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Exercising a direct claim against the wrongdoer's insurer – A wish or already a reality?

In some cases, the injured party may seek compensation from the wrongdoer's insurer. This article explores the feasibility of exercising a direct claim against the insurer of the wrongdoer and whether it is already a reality. When damage occurs, the injured party has the right to claim compensation directly from the wrongdoer. However, the wrongdoer may not always be solvent and able to compensate for the damage.

Alice Kubová Bártková, Kristýna Nováková
Rödl & Partner Prague

The injured party's direct right to insurance benefits from the liability insurance of the wrongdoer is currently enshrined in the Czech legal system. This is evident in the Act on Liability Insurance for Damage Caused by Vehicle Operation.

Unfortunately, under Czech law, the injured party does not have a direct claim for insurance benefits against the third party's insurer, unlike in some other EU Member States.

Case law and a new possible breakthrough

However, there may be a possible breakthrough in relation to claims other than those arising from mandatory liability as a result of the recent landmark judgment by the Czech Supreme Courts in case No. 29 Cdo 2304/2022 of 30 June 2023. The Court ruled that in cases where the insolvency court has declared the insured bankrupt due to liability for damages and has declared bankruptcy over his property, the insolvency administrator of the insured can

In the event of carrier insolvency, damages may be recovered through the carrier's liability insurance company, subject to certain conditions, by making a direct claim as a creditor in the insolvency proceedings

demand that the insurer directly reimburse the injured party for the damage caused. It is important to note that in the context of the entire reasoning of the judgment, the reference to the 'insured' is a clerical error and should be understood as referring to the 'injured party'. However, the injured party does not have the right to demand payment of the insurance claim from the estate.

Although the injured party does not make a direct claim against the liability insurer of the wrongdoer, the insolvency administrator of the wrongdoer can make such a claim against the insurer. However, the insurer cannot pay the insurance claim into its own assets, but must pay the full amount directly to the injured party.

For an insured party to proceed with this solution, insolvency proceedings must have been initiated against the wrongdoer's property due to his insolvency, and the insolvency must have been resolved through bankruptcy. Additionally, the injured party must file his claim in a timely and proper manner as a creditor in the insolvency proceedings. As a creditor, the injured party has certain options under the Insolvency Act to ensure that the insolvency administrator properly recovers the insurance claim from the insurer. It is essential that the insurance policy is valid at the relevant time, including the payment of premiums during the relevant period. The policy should also cover liquid damages, as defined in the insurance conditions and the insured's obligations.

Our advisers can assist you in assessing your claim against the wrongdoer's insurer, and guide you through insolvency proceedings.

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→ Law

Cybersecurity in 2024: Rödl & Partner and Cybrela s.r.o. shake hands on new consultancy deal

The new Cybersecurity Act and the accompanying regulations are currently undergoing the commenting process and will soon be submitted to the government for consideration. If all goes well, it should come into force as early as in autumn 2024. Ensuring a certain level of cybersecurity is undoubtedly a daily necessity for businesses and the new law will add a number of obligations for both public and private companies. The basic step is to assess whether a business provides so-called regulated services and will be covered by the new legislation, and if so, to what extent.

Are you unsure whether you provide regulated services or do you already know that you are one of the lucky ones and are looking

for a practical way to grasp the whole issue? Together with Cybrela s.r.o., a consulting company, we offer legal advice and comprehensive services in the field of cyber information security. To start with, we have prepared two informative webinars for you together with our cybersecurity manager Kateřina Hůtová. You can register for them here: www.roedl.cz/cs/cz/Events.aspx.

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→ Taxes

What has state administration come up with in terms of new developments in real estate tax for 2024?

This is part of a wider range of tax news expected this year, particularly in relation to the real estate tax..

Petr Koubovský
Rödl & Partner Prague

The state administration has recently issued new guidelines on the taxation of paved areas of land on its website on 26 January 2024. Namely:

– **New guidelines on the of taxation of paved areas of land**, which are used for business purposes or which the entrepreneur has classified as business property under the Income Taxes Act.

In contrast to the original definition, paved areas of land are defined as land surfaces that are reinforced with a building according to the Building Act, without a vertical supporting structure, regardless of their type registered in the Land Registry. Additionally, the land as a whole or only a part of it is classified as business property according to

cept of ‘public transport’ and the criteria for a road to be considered as such under the Road Traffic Act. An exemption requires approval or consent from the building authority, which should clarify whether the land is used for public transport or is a public road with general use. It is important to note that field and forest tracks are not included in this category. Lastly, the guidelines also address questions related to the exemption of land in public parks, grounds and sports facilities. The decisive factor for assessing entitlement to the exemption is the deliberate renunciation of the right of use for the benefit of the public.

For further information, please refer to: https://www.financnisprava.cz/assets/cs/prilohy/d-seznam-dani/65779_23-osvobozeni_pozemku_od_dane_z_pozemku_podle_par4_ods.pdf

Regarding the amendment to the Real Estate Tax Act, it is important to note the General Financial Directorate’s opinion on tax exemption for the construction of water supply facilities, such as water treatment plants and substations. Not every waterworks meets the definition of a taxable building under the Real Estate Tax Act, and not every substation is a distribution or transmission system facility under the Energy Act or a part thereof.

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the law regulating income taxes. In essence, the land or a part of it has been recorded in the tax records, regardless of whether it is currently being used for business purposes.

For further information, please refer to: https://www.financnisprava.cz/assets/cs/prilohy/d-seznam-dani/68745F23_Metodicky_pokyn_k_problematice_zdanovani_zpevnenych.pdf

– **New guidelines on exemption from land tax on land with roads serving public transport**, land used for public transport and also land with public car parks, or areas serving the public for parking according to Section 4(1)(o) and (l) of Act 338/1992 Sb., on immovable property taxes, effective from 1 January 2024.

These guidelines outline the conditions under which exemptions may be applied under relevant statutory provisions. The text discusses the con-

Real estate tax is increasing.
Take advantage of legitimate
opportunities to reduce it



→ Taxes

Do you qualify for income tax exemption on royalties?

The recipient of royalties cannot be exempt if he is not the beneficial owner. To classify as the beneficial owner, he must be free to determine how the payments are to be used and he may not be legally or contractually obliged to pass the payments on to another company.

Jakub Šotník
Rödl & Partner Prague

The Supreme Administrative Court considered whether the British taxpayer met the conditions for exemption of royalties paid by the Czech company. The tax authorities denied the UK taxpayer's request for exemption from royalties, arguing that the UK taxpayer had not demonstrated that they were the beneficial owner of the royalties.

The Supreme Administrative Court referred to its previous judgment, stating that "the recipient of (sub)royalties is the beneficial owner of the royalties only if they can use and enjoy them without restriction and are not obliged by law or contract to transfer the payments to another person".

The Supreme Administrative Court has stated that the answer to this question depends on whether the UK taxpayer actually benefits economically. This means that the taxpayer must have the freedom to determine how the royalties will be used and must not be legally or contractually obliged to pass the payments on to another company.

The UK taxpayer received royalties through a royalty assignment agreement and subsequently became the management company of

the group, with significant responsibilities regarding intellectual property rights. The UK taxpayer is now responsible for collecting royalties from the Czech company and paying royalties for the same licensed rights to other companies in the group.

The UK taxpayer is passing on almost 95% of the royalties collected from the Czech company to other companies within the group. The transfer of royalties is a contractual obligation.

The Supreme Administrative Court ruled against the British taxpayer, stating that:

- The UK taxpayer is not free to determine how the royalties will be used as it is obligated to pass on a substantial portion of the payments received from the Czech company to other companies
- It is irrelevant that the UK taxpayer is not required to account for the specific payment received from the Czech company under the contractual arrangement, and that they do not record and manage the payments received separately. The royalties collected from the Czech company cannot be used and enjoyed without restriction by the UK taxpayer
- The payments are determined as a percentage of the same base and are linked in time, creating a nexus between the royalties
- Additionally, the UK taxpayer is responsible for producing written reports detailing the royalties

they collect and pay, creating a link between the royalties

- There is a link between the payment of royalties and the requirement for the UK taxpayer to allow the companies to which it remits payments to audit and check the above records, including comparing the amounts of royalties received and paid
- Admittedly, the UK taxpayer carries numerous functions and risks and is acting on its own behalf and at its own expense, i.e. not just as a royalty manager. However, this does not affect the SAC's conclusion that it has a contractual obligation to remit approximately 95% of the royalties received from the Czech company to other companies.

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