

Country Reports

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A short selection up updates from the Czech Republic and Germany



PETR SPRINZ
Partner, Havel & Partners s.r.o.,
Czech Republic



JÍŘÍ RAHM
Associate, Havel & Partners s.r.o.,
Czech Republic

The Czech Republic: Amendment to the Bond Act anticipates the introduction of a security agent extending beyond bonds

In January, an amendment to the Bond Act came into effect. The amendment prepared by the Czech Ministry of Finance comprises new rules governing secured bonds as well as the introduction of a security agent in connection with bonds.

However, an inconspicuous provision in the final part of the Act quite revolutionarily expands the concept of the security agent beyond bonds – typically to commercial loan security.

Below we summarise the main points of the amendment and its potential impact on business practice, particularly in connection with syndicated and club loans in the Czech market.

Security agent for bonds

Redemption of a bond and payment of the yield (or any bond-related debts) may be secured, *inter alia*, by the establishment of a pledge. The amendment anticipates that the rights of a creditor, a pledgee or any other recipient of the security may be exercised by the security agent on his own behalf for the benefit of the entitled persons. For example, the security agent could exercise the right of pledge in

distress proceedings or submit the security in insolvency proceedings.

Security agent

The amendment stipulates no restriction as to who a security agent may be. It is at the sole discretion of the creditor to decide who will exercise the rights on the creditor's behalf against the debtor and third parties.

Implementation of the security agent concept and other aspects

The agreement entered into with the security agent must be in writing. The agent's authorisation is effective towards all, i.e. *erga omnes*. Typically, the agreement should define the security agent's rights and obligations (including the right to a fee), as well as the requirements for the agent's activities, mainly in view of a potential change of the agent in the future.

Security agent not related to bonds

As a new and revolutionary rule in Czech law, the amendment permits the concept of the security agent to be also used for securing debts not related to the issue of bonds. A typical example is syndicated loans made available by banks.

Today, a security agent usually becomes involved in syndicated loan security by means of 'active solidarity' (i.e. the security agent, as one of the creditors, is a joint and several beneficiary together with the

other creditors and, for this reason, may exercise all rights and fulfil obligations under the security with effect for the other creditors). In the past, this legal concept was tested in several large insolvency proceedings. A certain restriction on this concept is the necessity for the security agent to be a creditor of (at least a minimum part of) the loan at any time. This may in particular restrict the transferability and trading of the loan on a secondary credit market.

The new concept in the Bond Act allows a regime (more common in international practice) where the security agent need not be a creditor (of a loan) himself directly. The security agent exercises the rights of a creditor, a pledgee or another beneficiary of the security on his own behalf for the benefit of the beneficiaries. This also applies to insolvency proceedings, the enforcement of a judgment or distress relating to the pledger or any other security provider or their assets. The performance obtained from the security then belongs to the beneficiaries in a ratio specified in the loan agreement or any other similar financing document.

The question is, of course, when and how the new rule will be applied in bank financing practice. We can expect that creditor banks will be cautious in introducing it, in view of the risk associated with the novelty and interpretation of the legal regulation.