ask for their provision. The term for payment by the consumer must not exceed thirty days from the date of supply of the goods and a default interest must be determined in the case that this time-limit is not observed. Consumers who are subject to the audit must publish information on the terms of payment.

Rules restricting a price formation are implemented and a number of business practices are prohibited. Payments by suppliers for the services that were not factually provided are prohibited as well as payments which are inadequate to the value of the provided service. Requirement of payment by the supplier without the consumer's written obligation to take a delivery of an adequate volume of goods or suppliers' participation in business promotion, purchase or investments of the consumer are also prohibited. In addition, the consumer cannot draw benefit from the threat of interruption of business relations, require postponement of the date of issuance of an invoice or recharge the supplier for the sanctions imposed on him.

The consumer cannot unilaterally set-off its receivables against the receivables of the supplier and must not obtain retroactive benefit in the form of discounts, commissions or agreement on business co-operation. The rules for the so-called distant Dutch auction are also new. An agreement arising from the auction will be invalid if these rules are not fulfilled. For some products these auctions are fully prohibited.

Supreme Court: Some powers of attorney granted by a branch manager can be invalid

■ There are two conflicting legal standpoints regarding the possibility for a branch manager registered in the Commercial Register to give a power of attorney to other persons. One of the standpoints alleges that if the branch manager is entitled, in compliance with the Commercial Code, to perform all legal acts concerning this branch, he or she can also empower another person to the same extent. However, in its recent decision the Supreme Court favoured the opposite standpoint.

Pursuant to the Supreme Court, the empowerment of the branch manager to perform all legal acts is non-delegable and concerns him/her personally. Thus, the branch manager cannot appoint another representative in his/her place. This results from the decision by the Supreme Court that the powers of attorney for legal acts granted by the branch manager and the contracts concluded by the relevant agent could be questioned.

Based on the law, the branch's employees can also represent the branch in addition to the branch manager if they are authorised to carry out certain activities in operating the business. They are authorised ex lege to perform all acts normally conducted during their working activity.



advocate
AMBRUZ & DARK LAW FIRM

ADvocate, Czech Republic, 2009

The newsletter "ADvocate" is prepared by Ambruz & Dark Law Firm associated with PricewaterhouseCoopers

We are happy to answer your questions to any of the themes dealt with at:

advocate@ambruzdark.com, tel.: +420 251 152 911

Warning: The information contained in this material is of a general nature and does not provide a summary analysis of the referred themes. Before acting or abstaining from acting based on the information contained herein, users should consider making use of the respective professional services. Any claims for compensation for the steps taken in relation to this material will not be accepted.

© 2009 Ambruz & Dark, advokáti, v.o.s.
All rights reserved.