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Legal News

II/2018

Strategic thinking I Individual approach I Excellent legal team I Long-term partnership

The Largest Czech-Slovak Law Firm with an International Approach

The most successful law firm in the Czech Republic and Slovakia based on the number of nominations and awards in all years of the competition

Law Firm of The Year

Czech Law Firm of the Year (2011–2012, 2014–2018)

WHO'S WHO LEGAL WWL

Best Law Firm of the Year in the Czech Republic (2017, 2018)

GLOBAL AWARDS CorporateLiveWire 2018

No. 1 legal advisor according to the number of M&A deals in the Czech Republic (2009–2017)

EMIS

Mergermarket An Acuris company

M&A Law Firm of the Year in the Czech Republic and Slovakia (2016)

CorporateINTL GLOBAL AWARDS WINNER 2016

Summary

Introduction

Dear Clients and Business Partners,

I am pleased to welcome you to this year's last issue of our **Legal News**.

The introductory (and the most extensive) article is focused on business acquisitions and insurance used in this type of transactions (so called W&I insurance), which has both undeniable advantages and limitations. As **a market leader in the CEE region and a law firm ranked number one by EMIS DealWatch according to the number of M&A transactions in 2009 to 2017**, we have excellent know-how and extensive experience in negotiating and arranging this specific type of insurance.

In addition, members of our other practice groups will introduce you to a significant amendment to the Labour Code, an extension of electronic identification of persons, or the possibilities of legal defence of suppliers against discriminatory tendering practices under Czech, Slovak and German laws.

We have also prepared a summary of the most important legislative developments and events relating to our law firm. **For the second year in a row, we have become the clear winner of the Law Firm of the Year in the Czech Republic, receiving the main award as the Domestic Law Firm of the Year, two awards in the Corporate Law and Intellectual Property categories and the highest ratings in all other categories of the competition**.

We would not have achieved such excellent results without your trust in our abilities. I strongly believe that our efficient cooperation and mutual business synergy will continue in the next year. Let me use this opportunity to wish you every success in the year to come.

I wish you a joyful and festive holiday season and hope you enjoy reading our newsletter.

Jaroslav Havel

Law Firm of the Year 2018 competition results announced: HAVEL & PARTNERS easily upholds its position as the most successful law firm in the Czech Republic

Our law firm has followed up on its success in the years 2015 and 2017 by being awarded the Law Firm of the Year 2018 in the Domestic Law Firm category. In addition to the main award, in this 11th year of the prestigious competition, which is regularly organized by EPRAVO.CZ under the auspices of the Czech Bar Association and the Czech Ministry of Justice, HAVEL & PARTNERS has also won in the Corporate Law and Intellectual Property categories and has placed among the best ranked law firms in other specialised categories. Considering the total number of titles and nominations in all previous years of the Czech and Slovak Law Firm of the Year competition, HAVEL & PARTNERS remains the most successful law firm with the most comprehensive services in the Czech Republic and Slovakia. "*The year 2018 is associated not only with the change of our name to HAVEL & PARTNERS, but also with the redefinition of the strategy of the services we provide, focusing on as many complex legal cases as possible, including solving complex disputes, and also on the development in international transactions. The very fast implementation of this strategy has led to the additional rapid growth of the firm while further enhancing the quality of our services. We are very pleased that for the third time in the last four years we have been awarded the Law Firm of the Year in the Domestic Law Firm category. For this extraordinary success we would like to particularly thank our clients, who engage us with trust to address both their business and private matters. We appreciate not only their trust in us but also our stable team of top colleagues and their extraordinary work commitment that they have maintained throughout the year*," says Jaroslav Havel, managing partner of the firm, on receiving the main award.

List of law firms by the number of lawyers based on data provided during the Law Firm of Year 2018

Source: EURO Top Law Firms 2018 (p. 6–7)

Rank	Firm	Number of lawyers
1	**HAVEL & PARTNERS**	**185**
2	PRK Partners	95
3	Ambruz & Dark Deloitte Legal	74
4	Dentons	64
5	WEIL, GOTSHAL & MANGES	60

List of law firms by the volume of sales based on data provided during the Law Firm of Year 2018

Source: *INFO.cz* (6. 11. 2018)

Rank	Firm	Sales for 2017 (in CZK million)
1	**HAVEL & PARTNERS**	**708**
2	White & Case	521
3	Dentons	482
4	WEIL, GOTSHAL & MANGES	451
5	CMS Cameron McKenna	304

W&I insurance – how it works and what the limits are

Sale and purchase agreements (SPAs) in M&A transactions usually include a set of representations and warranties. These are given by the seller to the buyer in relation to the status and characteristics of a share in the target company and its assets. The representations and warranties reflect the fundamental principle of any acquisition: the seller is liable to the buyer for any defects in the item sold. If any of the representations turns out to be false, the seller will be liable if the share in the target or its assets lack the characteristics expressly confirmed by the seller to the buyer in the SPA. Specific "parameters" differ from case to case. What does not differ is the seller's unwillingness to assume full liability for defects in the share and assets of the target company, and the buyer's unwillingness to exclude or limit the seller's liability in the SPA. Consequently, the seller and the buyer often become embroiled in fierce negotiations that may end in failure.

Particularly in English-speaking as well as in other western European countries, a new concept has been gaining ground for many years that may prevent difficult and protracted and hence fruitless negotiations for the deal due to disagreement about the scope of the seller's liability for its representations and warranties. The concept is warranties and indemnities insurance (W&I insurance).

Only a few years ago this type of insurance was something completely unknown in our country. However, W&I insurance has increased in popularity in recent years, mainly (but not only) in real estate transactions, as is clear from the Study on Global Insurance Claims under warranties and indemnities insurance published by AIG.

W&I insurance can (also) be arranged by the buyer

The above may seem to imply that in most cases the party taking out the W&I insurance is the seller. It is the seller who should be interested in protection against the buyer's claims if any of its representations or warranties turns out to be false.

However, in practice, this logic does not work. In the absolute majority of cases, W&I insurance is arranged by the buyer, mostly out of concern for the seller to have sufficient funds after the closing to pay the buyer's claims arising from false representations or warranties. The concern is usually reflected in the buyer's requirement to keep a specific part of the purchase price as a retainer to cover such claims after the closing. On the other hand, the seller's aim is to collect the purchase price in full upon closing. By arranging W&I insurance, the buyer limits the risks that its claims against the seller will not be satisfied. Nevertheless, W&I insurance is often required from the buyer by the seller during negotiations for the transaction.

Another benefit of W&I insurance is that it provides higher limits applicable to the seller's liability for a breach of representations and warranties than those that can be achieved today in negotiations solely with sellers.

W&I insurance limits

W&I insurance may seem like an ideal solution to problems related to defects in the share in the target and the target's assets upon sale. However, this is of course not the case. W&I insurance (like any other insurance) is not a blank cheque issued by the insurer for the buyer and the seller. Neither is W&I insurance a replacement of the buyer's consistent care during the sale of the company.

The insurer assuming the insurance cover for warranties and indemnities will require that all facts be excluded from the W&I insurance that could give rise to the buyer's claim on the grounds of a breach of warranties and indemnities and that are known to the buyer at the time of the acquisition of the share in the company (such as from the results of a due diligence – known or identified risks), i.e. facts that are usually covered by indemnity in the transactional documentation. For this reason, the insurer will require the buyer to conduct a due diligence exercise on the target and to become thoroughly familiar with the target's situation. To check the depth of the buyer's knowledge of the target company's situation during the negotiations for the insurance policy, the insurer usually needs to be provided with due diligence reports prepared by the buyer's expert advisers and access to the data room. This is to ensure that the insurer may verify how thoroughly the due diligence

has been conducted and, particularly, what insurance risks (i.e. which warranties) have been left outside the scope of the due diligence. Based on this analysis, the insurer then will not accept all warranties and indemnities of the seller, will not cover some of them, or will only cover them once amended (e.g. limiting the buyer's knowledge about a potential breach of warranties).

However, today, even some known risks (i.e. risks usually identified through due diligence) can be insured; in most cases, these include identified tax risks with a lower probability of occurrence.

Other claims to which W&I insurance usually does not apply (they fall within exclusions) include (i) claims arising from warranties and indemnities directed at the future (i.e. those with the nature of a future forecast of the target's functioning), (ii) claims related to criminal law aspects, or (iii) claims related to the environment and compliance with environmental protection law, and others. The scope of exclusions from W&I insurance in all cases depends on the specific case and is carefully assessed (and negotiated with the client) by the insurance company in each individual case.

In addition, W&I insurance usually includes a client's deductible (retention or excess). The seller is liable up to the amount of the deductible or a part of the deductible is at the expense of the buyer if a lower limit on the seller's liability is set in the transactional documentation. The good news is that the limit is used gradually through any lower amount lawfully claimed by the buyer, and once the total deductible is reached, the amount that would not otherwise be insured due to the deductible will also be covered.

Another limit (this time only for the seller) is the fact that the insurer usually has a recourse claim against the seller under the insurance police if an insurance claim is a fraud or wilful default. The positive thing is that the recourse claim against the seller is excluded in other cases.

Time issues relating to arranging W&I insurance

Time is a relevant aspect that must be taken into account by the seller and the buyer if they decide to see W&I insurance coverage. Given that the insurer will review the results and the scope of the due diligence performed by the buyer, the timing of the negotiations and transaction closing must be synchronised with the insurer. However, insurers are quite flexible in this respect and able to comply with the requirements of the parties. Nevertheless, this aspect should be reflected in the initial stage of planning the deal timeline.

Usual price of W&I insurance

W&I insurance may bring substantial comfort both to the seller and the buyer in negotiating for and conducting the transaction. However, the price for arranging the insurance is not negligible. It is usually slightly above the 1% limit of the insurance benefit and the minimum threshold starts at around €50,000. Therefore, W&I insurance is more suitable for higher-value transactions. Due to the relatively high costs of W&I insurance combined with the fact that the insurance actually serves both parties, the costs of the insurance are often borne equally by both parties.

W&I insurance as part of high-quality transactional advice

As outlined in the introduction section, W&I insurance is becoming more and more popular in the Czech Republic. However, to use this concept, the adviser should be experienced in all aspects of all corporate transactions and, if possible, be familiar with the client's line of business, taxes and, in the case of W&I insurance, in insurance as well.

We offer a wide range of services and have the ability to efficiently combine these services. We have extensive experience in advising insurance companies, providing them with comprehensive legal services from negotiating the terms of the W&I insurance to arranging the insurance for M&A transactions. Based on our unique knowledge obtained from the representation of insurance companies, we are prepared to provide our services related to a W&I insurance arrangement to the seller or the buyer with maximum effectiveness.

M&A transactions have been our flagship since 2001. Representing both buyers and sellers, we have helped to successfully achieve more than 500 M&A transactions with a total value over CZK 550 bn (€19.5 bn) from 2006 to 2017. That's why we have been ranked by Mergermarket, Thomson Reuters and EMIS DealWatch as a leading adviser in terms of the number of transactions conducted in the Czech, Slovak and CEE legal markets for several years.

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No. 1 legal advisor according to the number of completed M&A deals for the last 9 years in the CEE region (2009–2017)

EMIS
A Euromoney Institutional Investor company

About EMIS DealWatch: EMIS operates in and reports on countries where high reward goes hand-in-hand with high risk. EMIS brings relevant news, research, analytical data, peer comparisons and more for over 125 emerging markets, including countries of the CEE region. Information is gathered from advisors' own submissions to DealWatch and from official deal announcements. The EMIS Deal Database contains M&A and ECM transactions with a deal value of EUR 900K or more.

Note to the table: The table includes only deals with a value up to EUR 10 within the Czech Republic, Slovakia, Hungary and Poland. The ranking is based on the total deal value and the number of deals. Deals with a confidential value are stated in the table as if the value was zero.

Top 15 Legal Advisers League Tables according to EMIS DealWatch

Rank	Firm	Number of Deals	Deal Value (EUR million)
1	**HAVEL & PARTNERS**	**173**	**199.93**
2	CMS	158	54.52
3	DZP	86	88.83
4	Dentons	70	38.07
5	Schönherr Rechtsanwälte GmbH	69	21.72
6	White & Case LLP	63	44.97
7	DLA Piper LLP	59	84.50
7	Baker & McKenzie LLP	59	23.10
8	Weil, Gotshal & Manges LLP	57	73.36
9	Kinstellar	54	27.48
10	Clifford Chance LLP	51	16.26
11	Gessel	46	51.70
12	Allen & Overy LLP	44	8.70
13	Linklaters LLP	37	31.65
14	Wardynski & Partners	33	71.63
15	Weinhold Legal	31	54.21

Prestigious CEE Deal of the Year Award for advisory to Dr. Max on acquisition in Romania

Our law firm has won the competition of the CEE Legal Matters magazine monitoring the most significant transactions in the CEE region. It has received the CEE Deal of the Year Award for advising the Dr. Max company of the Penta Investments Group during its acquisition of A&D Pharma Group, a Romanian company. The M&A team of HAVEL & PARTNERS led by one of the law firm's partners, Václav Audes, participated on the transaction. "*The client used our knowledge of the legal and entrepreneurial environment of the CEE region as well as our know-how in some regulatory matters. We focus both on cross-border transactions and advisory related to entering foreign markets, forming international holding structures, protecting investment and optimizing taxes in the course of international expansion*," says Václav Audes, describing the team's know-how that has been developed over many years. Dr. Max operates pharmacy networks in Romania and four other European countries – the Czech Republic, the Slovak Republic, Poland and Serbia.

Labour Code to face big changes – its amendment will provide for a new definition of leave, flexible jobs and delivery of employment-related documents

A rather extensive draft amendment to the Labour Code has been recently circulated in the Parliament for comments. The draft proposes new concepts, changes to some more substantial current concepts such as leave, job sharing or delivery of documents, but also purely technical adjustments which primarily aim to unify the terminology and eliminate provisions which no longer reflect the actual situation. This article outlines the most important and interesting proposed changes.

Holiday

The most extensive changes will probably be made to the regulation of **holiday**. Holiday for days worked will be cancelled; a new holiday concept is based on an employee's weekly working hours, and holiday entitlement will be expressed in hours. It will also be possible to transfer holiday entitlement in excess of the statutory four weeks to the following year. Also, time during which an employee did not work due to major personal obstacles to work will be regarded as time worked, up to twenty times the prescribed weekly working hours provided that in the same calendar year the employee worked at least twenty times such weekly hours. Immediate continuity of employments in the case of a job change during the year will no longer be a condition to the conclusion of an agreement on the transfer of untaken holiday between employers. At the same time, it is proposed that the sanction for unexcused absence of an employee be made less severe so that holiday entitlement is reduced only by the actual number of hours of the employee's absence.

Temporary posting and transfer of employees

Changes beneficial to employers are planned in connection with the regulation of **temporary posting of employees**. It will be sufficient for posting an employee to another employer if the employee has worked for the posting employer for at least one month instead of the current six months. Furthermore, the amended law extends the posting employer's entitlement to cost reimbursement to additional costs which may be incurred in connection with the posting of an employee.

The amendment also focuses on **transfer of employment-related rights and obligations**. Firstly, it reflects the case-law of the European Court of Justice and extends conditions which must be complied with for the transfer of employer's obligations. It further responds to problems encountered in practice by employers when terminating employment in connection with the transfer - the receiving employer could not be certain as to the actual number of transferred employees until the effective date of transfer. The amendment proposes to limit the possibility for an employee to give notice by imposing a fifteen-day period which will commence on the date following the date on which the employee was informed of the transfer. Thus, if the employer informs employees within the statutory period, i.e. no later than 30 days before the effective date of the transfer, the actual number and composition of employees to be transferred will be known to the receiving employer no later than 15 days before the transfer.

Job sharing

Job sharing is a concept that is completely new to the Labour Code. Using this concept, two or more employees share one job and schedule their working hours so that the total number of working hours is actually worked. This concept is already rather common abroad. It is attractive for employees and also provides a number of advantages to employers. In general, employees who share a job work more efficiently because the possibility to consult problems

with their colleagues with whom they share the job often produces more creative solutions and eliminates errors. The proposed legal regulation makes the creation of such a job conditional on an individual written agreement concluded with each employee in which primarily a schedule of working hours and the manner in which tasks will be handed over should be stipulated. The draft amendment does not envisage automatic substitution of one employee by another; hence if an employee who is supposed to be at work as per the schedule of working hours cannot work due to personal obstacles, they can be substituted by another employee only with the employer's prior written consent granted for a particular shift. It should be possible to terminate the agreement on the performance of work in a shared job even unilaterally with a fifteen-day notice period.

"Job sharing is a concept that is completely new to the Labour Code"

Delivery of documents

Significant changes should also be made to **delivery of employment-related documents**. This area has long been regarded as suffering from substantial impracticalities. The draft amendment should change this situation at least to some extent. A new rule will be introduced that an employer must primarily deliver a document to an employee personally at their workplace. If the employer fails to deliver the document to the employee in this manner, the employer may use as an alternative delivery via a postal service operator, the Internet or an electronic communications service and with the consent of the employee also via a data box, or personally wherever the employee can be found. For deliveries via a postal service operator it is proposed to transfer the responsibility also to the employee who will be obligated to report in writing any change in the address to which the employer can deliver documents. In compliance with the conditions of the Czech Post, a time limit of 15 calendar days is proposed for the collection of deposited mail. Finally, it is proposed to abolish the duty to make a written record that an employee has been informed of the consequences of refusal to receive a delivered document. This change should make delivery of documents easier for employers.

Miscellaneous

One change which should reduce the administrative load of employers is that **the duty to issue a confirmation of employment** will be abolished in respect of employees who work on the basis of an **agreement on the performance of work** without becoming obligated to pay health insurance, i.e. whose income was less than CZK 10,000 a month (with the exception of those who are subject to enforcement of a decision by means of salary deductions).

For members of the European works council and European negotiating body with flexible working hours, absence from work due to obstacles caused by a general interest will be counted as time fully worked with respect to work performance and remuneration. This reflects the requirements set out by the European directive that these members enjoy the same advantages and a similar level of protection as other employee representatives. It is proposed to apply this similar treatment rule also to the definition of fulfilment of work tasks for the purposes of compensation for damage.

It is also proposed to implement a special regulation under the Labour Code **and thus exclude the general regulation on the extension of a suspended time limit by another 6 months as provided by the Civil Code**. The use of civil regulation in employment matters is very problematic with regard to the short time limits.

An interesting change will also be made to Section 47 in that the obligation to assign an employee to the original work and workplace will be extended to apply also to employees who **return to work after parental leave**.

Effect

The Labour Code amendment is scheduled to enter into effect on 1 July 2019 with the exception of rules relating to leave, the effective date of which is postponed until 1 January 2020.

Nevertheless, the legislative procedure has only just begun. The changes outlined above are only proposed in the first draft submitted by the Ministry of Labour and Social Affairs, and their final version may be substantially different as a result of comments and any amendments proposed in the Parliament.

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Changes in taxation of controlled foreign companies

Under the current wording of the draft amendment to the Income Taxes Act, corporate income tax payers that are Czech tax residents will be obliged in certain cases, starting from 1 January 2019, to tax in the Czech Republic undistributed passive income generated by foreign companies under their direct or indirect control. The draft amendment implements ATAD I, the EU Anti Tax Avoidance Directive I.

Specifically, the draft proposes that Czech controlling companies pay taxes from specified taxable incomes (e.g. interests, royalties, dividends, income from the sale of shares, incomes from certain types of goods and services resales) generated in the taxable period by foreign companies under their control provided that:

- the Czech controlling company holds **over 50% of the capital or voting rights** in the controlled foreign company;
- **the tax** of the controlled foreign company would be **lower than 50% of the tax** payable from the specified income if the company was a Czech tax resident; and
- the controlled foreign company **does not carry on a substantive economic activity**.

At the same time, the existing draft allows controlled companies to lower their taxes in the Czech Republic by the paid tax that is analogous to corporate income tax payable abroad with the use of a simple credit method.

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The firm has achieved another big success in the Corporate Law category

After the previous seven rankings among the highly recommended law firms in the years 2011–2017, this year HAVEL & PARTNERS has become the winner of this category. "*This year's victory underlines the fact that the creation of a unique, dedicated corporate law team, which also provides a comprehensive legal and tax service to private clients, was a courageous and correct decision. Every year, we are involved in the most interesting domestic and cross-border corporate transactions and in the implementation of very private assignments. Clients appreciate our experience, innovation and our top-notch legal and tax team*," says David Neveselý, a partner co-leading the largest and most internationally recognized Czech-Slovak team specialising in corporate law, which is currently comprised of about 70 lawyers. Our law firm has in its portfolio the largest corporate and private clientele in the Czech Republic and Slovakia, including about 70 of the 500 largest global companies according to Fortune 500, almost 50 companies in the Czech Top 100 ranking, and a third of the richest Czechs and Slovaks. For many years, we have also carried out the largest number of corporate transactions on the Czech market and have been an advisory leader for private clients and family businesses, helping them to set up private (family) holdings, trust funds, etc.

Permits issued under the Building Code and passage of rights arising from these permits to legal successors

In practice cases are encountered in which an entitled person under a permit issued pursuant to the Building Code – typically a zoning decision or a building permit ("permits") – transfers the ownership of a property for which the permit was issued to another person before the relevant placed and permitted structure is finished. These cases do not necessarily have to involve transfer of an ownership title to a particular property on the basis of a purchase, donation or exchange agreement though. Often a property is transferred during a transformation to a successor company as the new owner without the transfer of the rights under the permit to the successor company being covered in the draft terms of transformation. In our practice, we are often asked by our clients about the entitled person under such a permit – whether it is still the person who applied for the permit as the previous owner and to whom the permit was issued as the original owner or whether the entitled person under the permit is the new property owner. A correct answer is important for further use of the transferred property if, for example, the new owner wants to apply for a building permit based on a zoning decision issued for the previous property owner or wants to build a structure under a building permit issued for the previous property owner.

It is necessary to realise that a permit places or permits the construction of a property which by its nature can pass or be transferred to another person (owner) that is different from the original applicant/owner. The legal theory is based on this fact as it understands such permits as so-called decisions *in rem*. This means that the permits apply only to a certain thing, i.e. a particular property, but not to a particular person (applicant). This conclusion follows from the Code of Administrative Procedure[1] pursuant to which if a right to a movable or immovable thing is decisive for the rights and obligations of parties attached to a movable thing or real estate, the enforceable decision is binding also for legal successors of the parties.

Thus, in the case of passage or transfer of an ownership title to the relevant property, entitlement under the permit automatically "*passes*" to the new property owner under the law given the very nature of these permits. The new owner is the legal successor of the original owner as the entitled person under the permit and, therefore, after acquiring an ownership title to the property, the new owner is automatically regarded from the legal perspective as the entitled person under these permits.

In practice a legal successor can be a person who acquired a property on the basis of a purchase, exchange or other agreement, a donee under a donation agreement, an heir, an acquirer determined by a court decision or other person on the basis of facts laid down by law such as a successor company to which assets (including the property which the permit applies to) were transferred as a consequence of a transformation.

These conclusions are also confirmed by case-law. As regards the question of legal successorship in the case of zoning decisions, the Supreme Administrative Court[2] inferred that a zoning decision is tied to the land plot to which it relates, so it passes to transferees of that land plot upon the transfer of the ownership title. As regards the legal successor in the case of a builder under a building permit, the Supreme Court concluded[3] that a person that acquires an unfinished structure as a new owner becomes the builder even if the building permit has not been issued to them and that such a person also takes over the obligations under public law attached to the ownership of the structure. It is then at the discretion of this legal successor to determine what kind of work needs to be carried out or whether the structure will be completed at all.

In connection with building permits the Supreme Administrative Court[4] also commented on the question of legal successorship. In addition to the aforementioned, the

[1] *Section 73(2) of Act no. 500/2004 Sb., Code of Administrative Procedure.*
[2] *Judgment of the Supreme Administrative Court file no. 1 As 73/2011 dated 15 February 2012.*
[3] *Judgment of the Supreme Court file no. 26 Cdo 781/2013 dated 16 September 2014.*
[4] *Judgment of the Supreme Administrative Court file no. 6 As 77/2013 dated 13 May 2014.*

Court concluded that it does not matter whether a legal successor of the original builder acquired an ownership title to a property to which a permit was issued by way of originary (primary) or derivative acquisition. The difference between these two ways of acquisition is that in the case of originary (primary) acquisition an ownership title is created independently from the previous owner of a thing. This can be for example an ownership title acquired upon the fall of the hammer in an auction. On the other hand, derivative acquisition of a thing involves the transfer of an ownership title, typically under a purchase agreement. Thus, according to the Supreme Administrative Court, the only requirement is that a new owner acquires a property for which a building permit has been issued; at the same time it is not relevant how such property was acquired. Given that a zoning decision has the same character as a building permit (i.e. they are both decisions *in rem*), the conclusions of this decision can also be applied to a zoning decision.

Under the law, a new owner of a property in relation to which the permits have been issued automatically becomes the entitled person under the permit without any other acts or arrangements (such as an agreement on the transfer of rights and obligations under the permits, an express mention in the draft terms of the transformation in the case of a transformation, etc.) being required in this connection. As a matter of fact, these permits are public decisions which by definition cannot be changed or otherwise dealt with under a private contract. Therefore, according to the Supreme Court, it is not possible to assign the rights and obligations under a permit by an agreement concluded pursuant to the Civil Code as such an agreement would be invalid[5]. In contrast, it is necessary for a legal successor to secure their rights to the project documentation that are required for the permit and without which the project could not be implemented or changed by means of private law even if they automatically become the new entitled person under the permit.

Although the situation described above is easy to solve by interpreting legal regulations and case-law, in some cases the building authority requests for example an agreement with the original property owner on the assignment of rights and obligations under a permit which was issued for the original owner. However, such approach of the building authority is incorrect in light of the legal regulations and case-law.

Despite the fact that the issue outlined in this article (transfer or passage of a property to which a permit issued in favour of the original property owner applies) may be seen as clear and simple from the legal point of view, complicated situations may be encountered which always need to be considered on an individual basis while taking into account all aspects of the relevant agreements. This will be necessary in particular if a permit was issued in favour of a third party (rather than in favour of the property owner) on the basis of the property owner's consent or on the basis of another contractual relationship with the property owner, or if the permit relates to several properties owned by different persons. We recommend that such cases always be thoroughly considered before the intended transaction.

[5] *Judgment of the Supreme Court dated 6 September 2014, file no. 26 Cdo 781/2013.*

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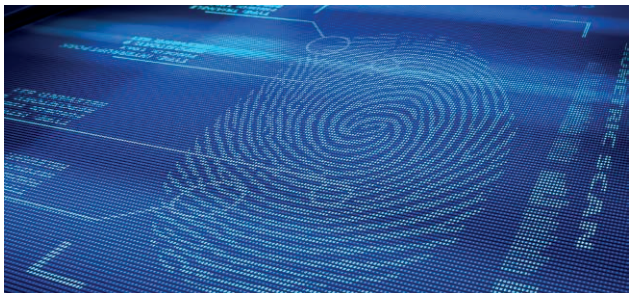
Advising Golden Star Real Estate on the acquisition of Explora Business Centre office complex

Our law firm has been involved, as legal counsel, in one of the largest real estate transactions closed in Prague this year. Our team, managed by partner Martin Fučík and senior associate Albert Tatra, advised Golden Star Real Estate, an international investment and real estate group, on their acquisition of Explora Business Centre, an office complex in Prague, from the development and investment company Avestus Capital Partners.

New options of electronic identification

July 1 saw the second (and the last) major law adapting the eIDAS Regulation[1] – Act No. 250/2017 Sb., on electronic identification (Electronic Identification Act, EIA) come into effect. The EIA ***specifies the electronic identification scheme envisaged by eIDAS in Czech conditions****, which we alternatively call "national identity space" (NIS).*



The identity of natural or legal persons is stored in national registers and systems of private entities. Identity is verified via "identification means" – a typical example of such means being the identity card of natural persons – but there are also incorporeal means. The means had to be adjusted for remote use in the online environment, which has only recently been expressly stipulated by Czech law. That is why the EIA **introduces a new option of verifying identity via "electronic identification**". Electronic identification means the electronic procedure of using personal identification data that uniquely identify a certain natural or legal person.

As the NIS environment established by the government is used for identification only in cases required by law or in order to perform powers, **identity must be verified exclusively in a qualified manner**. That is why an identity provider (a "qualified administrator") can only be a government body or a person meeting conditions of the accreditation procedure. **Only the Czech state is currently a qualified administrator**, enabling electronic identification via new electronic identity cards or via logging into a user account at eidentita.cz.

Apart from qualified administrators, another key actor in the NIS is a qualified provider of online services, whose users request to be authenticated by electronic means. A qualified provider can be any entity or other legal arrangement that provides services using electronic tools to verify identity and has notified the NIA administrator (as defined below) of this fact. **There are only five public bodies that are qualified providers** (like the General Financial Directorate or the Czech Social Security Administration); **however, their number is about to grow soon**.

The last actor in the NIS enabling the interaction between qualified administrators and providers is the "national point for identification and authentication" (NIA). **As a result, all interactions in the NIS include the NIA, which uses access to national registers in order to guarantee that personal identification data are up to date**. The NIA is nothing other than an information system administered by the National Registers Authority. Since the entire NIS was established in response to the eIDAS Regulation, which envisages the connection of EU Member States, the NIA also includes an international node ensuring the connection with notified electronic identification schemes in other EU Member States. For the time being, real connection with entities or schemes outside the Czech Republic is non-existent for many reasons.

With the NIS working free of charge, commercial identity providers are hesitant to enter the scheme. Should they participate in the scheme, the NIS would undoubtedly be, with an increased number of qualified providers, of more interest to the majority of people, who could remotely arrange for many more things than they do now. We will naturally be following developments in this area and inform you of any in time by appropriate ways of communication.

[1] *Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.*

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Protecting suppliers against discriminatory tendering practices – comparison of Czech, Slovak and German regulations

A large number of companies act as suppliers to public sector clients. And an increasing number of suppliers are eager to supply abroad. They may benefit from the fact that public procurement is regulated by EU directives, which have significantly helped unify the rules throughout the EU member states. In Slovakia, over 3,000 public contracts worth over EUR 4 billion had been initiated before September this year. While in the Czech Republic the volume of public contracts is almost double that, Germany and other neighbours with stronger economies are even further ahead. That, however, brings us to this question: what could suppliers who come across unfair tender requirements do if they do not want to succumb?

In the Czech Republic, contracting authorities are governed by the Public Procurement Act[1] (the "**Czech Act**") and are supervised by the Office for the Protection of Competition (the "**Czech Office**"). In Slovakia, the governing law is the Act on Public Procurement (the "**Slovak Act**") and the supervising authority is the Office for Public Procurements (the "**Slovak Office**"). In Germany, on the other hand, the regulation and the supervision are not unified: applicable laws include the federal act on the protection of competition[2] ("**GWB**"), procurement regulation[3] ("**VgV**") and a number of partial implementing regulations depending on the nature of the contract, as well as applicable acts valid in the state in which the specific contract is awarded.

The first main difference is that in Germany, the law only guarantees supervision in connection with "above-threshold" public contracts the anticipated value of which exceeds certain financial thresholds, which an EU directive uniformly sets in member states depending on the type of the contracting authority. Hence, contracts for services and supplies of up to EUR 144,000 (central contracting authorities), up to EUR 221,000 (local contracting authorities) and up to EUR 443,000 (sector contracting authorities) are not subject to a review. Construction contracts initiated by all contracting authorities are subject to supervision if worth over EUR 5,548,000. Contracting authorities are supervised by public procurement chambers (Vergabekammer, VK) – at the federal level (VK "Bund" in Bonn) or in cities in individual federal states. In higher instances, decisions of the chambers are reviewable by competent higher regional courts (Oberlandesgericht, OLG).

As the first step, suppliers must file their objections to the specific contracting authority and claim damage suffered. That can be done using "námitky" (objections) in the Czech Republic, "žiadosť o nápravu" (petition for relief) in Slovakia and "Rüge" in Germany. In the Czech Republic, the standard period for filing objections is 15 days, while objections against tender requirements (which are the focus of our attention in this article) may in principle be filed any time before the bid submission deadline. In Slovakia and Germany, the period is only 10 days and basically starts running from the day the supplier ascertained (Germany) or could have ascertained a fault from the available documentation (Slovakia).

If the contracting authority fails to act on the supplier's objections or fails to decide in time, the supplier may refer to the review authority. In the Czech Republic, suppliers apply to the Czech Office within 10 calendar days of the day of service of the contracting authority's decision, or within 25 calendar days if the contracting authority fails to make a decision on the objections within 15 days. In Slovakia, the defence mechanism filed at the Slovak Office is called "námietka" and may also be filed within 10 days of receiving the notification of the petition for relief, or of the lapse of the 7-day period during which the contracting authority should decide on the petition. In Germany, petitions ("Nachprüfungsantrag") may be filed within 15 calendar days or within 10 days in the event the notification on the settlement of objections is sent electronically. The law stipulates that during this period the contracting authority may not sign the contract. In Germany, the period starts running on the day following the day it is sent by the contracting authority; service on the participants is not relevant. The petitions should be filed as early as possible since the prohibition period will be extended as of the moment the chamber informs the contracting authority of the submitted petition.

In connection with the mandatory electronic public procurement procedures, the Czech and Slovak public procurement acts lay down the duty to file petitions electronically. In Germany, petitions may still also be filed in paper form, including fax.

When submitting petitions, suppliers must pay a deposit or a fee to the office depending on the bid price or the contract value. The basic guidelines for calculating the deposit or fees in connection with petitions objecting to tender requirements regarding above-limit public contracts are summarised in the table below:

[1] *Act No. 134/2016 Sb., on public procurement, as amended.*
[2] *Gesetz gegen Wettbewerbsbeschränkungen.*
[3] *Vergabeverordnung; other relevant regulations, some of which are not legislative, are namely VOB, VOL, VOF (their parts A governing the procurement), SektVO, SektVO, KonzVgV.*

	Amount of deposit or fee	Min. amount	Max. amount
CZ	1% of the bid price; if it cannot be ascertained: 100,000	CZK 50,000	CZK 10 mil.
SK	1% of the value of the contract – supplies and services	--	EUR 4,000
	0.1% of the value of the contract – construction works	--	EUR 10,000
DE	Based on the value of the contract and the VK's rate schedule	EUR 2,500	EUR 50,000

If the petition is successful, the deposit in both countries is reimbursed to the petitioner; if it is not, the deposit is devolved on the state. If the petition is withdrawn, part of the deposit is forfeited – 35% in the Czech Republic and Slovakia (at least CZK 30,000 in the Czech Republic) and 50% in Germany.

The Office should decide on the proposal within 60 days during which the contracting authority is not allowed to sign the contract with the selected supplier in the procurement procedure concerned. The German act expressly lays down the period of 5 weeks (which can be reasonably extended in justified cases) in which the supervisory authority must decide on the petition and duly substantiate its decision.

We hope that suppliers will find this brief overview useful in order to compare the different ways for placing objections in individual states. Should you be interested in a more detailed analysis or should you have questions regarding other countries or objection methods, feel free to contact us. We will be pleased to assist you.

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HAVEL & PARTNERS grows again, seeing double-digit growth in the first half of 2018 and all offices surpassing the sales plan

HAVEL & PARTNERS, the largest Czech-Slovak law firm, experienced further significant financial growth in the first half of 2018. All of our offices contributed to the growth with financial results exceeding our already ambitious plans for the given period. The turnover for legal services increased by 13.4% year-on-year while profits rose accordingly. The second quarter was particularly successful, with the turnover growing by 20.5%. All of the three key offices, namely Prague, Brno and Bratislava, delivered double-digit growth. "*Our firm's revenues have continuously grown since its establishment in 2001. It is our great pleasure to say that even though the Czech and Slovak legal services markets are notably saturated and at the same time face a lack of high-quality lawyers, we are able to satisfy the most challenging requests of our clients and help them develop their business plans and activities both at home and abroad. Our wide range of specializations, our expert and HR know-how developed over many years combined with an individual approach to clients and building a strategic partnership with them have given us a great competitive edge. We appreciate that we are trusted by successful companies, individuals and foreign law firms alike. The latter engage us increasingly more often in various international projects and cross-border transactions*," says Managing Partner Jaroslav Havel.

Supreme Court issued ground-breaking decision on unlawfully drawn bank guarantee

In judgement file no. 31 Cdo 3936/2016 of 12 September 2018, the Grand Panel of the Supreme Court altered the previous case law regarding the unlawful drawing of a bank guarantee. Specifically, the Supreme Court ruled that in order to be entitled to demand from the creditor reimbursement of funds unlawfully obtained at the debtor's expense on the basis of a bank guarantee, the debtor is not required to first indemnify the bank as the issuer of the bank guarantee.

Facts of the case

In a ground-breaking judgement in the case of an insolvency trustee of Eiffage Construction Česká republika, s.r.o., (the "**Debtor**") versus the town of Kravaře (the "**Creditor**"), the Grand Panel of the Supreme Court considered the obligation of the Creditor, as the defendant, to pay the Debtor, as the plaintiff, a sum in excess of EUR 100,000 with default interest in connection with an unlawfully drawn bank guarantee.

> *"…decision along with last year's amendment to the Insolvency Act … constitutes a clearly positive trend that reinforces the position of financial institutions providing financial guarantees in the event of a debtor's insolvency."*

In 2007, the Debtor agreed to construct a public sewerage system and waste water treatment facility for the Creditor. Všeobecná úvěrová banka, a.s. (the "**Bank**") issued a bank guarantee in favour of the Creditor to secure the Debtor's obligations arising from the liability for defects in the work. The sole prerequisite for drawing the bank guarantee was filing a written request by the Creditor along with a declaration made by the Creditor in writing asserting that the Debtor has failed to fulfil its obligations under the Contract for Work.

Supreme Court's judgement and its reasoning

The Creditor had gradually requested the Bank to provide it with sums in excess of EUR 100,000 in total as a result of alleged defective performance on the part of the Debtor. Pursuant to the guarantee certificate, the Bank had to make the payment upon the Creditor's notice. Subsequently, however, courts of lower instances ruled that the Creditor had not become entitled to the compensation from defective performance, so the funds provided from the bank guarantee had been drawn unlawfully.

Pursuant to the then valid provisions of Section 321 of the Commercial Code, the debtor was obliged to pay the bank the sum that the bank had paid on the basis of a guarantee certificate. The Commercial Code imposed the duty upon the creditor, in the event of unlawful drawing of a bank guarantee, to pay back the unlawfully drawn funds to the debtor and compensate it for damage caused, if any.

The Supreme Court addressed the conditions laid down in Section 321 of the Commercial Code earlier in its judgement no. 32 Cdo 1745/2013 in 2015. In it, the Supreme Court inferred that one of the conditions establishing a debtor's title to the reimbursement of performance by a creditor is the debtor's prior settlement with the bank. In the case concerned, the Supreme Court's panel in question arrived at a different conclusion, and the matter was referred to the Grand Panel of the Supreme Court.

The Grand Panel of the Supreme Court agreed with the appellate reasoning of the Debtor and explained that the legal relationship between the Debtor and the Creditor on one hand and that between the Debtor and the Bank on the other hand are two separate, unrelated legal relationships established on the basis of different legal titles and must be properly distinguished as such.

Hence, the Supreme Court reconsidered its own previous interpretation and expressly stated that "*in order for the debtor to be entitled to demand from the creditor reimbursement of funds unlawfully obtained at the debtor's expense on the basis of a bank guarantee pursuant to Section 321(4) of the Commercial Code, or for the creditor to be obliged to return the payment to the debtor, the debtor is not required to first pay the bank (as the issuer) the sum that the bank had paid pursuant to the bank guarantee*".

Implications of the decision

In our view, the **discussed decision of the Supreme Court also applies to financial (or bank) guarantees governed by the valid and effective Civil Code although it does not expressly regulate unauthorised drawing of a guarantee**. The original provision of Section 321(4) of the Commercial Code covered a specific case of unjust enrichment of a creditor who obtained funds from a bank guarantee on the basis of a non-existing legal title. We

believe, however, that it is still possible to apply general unjust enrichment provisions, namely the provisions of Section 2991, on cases regulated by the existing Civil Code.

The decision of the Supreme Court can have substantial implications namely for the enforcement of similar claims of a debtor in insolvency proceedings as the condition of prior payment in favour of the issuer (i.e. before the actual collection of the claim from the creditor) would be extremely problematic. In terms of the law of insolvency, **this ground-breaking decision along with last year's amendment to the Insolvency Act**—which aimed to overcome the well-known judgement in the ELMA-THERM case—**constitute a clearly positive trend that reinforces the position of financial institutions providing financial guarantees in the event of a debtor's insolvency**.

The quoted **judgement can possibly have a positive influence on a number of bank guarantee debtors because, in general, issuers of financial guarantees have very limited power to examine the legitimacy of the beneficiary's request for performance from the guarantee certificate**. This is supported by the established case law of the Supreme Court (cf. decisions file no. 23 Cdo 3042/2009 and file no. 32 Cdo 4752/2014, for instance) pursuant to which the issuer of a guarantee is entitled merely to assess whether formal elements have been fulfilled but not to materially examine the veracity of the beneficiary's request.

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Advice to Windeln.de on the sale of Feedo e-shops offering baby and toddler products

Our law firm has provided comprehensive legal advice to Windeln.de Group, one of the largest online sellers of baby and toddler products in the European and Chinese markets. The advice was related to the sale of a 100% share in the Polish company Feedo Spółka z o.o. and its Czech subsidiary MyMedia s.r.o., operating the largest Czech specialised e-shops selling infant food and baby and toddler products: Feedo.pl, Feedo.cz and Feedo.sk. The companies have been acquired by Dětská galaxie s.r.o., a member of the AGS 92 group owned by Czech businessman Zdeněk Žáček. The transactional team of HAVEL & PARTNERS was managed by senior associate Silvie Király and associate Juraj Petro, working closely with the law firm's partners Jan Koval, Petr Sprinz and associate Jiří Rahm of the Banking & Finance practice group. The complexity of the transaction also required the involvement of HAVEL & PARTNERS' tax specialists under the lead of managing associate Josef Žaloudek.

HAVEL & PARTNERS is the law firm of the year in the field of IT law in the Czech Republic according to a global online ranking of legal services

Our law firm received the 2018 Global Law Experts' Annual Award for the best law firm in the Czech Republic providing legal advisory in the area of law of information technologies (IT Law – Law Firm of the Year in the Czech Republic – 2018). "*Our law firm's specialized team, dealing with information technology, telecommunications, media, e-commerce and protection of personal data (now particularly in relation to the General Data Protection Regulation – GDPR), is one of the largest in the Czech and Slovak Republics. Our clients include the most significant entities running their business in information technology and investors expanding their portfolio by focusing on investment in technological companies. The Global Law Experts international award is very important feedback for us on the quality of our services*," says Robert Nešpůrek, the law firm's partner and head of the advisory group for IT law.

Amendment to the Act on Trademarks and to the Act on Enforcement of Industrial Property Rights

- amendment to Act No. 441/2003 Sb., **on trademarks** and on the amendment to Act No. 6/2002 Sb., on courts, judges, lay judges and the state administration of courts, and on amendments to certain other acts, as amended (the Trademark Act), as amended, Act No. 221/2006 Sb., **on the enforcement of industrial property rights** and on amendments to acts on the protection of industrial property, as amended, and Act No. 634/2004 Sb., **on administrative charges**, as amended (Act No. 286/2018 Sb.) has been promulgated in the Collection of Laws of the Czech Republic;
- **transposing Directive (EU) 2015/2436 of the European Parliament and of the Council** of 16 December 2015 to approximate the laws of the Member States relating to trademarks, **and Directive (EU) 2016/943 of the European Parliament and of the Council** of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure;
- modernising and streamlining the trademark system; approximation of national and EU trademark systems; making trademark regulations more effective.

Amendment to the Criminal Code

- amendment to Act No. 40/2009 Sb., the **Criminal Code**, as amended, and certain other acts (Act No. 287/2018 Sb.) has been promulgated in the Collection of Laws of the Czech Republic;
- **ensuring compliance of Czech criminal law provisions with international commitments of the Czech Republic and with EU regulations;**
- elimination of legislative defects ascertained by MONEYVAL that thwart efficient sanctioning of money laundering; **new legal definition of the legalisation of proceeds of crime and negligent legalisation of proceeds of crime** covering all money-laundering definition requirements under international conventions; abolition of crimes of complicity and negligent complicity;
- **enabling the ratification of the Council of Europe Convention on combating violence against women and domestic violence**; the definition of abduction should be expanded to also cover abduction of a person from one state to another;
- **implementation of Directive (EU) 2017/541 of the European Parliament and of the Council** of 15 March 2017 on combatting terrorism; expansion of the criminal sanctioning of *foreign fighters or cyber-terrorism*;
- **laying down a new crime of obstructing justice** in reaction to the UN Convention against Transnational Organised Crime No. 75/2013 Sb. m. s.;
- **expanding elements of crimes of corruption and indirect bribery** pursuant to UN Convention No. 105/2013 Sb. m. s. against corruption;
- **provision of the Criminal Procedure Code to retain data and deny access to them** in connection with Convention No. 104/2013 Sb. m. s. on cyber-crime.

Amendment to the Bond Act

- the draft amendment to Act No. 190/2004 Sb., on **bonds**, as amended, and other related acts (document of the Chamber no. 93), with amending motions to the Chamber of Deputies, has been signed by the President of the Czech Republic;
- eliminating deficiencies in the existing mortgage bond regulation; **a new regulation on *covered bonds***;
- a covered bond will mean a bond or a similar security issued by a bank representing the right to pay a due amount issued in line with the law valid in a foreign country fulfilling certain prescribed requirements as at the issue date; a covered bond can mean a mortgage bond, a public bond or a mixed bond.

Amendment to the Insolvency Act

- the draft amendment to Act No. 182/2006 Sb., **on insolvency and its resolution**, as amended (document of the Chamber no. 71) is to be debated in the Senate;
- **making debt discharge available to a wider range of debtors**; addressing the problem of the increasing number of people facing enforcement proceedings;
- under the existing debt discharge conditions, as least 30% of debts of registered unsecured creditors must definitely be paid;
- **introduction of the zero unsecured creditor satisfaction option**, even in case the debtors have provably made every effort to satisfy all their registered claims; the debtors will have to prove that they will be able to repay at least the same amount during the discharge process as the fees to be paid to the insolvency trustee;
- **new discharge option** under which debtors may be discharged of their debts **after three years if they have paid 60% of registered claims to unsecured creditors**;
- the standard discharge period will be cut from five to three years for especially vulnerable persons (pensioners, people with a disability);
- **the debt will be discharged merely by means of the liquidation of the estate or by means of an instalment schedule combined with the liquidation of the estate**;
- ensuring protection of the debtor's residence in the event of discharge by means of liquidation of the estate;
- restriction on the payment of the interest and fees related to the claims;
- extension of the period for submitting claims in the debt discharge proceedings to two months;
- simplification of the preparation of the insolvency application connected with the discharge authorisation and service of documents in the discharge proceedings.

Amendment to the Labour Code

- the draft amendment to Act No. 262/2006 Sb., the **Labour Code**, as amended (document of the Chamber no. 109); certain other acts is to be debated in the Senate;
- **repealing the *qualifying period* institute**; wage or salary compensation should be paid from the first day of a worker's incapacity for work;
- **reducing the health insurance contributions paid by employers or self-employed persons**;
- special regulation governing the working hours of academics and scholars.

Aggregate amendment to tax acts

- a **draft bill to amend certain tax-related acts from 2019** (document of the Chamber no. 206) has passed the second reading in the Chamber of Deputies;
- integrating all adjustments to taxes, charges and other similar monetary payments within a single regulation to ensure **greater transparency and a streamlined law-making process**;
- the draft bill is a collection of amendments to the following tax regulations: i) Income Taxes Act; ii) Gambling Tax Act; iii) Value-Added Tax Act; iv) Excise Taxes Act; v) Customs Act; vi) Tax Procedure Code; vii) Act on International Cooperation in Tax Administration; viii) Act on Financial Administration of the Czech Republic; ix) Act on Customs Administration of the Czech Republic; x) Insolvency Act.

Amendment to the Act on the Residence of Foreign Nationals in the Czech Republic

- the amendment to Act No. 326/1999 Sb., **on the residence of foreign nationals in the Czech Republic**, and on amendments to certain acts, as amended, and other related acts (document of the Chamber no. 203), is awaiting the second reading in the Chamber of Deputies;
- ensuring the transposition of Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016, on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing;
- increasing the legal certainty for third-country nationals arriving to the EU for scientific research or study purposes; **introduction of long-term residence permits** for university students after graduation in the territory and for researchers after terminating their research **looking for a job or commencing business activity**;
- a duty to complete **an adaptation and integration course**;
- authorising the cabinet to issue quotas **for economic migrants**;
- **extraordinary working visas** in the event of an insufficient number of workers on the Czech labour market when there is a significant lack of workers in certain industries on the Czech and European labour markets.

Amendment to the Senate's legislative measure on real estate acquisition tax

- the draft amendment to the Senate's legislative measure No. 340/2013 Sb. on **real estate acquisition tax**, in the wording of Act No. 254/2016 Sb., (document of the Chamber no. 179) has passed the first reading in the Chamber of Deputies;
- **the exemption from real estate acquisition tax** in the event of the first acquisition of the ownership title to the unit for consideration **will extend to units in a family house** under conditions laid down in the Senate's legislative measure.

Amendment to Act on Investment Incentives

- the draft amendment to Act No. 72/2000 Sb., on **investment incentives** and on amendments to certain acts, as amended, and Act No. 435/2004 Sb., on **employment**, as amended (document of the Chamber no. 298) is awaiting further law-making procedure in the Chamber of Deputies;
- **aiming the investment incentives towards projects with higher added value**, by providing greater support to technological and strategic services centres, and by introducing stricter production project support terms;
- maintaining greater support in economically weaker regions;
- enhancing the availability of incentives for SMEs;
- **enhancing the flexibility of the investment incentive system** taking into consideration the current economic situation.

Amendment to the Railway Act

- the draft amendment to Act No. 266/1994 Sb., on **rail systems**, as amended, and other related acts (document of the Chamber no. 326) are awaiting further law-making procedure in the Chamber of Deputies;
- **transposing Directive (EU) 2016/2370 of the European Parliament of the Council** of 14 December 2016, amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure, into the Czech system of laws;
- **adapting the Czech system of laws to Regulation (EU) 2016/2338** of 14 December 2016, amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail;
- **measure leading to the adaptation of the Czech Republic's system of laws to Regulation (EU) 2016/424 of the European Parliament and of the Council** of 9 March 2016 on cableway installations and repealing Directive 2000/9/EC;
- removing defects of legal regulations;
- **completion of the establishment of a single European railway area** governed by common rules introduced by Directive 2012/34/EU, and

enabling greater competition in the national railway transport market and equal access to railway infrastructure.

Amendment to the Act on Budgetary Rules

- the draft amendment to Act No. 218/2000 Sb., **on budgetary rules** and amendments to certain related acts, as amended (document of the Chamber no. 319) is awaiting further law-making process in the Chamber of Deputies;
- the budgetary rules (applicable to the state authorities as well as self-administrations) lay down the **duty to identify the beneficial owner of the applicant for a subsidy provided the applicant is a legal entity**;
- if the beneficial owner fails to be identified, the application for state aid will be rejected;
- the identified information on the beneficial owner will have to be specified in the decision approving the state aid.

HAVEL & PARTNERS has also become the Law Firm of the Year 2018 in the Intellectual Property category

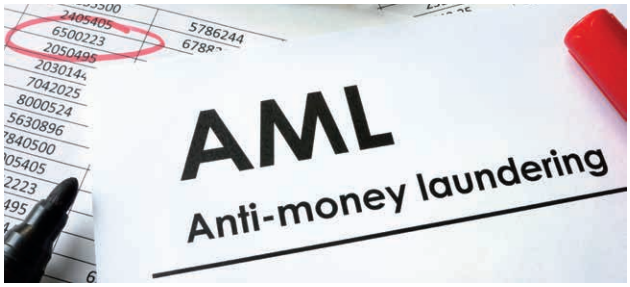
Intellectual property law is one of the most important and constantly growing legal specialisations of the firm. The legal team of 15 lawyers led by firm partner and co-founder Robert Nešpůrek and partner Ivan Rameš is among the largest advisory groups with this specialisation in the Czech Republic and Slovakia. "*Successfully building a brand and developing innovative ideas also includes their legal protection. We are very pleased that the know-how we have developed over the years is being sought by more and more clients - whether they are domestic companies expanding abroad, major global corporations or entrepreneurs combating counterfeits. We are delighted that this successful cooperation has been reflected in our victory in the Intellectual Property category*," says Robert Nešpůrek.

Advising SpaceLab EU SE on a partnership with Czech Aerospace Research Centre to develop a revolutionary satellite engine

We have provided comprehensive legal advice to SpaceLab EU SE, an entity established by London-based investment fund, hDock42. SpaceLab EU SE entered into a partnership with the Czech Aerospace Research Centre (VZLU) for the development of a completely unique ion engine that will allow satellites to orbit the Earth at a lower altitude than today and with virtually no fuel. The legal advice on this ambitious joint venture project included the establishment of a new entity SpaceLab EU for the purposes of the partnership and protection of the future product and IP rights, as well as a complete definition of rules for the joint development, use, valuation and treatment of IP rights. The legal teams participating in the transaction were the M&A and the IP practice groups managed by Jan Koval (M&A partner) and Ivan Rámeš (IP partner), Tomáš Navrátil (M&A senior associate) and Radek Riedl (IP associate).

Obliged entity's own activity program under Slovak AML/CFT legislation from 2018

*In 2018, Slovak Act No. 297/2008 Sb. on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing and on Amendments to Certain Acts ("**AML Act**") has been the subject of legislative amendments twice, and as a result of the extensive amendment adopted with effect from 15 March 2018, the AML Act lays down the changed statutory conditions, including, inter alia, for a program of the obliged entity's own activities aimed at prevention of money laundering and terrorist financing ("**AML program**").*



The reason for this extensive amendment to the AML Act was firstly the transposition of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ("**4th AML Directive**"). On the other hand, the change in statutory conditions has also been justified by the findings from practice and the constantly recurring interpretative and application complications in supervision.

From 2018, the obliged entity must meet clearly defined requirements for the mandatory essentials of an AML program. A strong AML Program should also include a description of the organizational structure of the obliged entity in terms of its size, nature of activity, number of employees and management method. Under the new legislation, the AML program must be updated, not only in the context of a change in the scope of business but also, for example, before starting to provide new products, but only if these situations could increase the risk of money laundering or terrorist financing in the obliged entity's operational activities.

However, the basic criterion of whether a given circumstance being assessed may increase the risk of money laundering or terrorist financing will be left to the responsibility of and self-assessment by the obliged entity. The AML program must be approved by the obliged entity's executive body.

Furthermore, a stable AML program should include not only general but also specific forms of unusual business transactions that may occur in the obliged entity's business activities.

The AML program must also include a method of assessing and managing the risks that occur when the obliged entity carries out its business activities in accordance with the AML Act.

The most important change to the content of the AML program is a change in the statutory requirements for the person responsible for compliance with anti-money laundering and terrorist financing regulations ("designated person"). The new statutory requirements laid down for the designated person arise, first, from the requirements of the 4th AML Directive and also correspond to the recommendations of the Council of Europe's Moneyval and the FATF. **The designated person's position must be determined at management level**, while the designated person may only be either an executive body or a member of an executive body of the obliged entity, or an officer who must be able to communicate directly with the executive body and the supervisory authority and have access to information and documents which the obliged entity has obtained in relation to conducting customer due diligence and could have used in assessing transactions and, where appropriate, in reporting unusual business transactions. An officer may be the person who is authorised to manage and check the work of the employees, ensure the adoption of timely and effective measures, etc.

> *"The obliged entity may not ensure performance of the designated person's tasks through a subcontractor as a third party, as was the case in the past."*

The fundamental change is therefore the new definition of the designated person that ensures the performance of tasks in the prevention of money laundering and terrorist financing, reporting of unusual business transactions, and ongoing contact with the Financial Intelligence Unit, whose name, surname and job description is also a mandatory essential element of the AML program. The obliged entity may no longer allow the designated person's tasks to be performed

by a subcontractor as a third party, as was the case in the past. **The designated person should be an integral part of the obliged entity's organizational structure and, at the same time, should guarantee compliance of the obliged entity's activities with AML/CFT regulations**.

Under the new AML Act, obliged entities must adapt their AML programs to the new statutory requirements, including making possible changes to their organizational structures due to the appointment of the designated person by 15 May 2018. If there is a breach of this obligation, or in the case of discovering any deficiencies in the AML program, a fine of up to EUR 200,000 may be imposed on the obliged entity. However, it should be noted that considering the role of the AML program in the functioning of a company, any possible deficiencies in such document may lead to a failure to fulfil this statutory obligation for which the AML Act allows a fine of up to EUR 1,000,000 to be imposed.

A report recently published by the Financial Intelligence Unit confirms in its statistical data that **the AML program has always been subject to every inspection by the supervisory authority**. Despite the importance and role of the AML program, it can be stated that in almost every inspection, the supervisory authority identified a breach of an obligation or weaknesses in the obliged entity's AML program. The fact that a considerable number of obliged entities still have not complied with the new statutory requirements for their AML programs is evidenced by the ongoing activity of some entrepreneurs as subcontractors of obliged entities replacing the role of the designated person.

With a stable AML program, being in line with the currently applicable legislation, companies will increase the security level of their internal functioning and reduce the risks they encounter in individual transactions and business relations.

Authors:
Ondřej Majer | *Partner*
Anikó Gőghová | *Associate*

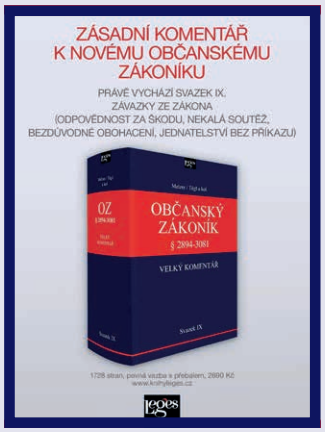
The Slovak office of HAVEL & PARTNERS to be reinforced by a partner and two attorneys

At the beginning of July 2018, our law firm notably strengthened the team of its Slovak office in Bratislava. Štěpán Štarha, managing associate and newly appointed partner, has taken over some of the responsibility for the development of the office. Bratislava has been further reinforced by senior associate Juraj Dubovský and associate Štefan Potočňák. "*We have agreed with Štěpán that he will work more days in Bratislava, where his family will also move. At the same time, he will continue to look after his clients in Prague and Brno. He will still focus in particular on advisory for technological and IT companies as well as on comprehensive projects for financial, energy and telecommunication companies. I believe that Štěpán's experience will help us further develop our services and achieve good financial results in Slovakia*," says managing partner Jaroslav Havel about the promotion and work of Štěpán Štarha in Bratislava. "*We want our Bratislava office to see further strong development also in the months to come. That's why we have agreed with two other colleagues who have worked mainly in Prague so far that they will move to Slovakia where they originally come from. Senior associate Juraj Dubovský specializes in representing clients in court and arbitration proceedings as well as insolvency and restructuring while Štefan Potočňák is an expert in civil law and IP/IT, media and telecommunication contracts*," says Jaroslav Havel. HAVEL & PARTNERS has 27 partners in total from 1 July 2018. It is not only Štěpán Štarha but also Ondřej Florián who has been appointed to the highest managerial position. Ondřej was managing associate in the advisory group focusing on private clients from the ranks of the most significant entrepreneurs and their families, top managers, investors, artists and professional athletes, including about 400 of the wealthiest Czechs and Slovaks. Štěpán and Ondřej also have in common the fact that they both started working for the law firm as junior associates in 2010. Their career reflects the law firm's long-term effort to nurture further generations of professionals who are both lawyers and managers faster than usually seen in the legal bar.

František Korbel presents Příběhy právních pojmů, one of numerous books sponsored by HAVEL & PARTNERS

František Korbel, director of the HAVEL & PARTNERS ACADEMY and a partner of the HAVEL & PARTNERS law firm, opened the book launch for Příběhy právních pojmů (The Stories of Legal Terms) by Professor Pavel Holländer, former vice president of the Constitutional Court of the Czech Republic, in the Literary Café in Prague on Thursday, 3 May 2018. Pavel Rychetský, President of the Constitutional Court of the Czech Republic, and Professor Aleš Gerloch, then dean of the Faculty of Law of Charles University in Prague, also came to support the launch of this book, which is one of the numerous titles co-funded by HAVEL & PARTNERS. Příběhy právních pojmů was published by Vydavatelství a nakladatelství Aleš Čeněk, s.r.o. and is available in Czech book shops like the first Czech edition of the bestselling Global Issues in Legal Ethics (in Czech: Globální problémy profesní etiky právníků), another sponsored book launched on the premises of HAVEL & PARTNERS ACADEMY in November last year. 2018 is the fourth year in a row that HAVEL & PARTNERS has also been funding Czech and Slovak translations of books selected from the most successful international publications focused on leadership, management or marketing. Last year, for instance, the law firm supported the first Czech edition of the globally reputable book on family-owned businesses, Dilemmas of Family Wealth.

Filip Melzer and Petr Tégl, lecturers at HAVEL & PARTNERS ACADEMY, publish the most elaborate commentary to statutory obligations so far



Filip Melzer and Petr Tégl, acting as Of Counsels at HAVEL & PARTNERS and lecturers of its training ACADEMY, are the chief editors of an elaborate commentary to the new Civil Code. Its ninth volume has just been released by the Leges publishing house and focuses on obligations arising from administrative offences and for other legal reasons as laid down in Sections 2894-3014, Titles III and IV, Book Four of the Civil Code. In the Czech Republic, this is so far the most extensive commentary to statutory obligations. Jan Šturm, a partner at HAVEL & PARTNERS, also contributed to the commentary together with Filip Melzer and Petr Tégl and co-wrote a part on unfair competition. The Leges publishing house has been issuing individual volumes of the elaborate commentary one at a time. The more than 7,000 pages have so far been written by over 50 prominent Czech and Slovak experts, most of whom co-drafted the new Civil Code. Apart from Filip Melzer and Petr Tégl, the list of authors also included namely František Korbel and Renáta Šínová from HAVEL & PARTNERS and its training ACADEMY.

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