

Register of Contracts – Penalties for failure to disclose a contract in the Register of Contracts

The provisions of Act No. 340/2015 Sb., on the Register of Contracts, governing the legal consequences of the (non-)disclosure of contracts and related penalties, will come into effect on 1 July 2017. All contracts for which disclosure in the Register is mandatory will only become effective upon their disclosure and any such contracts not disclosed in the Register will be treated as invalid from the outset.

Penalties for non-disclosure

The provisions of the Register of Contracts Act 2015 (Act No. 340/2015 Sb.), governing the legal consequences of the (non-) disclosure of contracts, is to come into effect on 1 July 2017. These provisions include the principles that a contract will not enter into force until it has been published in the Register of Contracts and that any contract not disclosed within three months of its signature date will be treated as invalid from the outset.

The Register of Contracts Act, effective as of 1 July 2016, provides that all contracts must be disclosed in the Register of Contracts where at least one of the parties to a contract is a public entity (in particular, the State) or is a certain type of private law-governed or mixed entity (such as State-owned enterprises, institutions receiving contributions from the State,

health insurance companies, legal entities in which the State holds a majority ownership interest and local government authorities). It has also been mandatory as of 1 July 2016 for all contracts subject to mandatory disclosure to be made in writing.

Additionally, a system for penalties will now come into effect from 1 July 2017. From this date, all contracts subject to mandatory disclosure that are signed on or after 1 July 2017 will not enter into force until they have been disclosed in the Register of Contracts. All contracts must be disclosed in the Register no more than 30 days after their signature date.

In several cases, this requires the parties to a contract to prove that such contract has been disclosed and has come into force. This is indeed the case of proceedings for the registration real estate ownership title with the land registry authorities, where any contract will have to be disclosed in the Register of Contracts before any application for the

Key features

- A contract does not enter into force until it has been published in the Register of Contracts
- A contract that is not disclosed in the Register of Contracts is treated as invalid from the outset.
- The disclosure obligation also applies to all agreements amending, modifying, replacing or cancelling contracts that were signed before the effective date Act, provided they are subject to mandatory disclosure in the Register of Contracts.
- All contracts that are subject to mandatory disclosure must be made in writing.

registration of ownership title can be filed.

The Act further provides that any contracts not disclosed in the Register of Contracts within three months of their signature date will be treated as invalid from the outset. The parties to a contract will be entitled to remedy any incorrect disclosure, albeit only in the specific cases concerning the protection of trade secrets provided for in the Act.

The obligation to disclose contracts applies to all parties to a contract and, therefore, any of them may make such disclosure. The parties can thus agree among themselves which of them will arrange for the disclosure in the Register of Contracts. However, if the obligation to arrange for the disclosure of a contract is stipulated in the contract itself and this contract is cancelled from the outset due to its non-disclosure, then the question exists as to whether this obligation will be treated as severable from the remaining parts of the contract or whether it, too, will be cancelled. If the obligation is treated as cancelled from the outset, together with the contract, it will not be possible to claim damages from the obliged party for breach of a contractual obligation. The question then remains of whether damages may be sought on grounds other than a breach of contractual obligation. The consequences of a contract being treated as invalid from the outset will vary depending on the laws governing the relationship between the parties.

It must be pointed out that, in addition to all contracts made after 1 July 2017, the above also applies to all agreements amending, modifying, replacing or cancelling contracts entered into before the date on which the Register of Contracts Act takes

effect (where subject to mandatory disclosure in the Register of Contracts). For such cases, the Act provides an obligation for any such agreement to be disclosed together with the "original" contract to which the agreement relates. Where such an agreement is not disclosed together with the contract in the

Register of Contracts, the not-in-force-until-disclosed principle and the penalty of cancellation will most likely only apply to the new agreement amending such contract and not to the "original" contract itself. However, this remains subject to the interpretation of the Czech courts.

Finally, it is worth mentioning that repeated efforts have been made to amend the Register of Contracts Act,

particularly with the aim of reducing the cohort of entities obliged to disclose their contracts and of increasing the number of cases of exemption from mandatory disclosure. The most recent bill proposed by the Parliament and the Senate did not pass and the provisions of the Register of Contracts Act governing the consequences of the (non-) disclosure of contracts will most likely come into force in their current wording. A new amendment is currently being prepared in the Parliament, which should again mainly deal with the entities exempted from mandatory disclosure. However, this amendment is not likely to be enacted by 1 July 2017.



Authors



Miloš Felgr
Partner

T: +420 222 555 222
E: milos.felgr
@cliffordchance.com



Tomáš Richter
Of Counsel

T: +420 222 555 222
E: tomas.richter
@cliffordchance.com



Vladimír Rýlich
Senior Lawyer

T: +420 222 555 222
E: vladimir.rylich
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, Jungmannova Plaz, Jungmannova 24, 110 00
Prague 1, Czech Republic

© Clifford Chance 2017

Abu Dhabi • Amsterdam • Bangkok • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • Jakarta* • London • Luxembourg • Madrid • Milan • Moscow • Munich • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.