

H&P

magazine

I/2022

“CHALLENGES,
RISKS AND
OPPORTUNITIES.
PREPARE FOR
A NEW REALITY.”



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

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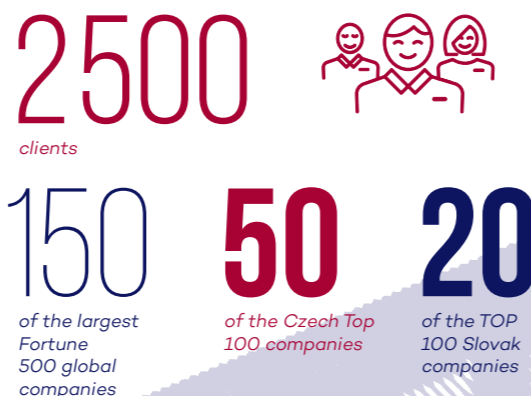
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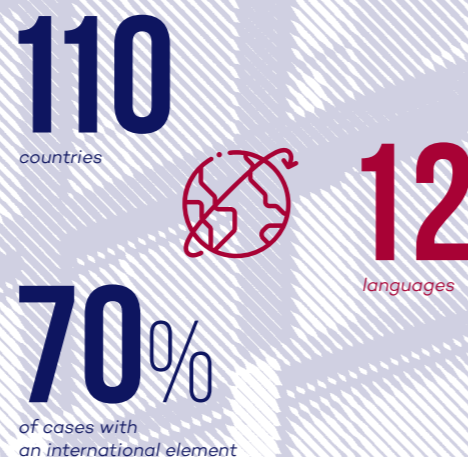
OUR TEAM



OUR CLIENTS



INTERNATIONAL APPROACH



FOREWORD

Dear Clients and Business Friends,

After two years of pandemic, we all hoped that the world would slowly return to normal. But then came the Russian invasion and war in Ukraine, a fundamental attack on the sovereignty of a free state, which has shaken the democratic principles on which the whole of Europe is founded. It is in these difficult times that we are facing unprecedented economic and geopolitical influences that are having an unparalleled impact on people's everyday lives as well as business.

In such difficult moments, I see it as an extremely positive promise for the future that the Czechs and Slovaks have unanimously condemned the attack and joined with great effort in helping Ukraine and the people affected by the war. The same determination and unity were shown by all colleagues in our office. We stand with Ukraine. We have been involved in assisting, either financially or materially, the people directly affected by the conflict, including those who have clearly and publicly spoken out against this aggression in Russia or Belarus and are thus in imminent danger there, and we are also helping our clients with our expertise to navigate the challenging conditions and cope with the risks that the current times bring.

As the legal market leader, we also see it as our duty to inform our partners and clients about all aspects that may have an impact on their business. In the wake of the conflict in Ukraine, a number of hacker attacks have emerged, so our colleagues in the Technology Law team have prepared a guide on how best to prevent them and what to do when your firm faces a cyber attack.

Many companies will also have a new obligation to publish a non-financial ESG report as of next year. The issue of sustainability in companies is broad and so are the criteria and data that such a report should contain. That is why we have prepared an article to advise you on how to get started with reporting and what to focus on.

This issue of the magazine also brings you a range of other topics, analyses, interviews and articles on current issues such as investment in venture capital start-ups, taxation of cryptocurrencies, or how architectural competitions can contribute to the creation of quality buildings and the development of innovation in architecture.

Therefore, even in the context of unexpected events, emergency situations and the economic turbulence that the last months and years have brought, we strive to continue to be a reliable partner for your business and private affairs and to provide you with our know-how and excellent, value-added advice. We are therefore very pleased, and it is a great motivation for us for the future, that the feedback on our services from our clients and business partners has been extremely positive over the long term. After all, the references from you have also been decisive in our winning the most prestigious industry award, Chambers Europe Awards, as the best law firm in the Czech Republic for the third time in a row, and in the Law Firm of the Year awards in Slovakia we won as the best international law firm and received the award for the best client service.

Thank you for your trust and long-term cooperation. We believe that we will successfully build on it in the next period. We also hope that the coming months will bring more reasons for optimism and hope for a better future for us all.



→ **HAVEL & PARTNERS once again defended the most prestigious global award, Chambers Europe Awards**

The British rating agency Chambers and Partners has once again ranked HAVEL & PARTNERS as the best law firm in the Czech Republic in its international ranking of law firms, Chambers Europe Awards, in 2022. This is the third consecutive year the firm has won this award.

“HAVEL & PARTNERS’ streak of winning Czech law firm of the year for its third consecutive year is unmatched by any firm in any award category, and a testament to the firm’s remarkable success in the Czech Republic,” stated the agency Chambers and Partners.

“We appreciate the award very much because it is decided not only by our colleagues in the field and other law firms, but above all by our clients’ references. I would like to thank them for their trust and long-term cooperation, and I believe that we will successfully build on it in the next period. A big thank you also goes to all our colleagues who work every day to maintain the trust of our clients,” said Jaroslav Havel about the award.



→ **The firm scored in Forbes’ ranking of the largest law firms**

Not only according to foreign ratings, but also according to the prestigious magazine Forbes Czech Republic, HAVEL & PARTNERS is the most successful law firm on the Czech market. We are ranked in the top 20 largest law firms in the Czech Republic, and we are also the only law firm that has been ranked in all five selected business-related legal categories.

The editors’ selection was based on economic results and involvement in major transactions and cases in the areas of M&A, real estate, telecommunications, banking and finance, and litigation, and our success was also decided by positive references from our clients. Forbes has published a list of the largest law firms and most sought-after lawyers in the Czech Republic in 2022 for the first time.

→ **We became TOP Employer for the eighth consecutive year**

We became the most desired employer among law firms in the Czech Republic in the TOP Employers poll for the eighth time in a row. The top employers were decided in the poll by nearly 12,000 students from various university faculties across the Czech Republic, who evaluated companies according to their working environment, professional training opportunities, social responsibility, and chances for future high income.

“I am delighted that students perceive us as a stable, strong and trustworthy firm that can offer them an exceptional opportunity to enter the world of the legal profession and their further career development,” commented HR Director Daniel Soukup. *“From the very beginning, young promising professionals have the chance to benefit from the firm’s unique know-how built up over the years and the guidance of more experienced colleagues, and they often soon get to extremely interesting cases,”* he added.

TECHNOLOGIES



HOW TO FIGHT CYBER ATTACKERS

Cyber attacks are a powerful weapon not only in international conflicts, but also in the private sphere. Hackers are constantly improving their attacks and it is very difficult to keep up with them. Meanwhile, attacking internal systems or misusing sensitive data can be devastating for some companies. So, what is the best way to prevent cyber crime and what to do if hackers attack your company?

BUSINESSES ARE NOT ONLY AT RISK OF SIGNIFICANT FINANCIAL DAMAGE OR SANCTIONS FROM THE AUTHORITIES DUE TO CYBER ATTACKS, BUT ALSO, AND MOST IMPORTANTLY, A LOSS OF TRUST FROM CUSTOMERS AND CLIENTS. AND SUCH DAMAGE IS DIFFICULT TO REPAIR.

The coronavirus pandemic has moved even previously sluggish companies into the online space. Today's digital world is increasingly having to deal with its flip side. According to data from Check Point, the number of cyber attacks on Czech companies in 2021 increased by half compared to the previous year, with an average of over 1,000 attacks per week, higher than the global average. Cyber crimes are therefore steadily increasing, and this negative trend has been compounded by the complicated geopolitical situation related to the war in Ukraine.

As a result, more and more companies are realising that a cyber attack could be fatal. According to the *Allianz Risk Barometer 2022*, a survey of the biggest risks to businesses, experts from more than 100 countries around the world ranked the cyber threat as the biggest danger this year and last year, surpassing even the risk of potential business disruption or the impact of legislative changes.

Therefore, company management should not rely on simply avoiding a cyber attack, not least because it is ultimately the statutory body that is responsible for setting an appropriate strategy to eliminate potential risks. Thus, the management should take sufficient measures to prevent cyber attacks. The opposite situation may constitute a breach of the statutory bodies' duty of care and their liability for damage suffered.

Hello, send me the money

Statistically, the most common type of cyber incident is phishing, an attack where attackers target individual users. They can steal passwords or credit card numbers or other sensitive data. It is no longer the case that you will receive an email with poor Czech in which you are approached by a Nigerian prince or a supposed friend asking for money. And while such attempts are now more likely to raise a smile, hackers still benefit from the fact that the biggest weakness in these cases is the human link.

Moreover, cyber attackers are constantly improving their methods and using more and more sophisticated strategies. They target large companies or government organisations, which themselves have a high level of security. For example, the National Cyber and Information Security Agency (NCISA) warned of two such cases affecting Czech public institutions in early

2022. In both cases, attackers were able to compromise user accounts and send additional phishing messages from them to various domains, including other public institutions. In one of the campaigns, the attacker even camouflaged the attack by following-up on existing communication and sending malicious messages in response to these threads.

You don't negotiate with criminals?

Cyber attacks in the form of ransomware, i.e., digital extortion, have also been a "popular" method in recent years. Hackers prevent access to data (typically by encrypting it) and demand a hefty ransom from companies for making it available. The fact that a significant number of companies have already encountered such an attack is confirmed by The State of Ransomware 2021 report prepared by the security company Sophos, which monitored the development of ransomware attacks in 30 countries, including hundreds of companies in the Czech Republic.

In 2021, attacks of this type affected 30% of the surveyed companies in the Czech Republic and the average negative impact of a ransomware attack was around CZK 7 million. The value includes not only the amount of the ransom, but also the associated costs, employee time and lost profit. In Germany, for example, the figure is CZK 25 million, and the highest value is in our neighbours in Austria, with an average of CZK 160 million. The Czech Republic therefore comes out as the country with the lowest average "amount lost" in the



overall ranking, but even so, these are not negligible sums.

Therefore, immediately after the attack, the company management usually addresses the question whether it is worth paying the required ransom. The amount for unlocking systems varies according to the size of the company affected, the difficulty of the chosen attack and, finally, the location of the target. So, whether or not to negotiate is literally the million-dollar question.

For example, in 2018, the US city of Atlanta refused to pay the requested ransom of

USD 50,000. For several days, the transport systems were not functional, and officials had to work with traditional paper forms. But the city subsequently paid more than USD 2 million for IT consulting, a security audit and PR services.

Prevention above all

Damages are thus quantified after the battle, and after cyber attacks, companies not only add up the costs spent on restoring and securing systems, investing in cyber security and cyber risk training, but also record the losses caused by slowing or stopping operations or fines for late delivery to contractors. And if sensitive data are leaked, they may also be liable for the loss of confidential business or personal data.

It is therefore best to prevent cyber attacks. The right defence is therefore the early and preventive introduction of company rules and measures that secure both human processes and the technology and data. A good guideline on how to proceed can be the Cyber security Act, which, although it introduces obligations mainly for public entities or their suppliers and operators of key services for the State, the same cyber security rules can be applied in private companies as well. A suitable inspiration is the so-called Minimum Security Standard issued by the Cyber and Information Security Agency.

At the outset, the basis should be a detailed internal analysis of the company that identifies security weaknesses. Knowing these, the company can then work on and eliminate them as part of a comprehensive

THE RIGHT DEFENCE IS THE EARLY AND PREVENTIVE INTRODUCTION OF COMPANY RULES AND MEASURES THAT SECURE BOTH HUMAN PROCESSES AND THE TECHNOLOGY AND DATA.

cyber security and digital protection system. However, it is important that any intended measures are feasible and, above all, understandable to employees so that they know exactly how to avoid risky behaviour.

In addition to this, every company should have proper technical security of systems and data – regularly change passwords to company accounts and systems, use advanced encryption technologies, etc. And companies should also prevent the potential loss of important data and information (which is more common than actual misuse) by correctly setting up backup management.

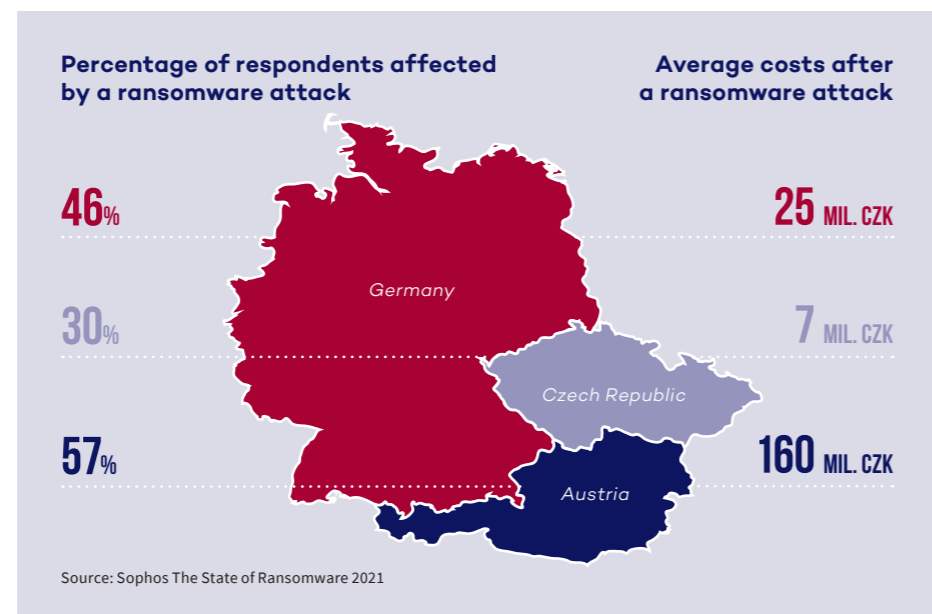
We also recommend establishing home office security rules beyond the normal

procedures. For example, employees should only send work emails via a company email account, use only trusted networks and secure connections to the company network (e.g. VPN connections), etc. Although some rules may sound trivial, they are not always the standard followed.

Companies should also choose their IT systems or anti-virus program suppliers carefully. An appropriate route may be to implement certification according to the ISO/IEC 27000 standards, which set out the requirements for the design, implementation, operation, monitoring and review of an information security management system.

However, putting in place appropriate internal procedures is only the first step. The rules then need to be constantly updated and employees regularly trained to ensure that they actually follow them. This applies not only to prevention, but also to cases where an attack has already occurred.

For such situations, we recommend creating a crisis plan that sets out a clear procedure. Ideally, you should immediately contact legal and security experts directly, who can quickly help to minimise the damage and advise on the necessary course of action. Subsequently, the incident should be properly investigated and documented. If a personal data breach has occurred, there may also be an obligation to notify the Office for Personal Data Protection.



Be careful about contracts

It is also important to make sure that contracts with IT system suppliers, employees and insurance companies are set up correctly. It is advisable to define in detail the obligations related to data protection, encryption, data backup and reporting. Contracts and any internal regulations should always clearly define who has what obligations and who is responsible for what. This is crucial in the event of a real attack, dealing with the consequences and the associated liability.

Contracts with IT system suppliers should ideally guarantee that the systems

supplied are regularly updated and that the supplier is sufficiently responsible for ensuring that they actually provide the necessary protection. And contracts with insurance companies also deserve attention. Standard insurance policies of companies often do not cover the risks of cyber attacks, but it is possible to take out special cyber risk insurance, not only for direct attacks on the insured's computer networks and systems, but also for attacks on cloud services operated by third parties.

Cyber space is a dangerous place, and we believe that a good cyber security strategy is therefore a necessity today. All

preventative measures should be seen primarily as a means to reduce future costs that would surely come with a cyber attack if unprepared.



Data is a critical asset, and we help clients protect it. We have logged thousands of hours of legal advice in protecting and valuing data. Need help setting up prevention, remediation after a cyber attack or data loss? Or do you simply want to make better business use of your data? In every situation, we have a practical solution for you. We know this area in great detail. With more than 30 lawyers specialized in information technology law, close cooperation with top forensic experts and renowned technical experts, best practices verified in international transaction environments as well as experience from hundreds of data projects, we can really help and support you effectively in the conceptual handling of your data. We deal in detail with the protection of ICT infrastructure (data storage), including CDNs from a cyber security perspective, and are ready to provide extremely time-flexible support in this area.

HAVEL & PARTNERS key contacts for technology and cyber security:



ROBERT NEŠPŮREK | PARTNER

Robert is a founding partner of the firm and leads the HAVEL & PARTNERS team specialising in IT law. He advises clients on software law, IT solution delivery and implementation projects, IT outsourcing, and dispute resolution for IT projects. In the field of cyber security, Robert is proficient in best practices proven in the environment of international transactions.

JAN DIBLÍK | PARTNER

Jan specialises in technology law, particularly information technology and telecommunications law. In this field, he has experience in transactions with international elements. Jan is an expert in software licensing, implementation of IT solutions, and cyber security. He provides comprehensive advice related to the prevention of cyber-attacks and protection against their consequences.



DALIBOR KOVÁŘ | MANAGING ASSOCIATE

Dalibor is an expert in information technology, electronic legal acts and related digital transformation. He has experience in over a hundred data projects, helping clients to make more effective commercial use of data, set up cyber attack prevention, and remediate data damage and loss. Dalibor also focuses on licensing and implementation agreements and the legal regulation of innovative technologies.

PAVEL AMLER | SENIOR ASSOCIATE

Pavel specialises in technology law, the legal and regulatory aspects of software and information technology services, and the implementation of IT systems, including the legal aspects of cyber security and prevention of threats in the online environment. He also advises on telecommunications matters and the legal regulation of innovative technologies.



FROM THE MEDIA

WE HELP AND INVEST IN START-UPS. WE INDIRECTLY CO-OWN OVER 100 COMPANIES, SAYS LAWYER JAROSLAV HAVEL

WE STRIVE TO OFFER A COMPREHENSIVE APPROACH, I.E. LAW IN THE BROADEST EXTENT, INCLUDING TAXES, REGULATORY AND LEGISLATIVE MATTERS, WHETHER LOCAL, EU OR US.

They are almost invisible, but business could not function without them. Lawyers active in the world of start-ups are behind every announced investment round, sale or acquisition, stock market entry and expansion into foreign markets. But the list is far from over. HAVEL & PARTNERS, the largest law firm in the Czech Republic, is well aware of all of this and is increasingly interested in start-ups.

In an interview for CzechCrunch, Jaroslav Havel, joined by Václav Audes, discuss the current events in the start-up world, which is buffeted by an investment storm and cooling-down, their investments in start-ups, international comparison and the specific aspects of this branch of law.

There have been reports coming from the United States for some time now that the volume and number of investments in start-ups has been declining, as have negotiated valuations. We are already seeing some indications of this in the Czech Republic. How do you perceive the situation as lawyers who are behind these transactions?

Václav Audes (VA): In terms of the number of transactions that we deal with directly, we have not yet observed any decrease in market dynamics. On the contrary, in some areas the intense interest from last year has continued this year. We see this, for example, in the crypto world and blockchain or artificial intelligence. In the long term, there is also great interest in investments in fintech, and e-commerce and gaming are also developing dynamically.

How many transactions do you process in general?

Jaroslav Havel (JH): On average, it is one transaction per week. We handle everything from the smallest, i.e. pre-seed and seed rounds, where we typically represent venture capital funds and angel investors, to the more advanced Series A, B and C stages, which we have tried with Rohlík, for example. Tomáš Čupr is a long-time client of ours, and we have represented Rohlík as a company in all of its rounds.

Although you do not see less dynamics in transactions concluded, do you see any changes happening in the venture capital market?

VA: From an international perspective, we can already see that many investors, mainly from Western Europe and the US, have moved into the 'wait and see' mode. The most common reasons are



Jaroslav Havel

inflation and the rising costs of developing or operating start-ups. In addition, for investors operating in Central Europe, the geopolitical risk has increased due to the situation in Ukraine, which they have to take into account.

JH: On the other hand, this cooling-down occurred in late February and early March. Now the geopolitical risk is no longer a big issue. For example, one of our Czech clients continues to invest with a Scandinavian fund, which postponed all investments to the second half of the year in February. However, it eventually reconsidered its position and started reinvesting. We therefore expect that the geopolitical aspect will not be so crucial. What will continue to play a role, however, are rising energy prices and inflation, or high interest rates on loans denominated in Czech crowns.

Will the current events from the US venture capital market spill over into the Czech Republic, or is the Czech Republic immune because the scene is more 'reasonable' and perhaps not as developed as in the West?

JH: It is true that in recent years even the largest American funds such as Sequoia, Index or Tiger have focused their attention on our region, because the quality and

global scale of start-ups is growing here. At the same time, their valuations were – and still are – at a reasonable level compared to those in the US. If I overstate it, the valuation of an idea without commercial traction and sales in the US can be equal to the valuation of established companies that actually have products and sell them. From our perspective, it is a diametrically different world.

What do you think our ecosystem lacks compared to the West?

VA: For example, cooperation between angel investors, who focus on the earliest stages of companies, and organisations that bring founders together are important. Such initiatives have emerged in our country only recently, but it is a step in the right direction. And it is extremely important that there are functional start-ups that are able to surround themselves with the right people and think truly globally. It is still true that many start-ups here look at their potential through the lens of the Czech and Slovak market, which is logically less interesting from the perspective of a foreign investor. From their perspective, it is also important to have the right legislative structure.

What do you mean?

JH: Early investments are typically always made by local investors, while later rounds are usually sought by start-ups abroad. To be attractive to international investors, they often have to have a properly built structure, because, with a few exceptions, foreign investors in later stages (especially A series and beyond) typically will not want to invest in a Czech or Slovak limited liability company.

Particularly at the beginning, start-ups try to save where they can, and for example legal services can be relatively expensive...

VA: In both the Czech Republic and Slovakia, lawyers are often cut back, and you are right that this is even more so in smaller companies and start-ups, which are mostly run by young people. A firm

like ours can offer an alternative fee structure in such cases. In the West, it is a common practice, for example, to reduce rates and get a share of the success in return. Subject, of course, to the rules of the legal practice. Owners of law firms often have a separate 'venture capital' company set up through which they enter start-ups directly. As a result, the lawyers receive a portion of their fee in the form of a stake in the company or a payout as part of the next investment round.

Is this the way you also invest in start-ups?

JH: I personally made my first investment in the Credo Ventures fund back in 2008. At that time, it was the first fund that could be invested in this way. Then we invested, either myself or jointly with my colleagues within the firm, in several other funds through similar structures. This allows us to appreciate the wealth we have earned through the provision of legal services in an environment that is close to us and shared with our clients.

IT IS IMPORTANT THAT START-UPS ARE CREATED HERE THAT ARE ABLE TO THINK GLOBALLY. MANY START-UPS LOOK AT THEIR POTENTIAL THROUGH THE LENS OF THE CZECH-SLOVAK MARKET, WHICH IS LESS INTERESTING FROM THE PERSPECTIVE OF A FOREIGN INVESTOR.

How much do you invest?

JH: The amounts are not very material; in general, we have invested several millions of Czech crowns in venture capital funds, exceptionally once over ten million. We try to keep it reasonable. In venture capital funds, there is often an exemption for a lower mandatory minimum investment for legal, tax and other advisors who bring

intellectual capital with added value to the funds in addition to money.

VA: Thanks to this, we can invest even smaller amounts in the funds than the minimum deposit for traditional investors. The funds see us as more motivated to help them find potential start-ups to invest in or, for other rounds and exits, to find their way to more potential investors and buyers. There is a logical intersection.

Which funds or start-ups have you directly entered?

JH: In addition to Credo Ventures, I can also mention Lighthouse Ventures. When I put together my investments and those of my colleagues made through joint vehicles, together we are indirect co-owners of probably the largest number of start-ups in the Czech Republic and Slovakia, and in many cases in other countries in CEE or Western Europe. There are also several 'unicorns' among them. In total, it must be more than a hundred of such shareholdings. But often it is a small exposure in respect of the legal exemption I mentioned. Still, we are very pleased to be able to follow their successes and contribute to them.

VA: With start-ups, we also get to do immensely interesting work. For example, one of our clients, originally a Slovak technology company, is opening its own plant as it expands in the United States. This involves setting up a US entity, hiring employees, renting real estate, and having to pay taxes there. We helped them with all of that.

As a Czech company, however, you will understandably not be experts in US law and taxes. How do you proceed in such cases?

VA: We act as service coordinators; we have a wide international network of cooperating law firms. We contact foreign offices for assistance, they contact us for help for their clients. It is our international cooperation that we consider one of our biggest competitive advantages – we have the ability to help abroad not only in the transaction but also with day-to-day business matters. Given that we are a large firm even in a European context, it allows us to build long-term relationships as a regular client and we act as an equal partner abroad, at least in terms of the number of lawyers and the type of clients.

You mean US companies that operate here in the Czech Republic?

JH: Yes. When you look at the top of the US stock market, the vast majority of the



Václav Audes

companies that operate in our country are our clients. For example, Google's parent company Alphabet, Facebook's parent company Metaverse, Apple, Tesla, Microsoft. I dare say that more than 80% of them are our clients in the Czech Republic and Slovakia. You don't have any other firm like us in Europe where the number one firm is so far ahead of the number two firm in terms of market share – clients, turnover, number of lawyers and reputation. And at the same time, we maintain and continue to strengthen this position – one thing is to grow, and another is to maintain that lead.

So you continue to grow?

JH: We are growing in terms of sales, profit, quality and specialisations. Thanks to this, we can ultimately inspire start-ups and advise funds. Fund managers have not typically gone through large companies, they have grown out of the investment environment. We are lawyers, but we are also managers – we have built a firm that currently has 500 people, 300 of whom are lawyers and advisors. And lawyers aren't the easiest people to manage. (laughs) We have set up management, we understand law, tax, business development and marketing, we deal with a lot of HR issues. Therefore, we can also offer added value to entrepreneurs and managers in terms of business sustainability and corporate culture.

This interview was published on CzechCrunch, a Czech portal focusing on business, start-ups, technology and other current topics. The interview has been edited for length (note from the H&P Magazine editorial board).

OVERVIEW OF SELECTED TRANSACTIONS WITH THE INVOLVEMENT OF HAVEL & PARTNERS

Over the past 16 years, we have been involved in completing over 800 transactions, not only in mergers, acquisitions, divestments, and restructurings. Their total value exceeds EUR 32 billion. Here is an overview of the major ones in the recent period.



GENESIS PRIVATE EQUITY FUND III

Representing a seller in a major transaction in the pharmaceutical sector

Our team represented Genesis Private Equity Fund III of the Genesis Capital Group in the sale of an 85.9% stake in QUINTA-ANALYTICA. The latter is a major Czech provider of research and regulatory services to the pharmaceutical, biotechnology and generic pharmaceuticals industries. The stake was newly acquired by LVA Holding from the portfolio of BBA Capital Partners.

Legal advice in connection with the transaction was provided by partner Václav Audes, senior associate Veronika Filipová, and legal assistant Filip Pavlík.

Genesis Capital has been cooperating with HAVEL & PARTNERS for a long time, and in 2016 we also provided comprehensive legal services during the company's entry into QUINTA-ANALYTICA. The then share purchase was a prime example of how to address a succession. The fund became the majority owner of the company and kick-started its growth strategy.



ČEMAT

Comprehensive advice on the acquisition of ČEMAT by Michelin

Michelin, a major global tyre manufacturer and distributor, has acquired ČEMAT in the Czech Republic and Slovakia. The company has been active on the market for 25 years and is one of the largest suppliers of accessories for handling, construction and agricultural machinery. It also offers maintenance services for such machinery.

We provided comprehensive legal advice to the owner of ČEMAT on the sale of his 100% stake in the company in both countries, which was handled by the firm's partners Jan Koval and Petr Dohnal, as well as senior associate Ivo Skolil. This was a significant acquisition for Michelin, which will strengthen the company's position on the Czech and Slovak markets and expand its operations in Central Europe.



SEALL

Sale of a distributor of products and provider of services focused on hydraulics and pneumatics

Partner Jan Koval and senior associate Veronika Filipová provided comprehensive legal support to the owners of SEALL, who sold their stake in this leading Czech company manufacturing and selling hydraulic, pneumatic and sealing components to Rubix Czech.

The new owner belongs to the group of the European leader in the distribution of industrial consumables, Rubix. It is the only distributor with a pan-European presence that deals with all the premium brands of manufacturers in the industry. The acquisition is aimed at increasing the group's market share in the fluid technology market and expanding the services provided to existing customers.



PTÁČEK KOUPELNÝ

Advising on acquisitions of industrial and retail parks

For the Ptáček velkoobchod group, which owns a wide network of stores selling bathroom fittings, sanitary ware and heating equipment, our team worked on several transactions aimed at acquiring shares in the companies owning industrial and retail parks in Prague and České Budějovice.

We advised the client on the acquisition of a share in Průmyslový park Harfa and also acted as legal adviser on the acquisition of shares in ProStorage and Retail Park CAR CB. Partner Jan Koval and associate Josef Bouchal provided comprehensive M&A advice to the client. The team also included tax advisor Martin Bureš, who handled the tax aspects of the acquisitions.



CREDO VENTURES / EARLYBIRD DIGITAL EAST FUND

Investment in Slovak technology start-up Photoneo

We acted as legal advisors in one of the largest venture capital investments in Slovakia. In successfully completing the investment round (Series B), we provided legal services to investors Credo Ventures and Earlybird Digital East Fund, as well as to Slovak start-up Photoneo itself, which raised a total of USD 21 million in new capital, or nearly half a billion Czech crowns.

The transaction was led by M&A and venture capital specialists – partner Václav Audes, senior associate Tomáš Navrátil, associate Ivana Gajdošová, and junior associate Kristína Očenášová.

Photoneo specialises in research and development activities in the field of 3D sensing technology and vision-guided robots, and also focuses on new comprehensive solutions for fully automated distribution centres.



SMART COMP

Acquisition of Czech Internet provider by Nej.cz

Our team consisting of partner Václav Audes, senior associate Juraj Petro and legal assistant Filip Pavlík represented the majority owners of SMART Comp, who sold their shares to Nej.cz, in a major transaction on the Czech telecommunications market. Both companies are major Internet providers.

SMART Comp has been operating since 1998 and, in addition to Internet access, offers customers in the Czech Republic and Slovakia mobile services and Kuki internet television. Nej.cz provides Internet to more than 200,000 households and 10,000 companies. The transaction followed a series of mergers with six other telecommunications companies, which Nej.cz completed in 2021.



KLEIN AUTOMOTIVE

A Czech automotive company acquired by the global company MAGNA

Our M&A experts – partner Václav Audes, managing associate Silvie Király and legal assistant Filip Pavlík – handled the sale of a 100% stake in KLEIN automotive for our clients. The company, which until now had Czech owners through the investment fund K-Invest, was acquired by the global company MAGNA Automotive Europe.

KLEIN automotive, a Czech company with a manufacturing plant in Štítý, specialises in the manufacture and supply of car bodies and other automotive components and employs around 500 people. The Canada-based MAGNA Group is one of the world's largest automotive suppliers.

The acquisition was the largest investment in the industry in the Czech Republic in 2021 and had to be approved by the Office for the Protection of Competition.



HERKUL

HAVEL & PARTNERS represented the owners in the sale of a construction company

In a major acquisition in the construction sector, AVE CZ odpadové hospodářství became the new owner of the construction company HERKUL. Our firm participated in this transaction as a representative of the owners of HERKUL – their legal advisors were partner Jan Koval, managing associate Robert Porubský, and senior associate Ivo Skolil.

HERKUL is primarily engaged in transport and civil engineering construction, and through this transaction AVE CZ took control of a major player in the field of civil engineering works with a turnover of around CZK 1 billion, which is currently a leading supplier of linear constructions, especially in the Ústí and Central Bohemia regions.

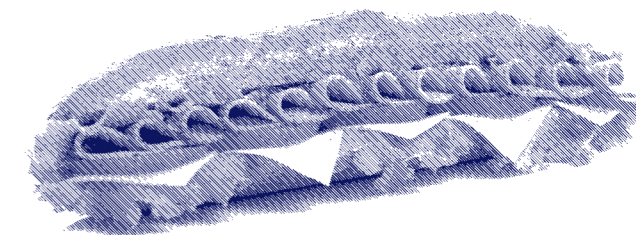
DANUCEM SLOVENSKO

Legal advice to a European building material manufacturer and supplier

In several separate transactions involving the acquisition of industrial and manufacturing sites in Slovakia, the firm's Bratislava team assisted our client Danucem Slovensko with the preparation of the transaction documentation as well as with detailed legal due diligence, particularly in the area of real estate law.

The legal team included partner Ondřej Majer, associate Ivana Gajdošová, and associate Peter Košecký.

Danucem belongs to the parent CRH Group, which ranks among the top leaders in the supply of building materials. With thousands of employees and partners, it helps build roads and residential and commercial buildings around the world. Their materials have been used for projects such as the Messner Mountain Museum in Italy, the Atlanta soccer stadium, and Panorama City in Bratislava.



CF GROUP

Investment in CF Group and acquisition of Banh-mi-Ba

In connection with an equity investment by the Czech investor Pale Fire Capital, the Bratislava office team represented CF Group, which operates a chain of modern food concepts, including Regal Burger restaurants. The investment in CF Group amounted to EUR 2.3 million and also includes the acquisition of a stake in Banh-mi-Ba, where CF Group acquired a stake in this Vietnamese restaurant chain.

HAVEL & PARTNERS partner Ondřej Majer and senior associate Tomáš Navrátil provided comprehensive legal advice to CF Group on the investment and acquisition. CF Group will use the new capital to strengthen marketing, research, development, recruitment and overall growth of the group in Slovakia, the Czech Republic and most recently in Abu Dhabi.

GENERATION CAPITAL / HELIOS FUND

Advising on an equity investment in GREENWAY HOLDING and GreenWay Infrastructure

Our law firm advised foreign investors Generation Capital and Helios Fund on the provision of an equity investment at the level of the Polish parent company GREENWAY HOLDING, which through its subsidiaries operates a network of charging stations in Slovakia and Poland.

The legal advice, provided by partner Jan Koval, managing associate Robert Porubský, senior associate Elena Jarolímková, and associates Ivana Gajdošová and Zuzana Hargašová, included due diligence, negotiation of transaction documentation, including setting up relations with new investors, as well as comprehensive advice related to the financing of the investment from the European Investment Bank's funds.

MYLAN

Acquisition of the assets of the Aspen pharmaceutical group in Slovakia by the Mylan group

For the global pharmaceutical group Mylan, our office in Slovakia provided comprehensive legal support in the acquisition of assets from the local legal structure of another major global pharmaceutical group, Aspen.

Partner Václav Audes and senior associate Tomáš Navrátil were involved in the transaction. Mylan is a global pharmaceutical company with a portfolio of more than 7,500 pharmaceutical products worldwide and is one of the world's largest producers of active pharmacological substances.

SUSTAINABILITY REPORT FOR LARGE COMPANIES A DUTY, FOR OTHERS A NECESSITY

Carbon footprints, favourable working conditions, anti-corruption rules... Is your company already addressing sustainability and ESG reporting issues? If it is not, it is high time it started. Since last year, you have been able to hear these three letters in a bank when looking for funds for your new projects. Moreover, from next year, non-financial reporting should be mandatory for large companies according to the upcoming EU legislation; the obligation will also indirectly affect companies cooperating with larger corporations.

What does ESG stand for?

ESG issues are very wide-ranging and the individual letters cover multiple areas. E stands for environmental – this includes everything that has an impact on the environment in connection with your company. Therefore, in your reporting, you should, e.g., include all waste management data, the amount of emissions your company generates, the consumed energy sources, etc. – simply, all that affects the carbon footprint of your company and products. S stands for social – here we can include issues such as fair remuneration of employees, diversity in the company, favourable working conditions, etc. And the last letter G refers to corporate governance – which generally means strategic corporate risk management, ownership structure transparency, business ethics within your company, etc.

An ESG report is a general report on where your company stands in all the specified areas. It is therefore a process of measuring, evaluating, and publishing corporate data and strategies connected with the environment, social sustainability and efficient and responsible corporate governance. However, currently there are several methodologies laying down how exactly to report and handle the data. Moreover, the outputs from various companies are difficult to compare. As a result, starting next year, the EU is planning to introduce new harmonised reporting rules (European Sustainability Reporting Standards – ESRS), which will be binding on a large group of companies. Specifically, on those who meet at least two out of three criteria: over 250 employees, assets worth EUR 20 million or turnover in excess of EUR 40 million. In the Czech Republic, this should be up to 1,300 companies, which, according to the current development of legislation, should be obliged to prepare reports as early as for the year 2023.

The reporting obligation will not be imposed on smaller companies yet, but they can be expected to be asked about their ESG criteria by their business partners who are subject to mandatory reporting. Do you know how to get started with ESG reporting? We'll tell you what to focus on.



What will an investor or a bank require me to do?

Non-financial reporting has become more and more crucial for investments in recent years. According to a global survey carried out by EY in 2020, 91% of investors said that non-financial performance had played a pivotal role in their investment decision-making.

Apart from the forthcoming EU's Corporate Sustainability Reporting Directive (the CSRD) and the harmonised ESG reporting rules, the EU regulation on the taxonomy of sustainable activities has also been in force since the beginning of this year. The regulation sets forth which activities can be considered environmentally sustainable. Banks want to be green. That is why they request ESG data from their clients and take them into account when providing loans and other products and services.

When you discuss a loan with the bank, it will not only ask you for financial statements and other economic data but also for ESG information. It will, for instance, ask about the share of renewable energy, waste production, greenhouse gas emissions or consumption of water; or, it will require energy certificates for properties and your plans to improve energy efficiency and reduce carbon dioxide emissions. Without such information, banks cannot properly assess loans because ESG criteria are now new mandatory criteria in the approval procedure. Therefore, if you do not have ESG data, the loan granting procedure may drag. In certain cases, your ESG score can result in worse credit terms or, on the contrary, in the event of favourable figures, it can qualify you for better credit terms.

To assist companies, the Czech Banking Association has issued a template [ESG questionnaire](#), in which you will find detailed points about what banks assess. Therefore, if you are applying for a loan or discussing funding for your new projects with a bank, it is a good basis for the preparation of supporting documents. The approach of individual banks can differ in their details. The sample questionnaire, however, can be used as a checklist for your company's ESG report.

Where, when and how to start?

The sooner you start the better. Find out what data you already have available in your company and start measuring what you are missing. In the next phase, you then need to collect the data and find out where you stand in terms of sustainability. Given the range of ESG criteria, definitely don't expect to find the numbers you need in a neatly wrapped package under the Christmas tree. Quite the opposite, data collection requires quite an intense effort and the participation of employees on multiple fronts because the necessary figures and supporting documents are located in different departments within the company.

You can find what impact your company has on the natural environment, e.g., from its energy consumption, company car business trips, emissions from manufacturing, etc. – this usually requires the engagement of a number of employees who have the necessary data in various systems and forms. This applies analogically to other areas. As for social sustainability, you will be usually able to find the data you need in the HR or marketing departments. For corporate governance information, you will have to ask the compliance staff. The actual collection, consolidation and evaluation of data is, as a rule, the greatest challenge companies face in ESG reporting. What is most time-consuming for companies, on the other hand, is the configuration of processes and uniform format. For instance, the initial set up of the carbon footprint in a company takes at least 3 to 4 months in our experience.

Last but not least, it is also crucial to be able to correctly interpret the data. To ensure company-wide coordination, new positions of ESG coordinators are increasingly being created, or companies allocate persons in charge to the top management position of CSO (Chief Sustainability Officer).

If you are confused or hesitant, it is definitely a good idea to contact experts specialising in non-financial reporting to guide you through the entire process step-by-step. Today, there are also technological solutions that can make this stage much easier for companies and go even further. The systems not only collect and monitor the data, but also evaluate them and can automatically produce entire ESG reports. This, of course, saves staff capacity and overall costs.

How do you calculate a company's carbon footprint?

In reporting, it is ideal to include data from as many areas falling under the letters ESG as possible. The minimum basis of each sustainability report should definitely be the calculation of the company's carbon footprint. It is measured in terms of the carbon dioxide equivalent that the company produces in connection with its business activity and thus shows the company's impact on climate change. The company's carbon footprint is calculated, as a rule, based on two methodologies, either the GHG protocol (Greenhouse Gas Protocol) or ISO 14064 (the company's carbon footprint).

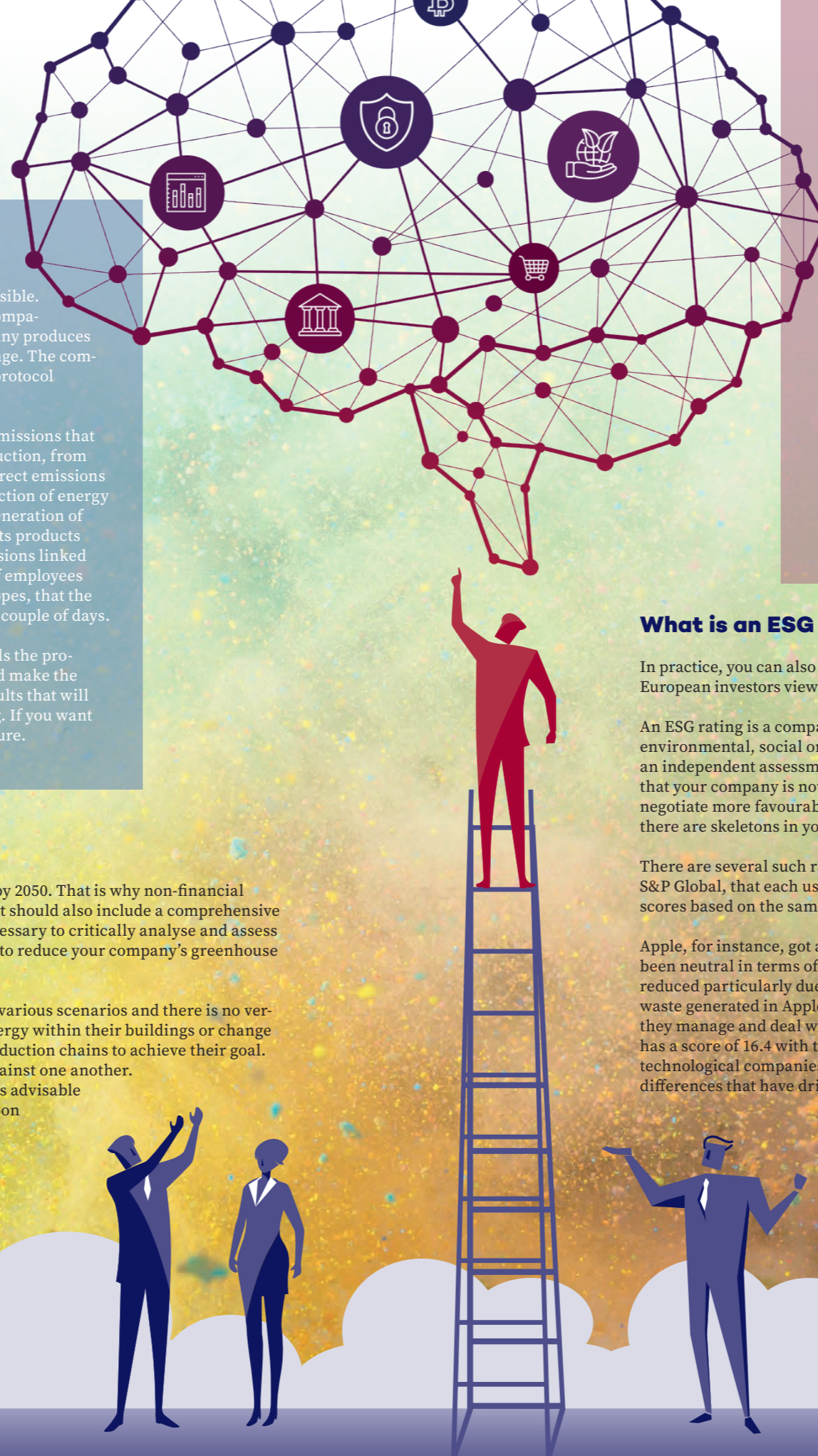
The carbon footprint includes emissions from three areas called Scopes. Scope 1 comprises emissions that are produced by the company itself. This includes the volume of greenhouse gases from production, from driving company cars, from the gas used for own heat generation, etc. Therefore, these are direct emissions that the company emits into the air. Scope 2 comprises indirect emissions linked to the production of energy for the company that is produced outside the company for its consumption. This means the generation of power, district heating, or district cooling. Scope 3 comprises emissions of the company and its products and services, the impacts of which are the most complicated to report. These include all emissions linked to the entire production chain, the company's suppliers and clients, or e.g., to the transport of employees to work and a number of other items. It is clear, merely from the list of criteria in all three Scopes, that the calculation of the carbon footprint is not a simple procedure that could be processed within a couple of days.

And again, experience is invaluable here. If you are unsure, contact someone who understands the processes and has experience with the calculations. They will help you collect necessary data and make the calculation based on a professional methodology. This way, you will arrive at the relevant results that will stand up to investors, banks, new legislation or companies that issue the corporate ESG rating. If you want to be sustainable, and thus attractive for investors, you cannot do without this elementary figure.

What is your strategy and what are your goals?

The Green Deal aims to ensure the carbon neutrality of greenhouse gas emissions in Europe by 2050. That is why non-financial reporting, according to the new EU regulations, should not just be an overview of figures but it should also include a comprehensive strategy and setting of goals that will lead a company to carbon neutrality. Therefore, it is necessary to critically analyse and assess the collected corporate data and set goals that will be realistic for the company. For example, to reduce your company's greenhouse gas production by 25% in five years.

Then you need to set a strategy regarding which road to take to reach your goal. There can be various scenarios and there is no versatile guide that applies to all companies on the market. For some it will be enough to save energy within their buildings or change the sources of energy used, while other companies might have to completely rebuild their production chains to achieve their goal. Above all, we should keep in mind that companies from various fields cannot be compared against one another. An organic farm has a different impact on the environment than a power plant. Therefore, it is advisable to compare your company against others in your industry. If your competitor has a lower carbon footprint than you, it is definitely worth considering how to do things in a better way.



Useless bureaucracy or a necessity?

If you want to push through a change or introduce new processes in your company, you should always first explain why it is necessary and what your objectives are. Non-financial reporting is no exception. Moreover, the actual fulfilment of set ESG strategies and objectives is a long-term effort; therefore, it is a good idea to motivate your employees and make them ready for the change. Give them an idea of the entire process and explain what your goals are and train your employees so that they do not see data reporting and the transition to sustainable operation as just useless bureaucracy.

Sustainable operating models are not only good for the environment. They are also an advantage because of the reduction of operational savings in today's era of rising energy costs or because of the evaluation by financial institutions, insurance companies and strategic partners. Sustainability is also perceived positively by customers or potential employees. Non-financial reporting will thus be as important for business in the future as financial reporting. With the former, you will get a detailed idea about your company and its readiness for the new challenges the modern world is facing. This will help to make you more strategically adaptable to new conditions and succeed in the market.

What is an ESG rating?

In practice, you can also come across ESG ratings. According to a survey carried out by HSBC in 2021, European investors view these ratings as one of the most useful factors in their sustainable investment efforts.

An ESG rating is a company score or mark for your company showing how well you manage to deal with environmental, social or corporate governance risks overall. ESG ratings are issued by rating agencies as an independent assessment and review of a company's reported data. A good score is a signal for investors that your company is not exposed to risks. A favourable rating will therefore help you attract investors and negotiate more favourable financing terms. A negative rating, on the other hand, may warn investors that there are skeletons in your corporate closet.

There are several such rating agencies, the best-known ones being, for instance, MSCI, Sustainalytics and S&P Global, that each use their own methodology and assessment. You can therefore receive different scores based on the same data from different agencies.

Apple, for instance, got a mediocre BBB rating from MSCI even though it publicly declares that it has been neutral in terms of the carbon footprint of its corporate emissions since 2020. Apple's rating was reduced particularly due to the criticism from workers in its supply chain and also due to the electronic waste generated in Apple production. Sustainalytics, on the other hand, rates companies based on how they manage and deal with ESG risks and gives them quantitative scores accordingly. Currently, Apple has a score of 16.4 with this agency, ranking it among low-risk companies; in the benchmarking of all technological companies, Apple is at the end of the top third of the best rated companies. It is also these differences that have driven the EU to draft new harmonised reporting rules.



HAVEL & PARTNERS is a founding member of the Climate & Sustainable Leaders Czech Republic initiative. We have joined our efforts with other leading companies from various industries of the Czech economy to support the reduction of carbon footprint in the Czech Republic and to motivate Czech companies to start projects helping them transition to sustainable models of operation.

The initiative prepares activities in the area of education, awareness and methodological support concerning sustainability and climate objectives and is also the author of the Carbon Tracker project, the first comprehensive overview of how the largest companies in the Czech Republic are coping with carbon dioxide emissions and how they are managing to reduce them.

Key contacts for sustainability and ESG services:

HAVEL & PARTNERS exclusively cooperates with One Advisory in the area of advisory on sustainable corporate strategies and reporting.



JAN KOVAL | PARTNER, HAVEL & PARTNERS

Jan has 18 years of experience in international mergers and acquisitions and long-term experience with transactions and projects in renewable energy sources and sustainable investments. He is also an expert on corporate governance. In compliance, he focuses on sustainable strategies and advises on the set-up of ESG parameters in companies in line with the globally recognised framework.

JAN TOPINKA | PARTNER, HAVEL & PARTNERS

Jan leads a specialised HAVEL & PARTNERS team for banking, financing, and capital markets. He focuses on financial services regulation, fintech and capital markets. He also specialises in sustainable finances and green financing, including green bonds.



KAREL PŮBAL | PARTNER, ONE ADVISORY

For many years, Karel worked in one of the leading global consulting companies as a director for services for the public sector and as a bursar of a Czech natural sciences university. He has been involved in the preparation of a number of significant strategic documents and sectoral and other economic analyses. He takes a realistic stance in ESG issues drawing on his knowledge of global and local social and economic trends and also from practical experience in a number of business sectors.

LUKÁŠ JIŘIČEK | SENIOR ADVISOR, ONE ADVISORY

At One Advisory, Lukáš provides comprehensive advice to private and public sector clients in strategy development, ESG reporting, and corporate risk management. He is an internationally certified project manager. He has long-standing expertise in EU policies and legislation, particularly in relation to the preparation and implementation of EU Green Deal and Structural and Investment Funds.



SLOVAKIA

DEPOSIT RETURN SCHEME HAS A GREEN LIGHT

The climate crisis, sustainability and green politics are the new everyday issues in society and areas that must be addressed if our planet is to have a chance of recovery. At HAVEL & PARTNERS, we are fully aware that we cannot turn a blind eye to the climate and that it is essential to actively participate in the recovery. That is why we are delighted to have been able to contribute as legal counsel to Správca zálohového systému (Deposit System Administrator) in the preparation, launch and operation of a system for the collection of disposable beverage packaging in Slovakia.

Approximately one billion disposable plastic bottles and 345 million beverage cans are placed on the Slovak market each year. However, only about three-fifths of plastic bottles are collected in the form of separate waste collection. The deposit system for disposable beverage packaging can increase this amount and thus achieve a significantly higher return of packaging, which will also allow for its subsequent recycling.

The impetus for the introduction of the deposit system came from the European Union, which set baseline targets for the recycling of disposable beverage packaging and made it mandatory for the Member States to ensure that 77% of disposable plastic bottles are collected by 2025 and 90% by 2029.

The return rate of deposit packaging in European deposit schemes ranges between 82% and 98%, while the Deposit System Administrator has set its own objective of achieving a minimum return rate of 90% for PET bottles and cans already by 2025, i.e., much earlier than required by the European legislation.

What benefits can producers have from the deposit return scheme?

In addition to the obligation to collect plastic packaging, the European legislation also introduces obligations for producers in the area of the material composition of plastic products placed on the market. The legislation obliges producers to comply with a minimum of a quarter of recycled material in their plastic packaging by 2025 and then to increase this proportion to 30% from 2030. Many producers, as part of sustainable operating models, have even decided to set their own objectives for the proportion of recycled material in their packaging that exceed the minimum legislative requirements to minimise the waste they place on the market with their beverages.

It is precisely the obligation to achieve the required percentage of recycled material with which the deposit system can help producers significantly. With the deposit return scheme, producers will have access to a greater volume of collected material. And the deposit return scheme can also significantly increase the quality of collected PET bottles and cans as secondary raw materials and encourage

their subsequent use in the production of other bottles.

Slovakia launched the deposit system for disposable beverage packaging, including PET bottles and aluminium cans, in January this year. When buying a beverage in such packaging, the buyer will now also pay a deposit of EUR 0.15 (less than CZK 4), which will be refunded if they hand in the deposit packaging at one of the collection points. As of March 2022, there were already more than two thousand collection points across Slovakia and, in addition to the mandatory collection points (establishments with an area of at least 300 m²), a number of voluntary collection points in smaller establishments or even directly in the plants of large companies are also becoming involved, whereby employers are trying to enable their employees to deposit packaging directly at work.

Slovakia is thus one step closer to a cleaner environment and we are glad that as legal counsel to the Deposit System Administrator we were able to contribute to their activities towards sustainability and environmentally responsible business.



Štěpán Štarha | partner

THE SLOVAK OFFICE OF HAVEL & PARTNERS



The HAVEL & PARTNERS office in Bratislava is the main contact point not only for Slovak clients but also for Czech and foreign clients doing business in Slovakia.

HAVEL & PARTNERS awarded as the best international and most popular law firm among clients in Slovakia, and also scored in the field of competition law

In the 10th Law Firm of the Year competition in Slovakia, HAVEL & PARTNERS won the main award in the International Law Firm category and also won the Best Client Service category for the third consecutive year. Our team also defended first place in the Competition category, and we ranked among the top-ranked law firms in 12 other categories.

“Our firm operates in Slovakia and the Czech Republic, but our achievements and capabilities go far beyond the borders of these two countries. The main award in the International Law Firm category confirms that we are able to complete and manage cross-border transactions and projects anywhere in the world thanks to our unique knowledge of the legal and business environment, as well as our unique network of contacts, both in the CEE region and outside Europe,” said Ondřej Majer, a firm partner co-responsible for managing the Slovak office.



winning the Best Client Service category for the third consecutive year in the Slovak Law Firm of the Year competition and the best International Law Firm in Slovakia (2022)

35

experienced Slovak lawyers

300

over 300 long-term clients



the largest Czech law firm in Slovakia and the 5th largest law firm in Slovakia according to The Slovak Spectator

PUBLIC SECTOR



PUBLIC PROCUREMENT OF LEGAL SERVICES WHAT IS DECISIVE – PRICE OR QUALITY?

Providing high quality legal services to the public sector is a challenge. The main criterion in fact is still price. However, the lowest hourly rate does not necessarily mean the lowest overall price for the services provided, and certainly not the top quality, which is demanded by the public sector just as much as by the private sector. So how to choose truly high-quality legal services at a reasonable price?

THE QUALITY OF LEGAL SERVICES IS DETERMINED PRIMARILY BY THE TEAM'S OUTSTANDING LEGAL KNOW-HOW AND REFERENCES, BUSINESS INSIGHT AND PRACTICAL EXPERIENCE.

Theoretically, one might claim that every attorney must be able to draft and win a public construction contract. But can every attorney prepare documentation according to FIDIC standards, define clear and balanced tender terms and conditions for a large construction project, guide the contracting authority through all the building permit procedures, effectively deal with subsequent uncertainties during the construction stage and succeed in all kinds of problem-solving?

It is quite common in the private sector that in order to pursue their interests, clients choose the best lawyers. In principle, this means those who have acquired high-quality education, have not only top legal expertise or the necessary insight with a cross-over into business, but also have the best references and years of experience in the given area of law and business.

If legal services are procured for the public sector, public procurement rules must be observed. For contracting authorities, such procedure is often very demanding in terms of the administration and time spent. To avoid potential disputes with suppliers over the outcome of the evaluation, contracting authorities tend to take (at first sight) the easiest road – hence, bids are evaluated based on the lowest price. However, for legal services, this is absolutely inappropriate. Truly high-quality law firms often do not even participate in such tenders. In practice, tenders then take place among less experienced firms or attorneys, who often engage in price undercutting and offer hourly rates that are completely unrealistic.

To keep a contract at least somewhat profitable, such law firms often deploy junior lawyers to perform the work. However, these lawyers do not have sufficient experience and, if the law firm does not specialise in the given field, they sometimes encounter a certain area of law in practice for the very first time. As a result, they end up spending more hours on the case, which, of course, are then billed to the client. That means that in fact they spend many more hours on the case compared to an experienced legal team. Despite the lower hourly rate, the final cost charged to the client is then higher, which cannot be said about the quality of such advisory.

Broad crossover and insight

Is it more appropriate to evaluate legal services based on the rate (i.e. unit price) or on the total price charged for the given case? Setting a total price may partly prevent companies from charging an unlimited number of hours. However, the total price often cannot be determined in advance. And even if it can, it doesn't solve the situation where a law firm, to remain financially sustainable, assigns the contract to an inexperienced junior team lacking sufficient detail and insight.

If a contracting authority needs legal services for a more complex or multidisciplinary case, it should look for lawyers with a maximum level of expertise. Such lawyers are able to approach the case from all necessary perspectives and achieve the intended outcome. Sufficiently robust law firms offer a broad crossover approach across all areas of law. They can think comprehensively about a case, they can engage their own experts from virtually all fields of law, they have ties with and

THE INTERNAL RULES OF A NUMBER OF CONTRACTING AUTHORITIES STIPULATE THAT THE TENDER PRICE MUST BE EVALUATED WITH A MINIMUM WEIGHT OF 60, 70 OR EVEN 80%. HOWEVER, IN THE CASE OF EXPERT LEGAL SERVICES SUCH PROCEDURE CANNOT GUARANTEE THE SELECTION OF A TRULY HIGH-QUALITY SUPPLIER.

contacts to consulting companies, technical and other experts, and market leaders in the respective fields.

Set your criteria

If evaluation criteria are set correctly, seemingly advantageous offers can be eliminated. It is not only the price that needs to be evaluated, but above all the quality. First of all, it is necessary to correctly specify what legal services the contracting authority requires. The resulting qualification criteria must then be set accordingly – i.e. the requirement for a legal team of the appropriate size

and sufficient number of references. It is usually preferable to require more general references in the qualification, while the evaluation should focus on the specifics of the case in more detail.

The quality of lawyers is assessed mainly based on a criterion that the legal regulations define as the organisation, qualifications or experience of the persons assigned to performing the public contract directly. This means an assessment of the implementation team, i.e. the specific lawyers who are to perform the work for the contracting authority.

The internal rules of a number of contracting authorities lay down that the weight of the evaluation of the tender price must amount to at least 60, 70 or even 80%. However, in the case of expert legal services, such a procedure cannot guarantee the selection of a truly high-quality supplier. Quite the contrary – for services involving people as the decisive factor, the predominant criterion must apply to the people who provide the services. In the case of legal services, we therefore strongly recommend that quality be assessed with a weight of over 50%. The law even allows the contracting authorities to set a fixed price and to evaluate only the quality offered by the suppliers at that price (which is the same for all). Similarly, it is also possible to set the lowest price threshold for evaluation (i.e. the contracting authority will no longer award extra points to tender prices below a certain threshold).

Another possible method may be to interview members of the implementation team so that the contracting authority has the opportunity to see the lawyers in person

and check their skills. However, in the procurement procedure, the contracting authority must specify in advance what it will take into account in such interviews. Needless to say, the course and the outcome of the interviews should be transparently recorded – ideally in writing and as an audio/video recording. It is therefore not quite comparable with the standard selection of a lawyer, where the clients decide independently based on direct contact with the given lawyer whether or not the lawyer suits them.

Reliable partner

Today, there is a growing number of new approaches applied in the public sector, including international FIDIC standards, BIM based design, and taking into account social and environmental aspects. There is also a lot of pressure to computerise and innovate. The current issues affecting the society at large include inflation and material shortages, as well as the impact of the Covid-19 pandemic and the conflict in Ukraine. Contracting authorities are dealing with the difficulties suppliers have with fulfilling contracts and meeting deadlines and performance quality on a daily basis. It is being able to deal with these

issues that makes an experienced lawyer a reliable partner.

High-quality attorneys should provide full services to the contracting authority. For example, in the field of public investment projects, they should prepare and legally define the terms and tender requirements taking into account all aspects of all relevant fields of law (including intellectual property law, data protection or tax issues). They will coordinate their activities with technical advisors, navigate the contracting authority through the whole process, including possible defence before inspection and audit authorities in case of subsidies. Subsequently, they will also be able to resolve any ambiguities in interpretation or unforeseeable issues during the project implementation. They not only manage to ensure the proper legal form, but also understand the content and business needs of the contracting authority and are familiar with the conditions and relationships in the market concerned. They are also well acquainted with the latest trends in both domestic and foreign practice, and can apply them and resolve interpretation issues.

HAVEL & PARTNERS' experienced public sector legal team is familiar, in great detail, not only with practice, but also with the evolution of the legislation and interpretation practice in a wide range of areas. Our experts actively participate in the law-making process by means of professional organisations, take part in the adoption and development of methodological guidelines and, thanks to their participation in associations, expert groups, and arbitration commissions, follow the latest trends in how to apply know-how in practice. We have participated and are still participating in the preparation of explanatory reports to a number of acts and bills, in some cases we also cooperate directly in their drafting (e.g. the new Building Act). Our lawyers attend conferences, actively lecture and work with other market experts to address both current topics in public sector law and uncertainties in interpretation.

HAVEL & PARTNERS key contacts for public sector law:



JOSEF HLAVÍČKA | PARTNER

Josef is the team leader of the firm's public sector services team. His practice focuses mainly on public procurement law, PPP projects, construction and real estate law, state aid, environmental law, greenfield and industrial real estate investments, and administrative law.

ADÉLA HAVLOVÁ | PARTNER

In the public sector, Adéla focuses mainly on public procurement law. She advises public, sectoral and subsidised contracting authorities during the preparation and comprehensive organisation of procurement procedures under the Public Procurement Act, during negotiations with suppliers and when handling subsequent issues related to the performance of contracts. She also advises suppliers, especially during the preparation of their tenders, participation in procurement procedures and during contract negotiations.



ARCHITECTURAL COMPETITIONS A CHOICE FOR INVESTORS WITH AMBITIONS

On average, 50 public architectural competitions and dozens of private competitions are held in the Czech Republic every year. This is the way to achieve a quality and ambitious project, and not only for structures in public space.

**WE HAVE A LOT OF
EXPERIENCE WITH
THIS SPECIFIC TYPE OF
PUBLIC PROCUREMENT
PROCEDURE. WE WILL
RECOMMEND THE
APPROPRIATE FORM OF
COMPETITION AND ENSURE
IT GOES SMOOTHLY.**

When designing structures and other construction projects, the eternal dilemma is whether to prioritise price or quality. Every investor, private or public, has to deal with it. It is always best to find the ideal balance between the two criteria. The way to achieve the selection of a quality structure project under optimal price conditions is through an architectural competition.

I compete, you compete, we compete
In an architectural competition, an investor, with the help of experts, obtains an architectural design for the construction project. It is a process that can be carried out in different variations by both private and public investors.

In the Czech Republic, the most frequent investors, i.e., contracting authorities for architectural competitions, from among public entities are municipalities and regions, which most often seek ideal designs for schools, multi-purpose cultural or sports facilities, elderly care facilities or public spaces.

In addition to regional projects, however, there are also more and more important competitions of national importance organized by state institutions; an example is the competition for the design of the Prague East Terminal for the first ever high-speed railway line in the Czech Republic, in which we participated as organizers. With its architectural and technical design, this project symbolizes a new era of train transport and infrastructure in the Czech Republic. Increasingly, private investors are also choosing architectural competitions in various forms.

Selection by regulations

The practical procedure for selecting the architect and the project in the competition is determined primarily by whether the investor is a private company or an individual or, on the contrary, a public entity that finances the future construction project from public budgets. In the latter case, the whole process is subject to the rules set by the Czech Chamber of Architects and the Public Procurement Act (PPA).

If the estimated value of the tender procedure is higher than CZK 2 million excluding VAT or if the follow-up performance is awarded in a so-called negotiated procedure without publication, in such a case the public investor is fully subject to the PPA, which offers the investor a choice



New look of the Cibulka estate for the Vlček Family Foundation

As part of our pro bono activities, our law firm organized an architectural workshop for the Vlček Family Foundation, in which an expert jury selected the winning design for the reconstruction of the Cibulka estate in Prague. The Foundation will build a children's hospice with a palliative care centre there. The HAVEL & PARTNERS team, led by partner Adéla Havlová and managing associate Kamila Kulhánková, was responsible for the complete organization and administration of the architectural workshop, which brought together a total of 48 designs. The new look of this historic complex in Prague's Košíře district will be designed by the winning architectural studio, Petr Hájek Architekti.

between a design contest or a competitive dialogue.

The most common method of announcing architectural competitions is currently a design competition. Based on a description of the future construction project, architects submit designs anonymously to the investor. These are then evaluated by a jury consisting of representatives of the investor and representatives of the architectural community independent of the investor. At the same time, on the jury the number of independent experts must exceed the number of the investor's representatives by at least one. This is to ensure that the competition designs are evaluated in a particularly professional manner.

The jury usually selects three of the accepted designs to be awarded competition prizes. Once this order has been decided, only then are the names of the authors of all the evaluated competition designs revealed. The competition ends upon this and, in accordance with the PPA, is followed by negotiations on the development of an architectural study and the development of the project, usually with the winner of the competition.

A competitive dialogue has a similar process, except that the designs are not evaluated anonymously, so it is known from the very beginning who is the author of which design. The dialogue is usually applied to complex specifications, where the investor and the architects held discussions during the creation of the design itself, resolving details and refining the specifications.

A different procedure can be chosen by the public sector investor for tender procedures with an estimated value of less than CZK 2 million excluding VAT and the follow-up performance is not awarded in a negotiated procedure without publication. In such a case, it is not necessary to follow the PPA, but it is still necessary to comply with the rules set out in the Competition Procedure Rules of the Czech Chamber of Architects. Again, there are two ways to choose, namely an architectural competition (in the strict sense), where anonymous designs are evaluated, or a competition workshop, where again the authors are known from the beginning. The procedure is therefore similar to that for competitions governed by the PPA.

Free discipline

A private investor has a freer hand when it comes to the process of selecting and organising an architectural competition. The investor does not have to follow the rules stipulated in the PPA, and the procedure, therefore does not have to be so formal. However, if the investor announces an architectural competition in a similar form to the design competition, then the investor should also comply with the rules of the Competition Procedure Rules of the Czech Chamber of Architects.

Another option for the private investor to select the best architectural design for the project is the possibility of so-called parallel specifications. This practically means that the investor asks several architectural studios to prepare a design for the



Prague East Terminal, authors of the design: Ing. arch. Jiří Opočenský, Ing. arch. Štěpán Valouch, Ing. Petr Malinovský, Ing. Petr Vyskočil

structure but agrees with them in advance to pay them a fee.

Competitions with an advantage

So, if an investor, whether private or public, is considering whether an architectural competition would make sense for a project, we strongly recommend that the investor seeks expert advice from the outset. Experts who deal with architecture or the organisation of competitions can help the investor to create a budget, define the investment plan and select the appropriate type and purpose of the competition. Based on this, the investor can then decide whether an architectural competition is the right choice.

In the process of deciding whether or not to organise a competition, some investors argue that the architectural competition is too lengthy and expensive. These are typical objections we encounter in the practice of pushing forward architectural competitions.

Yes, the architectural competition is a longer process than other methods of

achieving the structure design and quality architecture. The designs of the individual competitors require sufficient time. However, it is necessary to add that the time spent on the thorough preparation of the competition will provide the investor with quality input information on the area to be developed and the investor should not be surprised by anything unpleasant in the construction process. In some cases, it is not worth rushing too much, as it will pay off for the investor many times later.

It is equally true that architectural competitions are a more expensive option than other possible options. However, the higher costs are related to the fact that the investor rewards expert jurors and invited experts in the architectural competition who help with the formulation of the specification and advise the investor on the selection of the most suitable competition design. At the same time, the investor is also obliged to financially reward the participation of the best competitors in the architectural competition. However,

it is also true that the higher costs of the architectural competition will have a multiple return throughout the structure cycle because the quality structure design selected in the competition will significantly contribute to reducing future additional costs (design or construction).

Despite the reservations mentioned above, we are convinced that architectural competitions are clearly the right way to create quality structures and to develop innovation in architecture. A well-prepared competition with ideally set criteria for cooperation can function as a direct route to a successful goal. The National Theatre, the Brno Exhibition Centre or the iconic Ještěd Tower TV transmitter in Liberec - these are all structures selected in architectural competitions. These and many other examples confirm that they also produce high-quality and valuable architecture that is appreciated by the following generations.

HAVEL & PARTNERS key contacts for the organisation of architectural competitions:



JOSEF HLAVIČKA | PARTNER

Josef leads the HAVEL & PARTNERS' legal team for the public sector. His practice focuses on public procurement law, construction law, and real estate law. He also provides comprehensive advice on the preparation and organization of architectural and urban planning competitions – for example, he has advised on the competition for the architectural design of the Prague East Terminal, the Prague-Veleslavín railway station, and the modernization of the Liberec Regional Hospital.

KAMILA KULHÁNKOVÁ | MANAGING ASSOCIATE

Kamila specialises in public sector and public procurement law. She focuses on comprehensive legal support for public and private entities or Czech and foreign studios in architectural competitions. For example, Kamila organized the architectural competition for the project of reconstruction of the Cibulka estate or the construction of the new high-speed railway Prague East, and dozens of other competitions.



CERTO O DIGITAL NOTARY INNOVATIVE SOLUTIONS IN IP LAW

Awareness of copyright is increasing in the Czech Republic but few people take care to ensure, when protecting their intellectual property, that they should have sufficient proof of authorship in advance to prevent potential disputes. Today, it is no longer necessary to go to a notary or to undergo complicated registration in an office. Credible proof can be obtained easily online.

**THE CERTOO
PROJECT IS A TICKET
TO THE FUTURE OF
ALL ELECTRONIC
DATA PROTECTION.**

Are you the author of a photograph or video, have you created a new design, written a book or created any other text? Are you afraid that someone will copy your work or misuse it? These days, it is extremely difficult to defend yourself effectively in such cases, and few people go to court to protect their rights. In many cases, it is a lengthy journey with an uncertain outcome. Indeed, the author may very easily find himself or herself in need of proof in court. Although he or she may claim that he or she was the author of a particular work at a particular time, he or she should be able to prove it in all circumstances.

Lessons in copyright compliance

Architects Adam Jirkal and Jerry Koza from Prague's Atelier SAD are aware of this. More than ten years ago, a unique petrol station was built according to their design in the village of Matúškovo in Slovakia. The petrol station has a unique roof shape and its unique appearance has won great international acclaim and has even made it onto the lists of the most beautiful petrol stations in the world.

A few years later, in 2019, a strikingly similar petrol station was built in Prague's Libeň borough. The architects found out by accident when friends started sending them photos of the new petrol station and thought it was their own design. As a result, the architects of Atelier SAD contacted our office to help them solve the matter.

The court issued a preliminary injunction and the petrol station in Libeň had to cover the roof and hang signs stating that Atelier SAD's architects had not granted a licence for this construction. The dispute was eventually settled out of court in favour of the architects of the original design. This is also one example of non-compliance with copyright. "We wanted to address this issue and show that there are definitely some rules to follow in architecture and respect for unique architectural ideas and designs," said Jerry Koza. This is also why Atelier SAD is one of the first to pay attention to copyright protection and use the new online solution Certoo, which HAVEL & PARTNERS developed in cooperation with ARTinii Production.

Blockchain in the act

It is a kind of digital notary enabling instant confirmation of the ownership and existence of a document online. A few simple steps are all it takes. Go to www.certoo.eu on your mobile or computer.

Upload your digital content to Certoo, which accepts all file formats. Fill in your personal details and download your digital certificate with a time stamp. This confirms that you uploaded the file at that moment. For the price of a coffee and a cake, you have official proof that the work you have created existed on a certain date, which you could previously only credibly prove by means of a notarial deed, which is costly both in money and time.

**WITH THE SYMBIOSIS OF
THE INNOVATIVE SOLUTION
OF THE LARGEST CZECH-
SLOVAK LAW FIRM AND
DYNAMIC BLOCKCHAIN
TECHNOLOGY IT IS SO
EASY TO SECURE YOUR
INTELLECTUAL PROPERTY
ONLINE WITH A FEW CLICKS.**

The tool is mostly used by copywriters, photographers, musicians, composers,

architects, designers or developers. However, it can be used to preserve pretty much anything you could possibly use in the event of insufficient evidence, helping you to prove that the file was uploaded by you at the given time.

At Certoo, you also get access to your own private online repository. You can upload additional projects to this environment and administer them as necessary. This way you always have the original file at hand. The stored data is secure and encrypted, as has been confirmed by an independent expert opinion. Data is safe on the blockchain because it is a transparent, decentralised and immutable system of data blocks.

The Certoo project is a ticket to the future of all electronic data protection. The vision of the project is to simplify the protection of know-how and at the same time to enable efficient work with document archives that can be securely shared without worrying about information manipulation. With the symbiosis of the innovative solution of the largest Czech-Slovak law firm and dynamic blockchain technology, otherwise used mostly in cryptocurrency operations, it is so easy to secure your intellectual property online with a few clicks.

Try how easy it is with Certoo. The first use is for free.



Petrol station GAS Matúškovo, Atelier SAD 2011



The copy of petrol station (2019) – STOPKA LIBEŇ

(R)EVOLUTION IN SUPPLIER-BUYER RELATIONSHIPS GET READY FOR A CHANGE

Are manufacturers allowed to tell distributors what prices to charge for their products? Are they allowed to restrict retail sales of their products via online sales channels? Starting from June this year, the rules governing the relationship between manufacturers and distributors of goods are to fundamentally change. The changes deserve due attention because they pose both potential risks and opportunities.

THE CORRECT SETTING OF DISTRIBUTION SYSTEMS SHOULD ELIMINATE THE RISK OF COMPETITION LAW INFRINGEMENTS AND RELATED HIGH FINES AND ENSURE THAT ALL THE OPPORTUNITIES OFFERED BY THE NEW RULES ARE TAKEN ADVANTAGE OF.

In the eyes of many entrepreneurs, the field of competition law is often reduced to the topic of huge fines, which “clearly affect only the biggest companies, not us”. Many entrepreneurs have already seen that this attitude is incorrect. Competition law is not only about cartels and abuse of a dominant position. It also comprises an area that affects a large number of companies that are often unfamiliar with it. This area is distribution relationships or, in other words, vertical agreements.

Simply put, this part of competition law addresses the regulation of commercial relationships between a manufacturer and its distributors when placing products on

the market. This applies to manufacturers, importers and/or wholesalers who market their goods and/or services through independent third-party distributors. For example, competition law prohibits suppliers from resale price maintenance. Furthermore, is it not allowed to prohibit or significantly restrict internet sales. Therefore, protection of intra-brand competition is at stake.

Combating resale price maintenance

Although potential restrictions resulting from distribution agreements are not as dangerous as cartel agreements, this does not mean that competition authorities do not deal with them. Quite the contrary. For example, the Czech Office for the Protection of Competition (the Office) has recently declared combat against resale price maintenance, which it has identified as one of its two priorities. These are not just empty words. Currently, the Office is conducting several investigations into this practice imposing record fines in the ensuing administrative proceedings, reaching the statutory cap of 10% of the total turnover of the fined company. Many of these cases have also received considerable media coverage.

Therefore, it is definitely good to know the obligations imposed by competition law in connection with the distribution of goods and services, what it prohibits and what it allows. What is even more important to know is that a significant change in EU rules took place from 1 June 2022. Becoming acquainted with the new rules that apply in supplier-buyer relationships is thus a necessity.

How much to sell for?

The manufacturer is still not allowed to tell the distributor how much to resell its goods for. It is therefore not possible to set a fixed or minimum selling price or to enforce compliance with it. On the other hand, the new rules still principally allow producers to set recommended and maximum prices. Thus, for example, a television manufacturer can (merely and truly) recommend to a distributor the price for which it should ideally sell or tell the distributor the maximum price it can charge for a television. However, the manufacturer cannot, for example, tell the distributor that it cannot resell it for less than CZK 5,000. Under certain conditions, only the setting of so-called minimum advertised prices is tolerated, i.e. the setting of the lowest price for which the television is offered in online advertisements or in

leaflets. However, even then, the manufacturer may not restrict the reseller by not allowing it to sell the goods for a price lower than that advertised in the leaflet.

The new regulation allows fixed pricing in fulfilment contracts. These are contracts in which the manufacturer agrees directly with the customer on a supply of goods but uses an independent distributor to carry out the transaction. The new rules further confirm that even setting fixed or minimum resale prices can be, under very strict conditions, exempt from the prohibition of anti-competitive agreements. However, given our experience with competition authorities, we do not expect them to accept a defence based on a demonstration of the positive effects of an anti-competitive agreement.

THE OFFICE IS CONDUCTING A SERIES OF INVESTIGATIONS INTO RESALE PRICE MAINTENANCE WITH RECORD FINES BEING IMPOSED, GETTING NEAR THE STATUTORY CAP OF 10% OF THE TOTAL TURNOVER OF THE FINED COMPANY.

Restrictions of online sales

The competition authorities want to give customers the opportunity to choose the method of purchase that suits them best. Following the boom of the internet, e-shops and online marketplaces, the authorities therefore recognise the need to allow manufacturers to effectively support brick-and-mortar shops, which are indispensable for the sale of a wide range of products. However, the new regulation gives manufacturers and brand owners more options to restrict the online sale of their goods.

Under the new rules, manufacturers can prohibit their distributors from selling on marketplaces such as Amazon or eBay under certain conditions. However, they must not prohibit them from using price

comparison services (such as Google Shopping or Heureka).

The amended rules also give manufacturers the possibility to implement the dual pricing strategy when supplying their distributors with goods under certain conditions. In the above case of televisions, this would apply, for example, if a television intended for online sale is supplied by the manufacturer to a distributor at a higher price than a television for sale in a brick-and-mortar shop. Under the old rules, this wasn't possible. However, the manufacturer must not prohibit the effective use of the internet for online sales.

Manufacturers and distributors as competitors

Since the last amendment of the rules governing distribution agreements in 2010, there has been rapid development in direct distribution. This means that producers often sell a part of their production directly to customers in their brick-and-mortar stores or in their own online shops. By doing so, however, they also become competitors of the distributors who sell their products on the retail level of markets, which raises additional competition law concerns.

One of the issues, for example, is the exchange of commercially sensitive information between a manufacturer and a distributor in the context of dual distribution. The exchange is certainly necessary for the effective marketing of goods. On the other hand, the exchange of information between competitors is always suspicious. The new rules therefore specify that the

manufacturer and the distributor may only exchange information necessary to enhance the distribution and/or production of the goods. On the contrary, the manufacturer and the distributor are still not allowed to inform each other about the prices at which they intend to sell the goods on the retail market.

Selection criteria by manufacturer

The new regulation also provides manufacturers with additional options for the setting of their distribution network. For example, in the case of selective distribution, the manufacturer sets specific criteria and its goods can only be sold by those distributors who meet them. This is the case of luxury products, for example, where the manufacturer clearly determines who can sell the goods and under what conditions. Under the new rules, manufacturers can use significantly different criteria for brick-and-mortar shops as opposed to online sellers. They also have more options to prevent sales to unauthorised retailers. Manufacturers are also able to stipulate that there can be up to five exclusive retailers who can sell in a particular territory and not only one, as has been

the case until now. They can also prohibit sales by other retailers in that territory.

Manufacturers also have greater freedom if they decide to use genuine agents for the distribution of their goods (to whom they can generally set a fixed resale price) or if they wish to prohibit distributors from buying and reselling competing goods. Such "single branding" restrictions are also automatically renewable for a period longer than five years under certain conditions.

The new legislation introduces many more changes and clarifications, which we have covered in detail in our DLC Countdown newsletters available on the HAVEL & PARTNERS website. Existing distribution relationships will need to reflect these changes within one year, i.e. by 1 June 2023. We strongly recommend using this period to allow manufacturers, brand owners and distributors to explore the opportunities presented by the new rules. They can use the opportunity to amend their distribution systems to better suit their long-term sales interests.



HAVEL & PARTNERS competition law team comprises over 27 lawyers, economists and legal assistants and has been recognised by the prestigious international ratings Chambers Europe Awards and The Legal 500 as one of the best in the field in the Czech Republic and Slovakia. The group has been working on distribution law issues for a long time. We help set up distribution systems, have successfully commented on new bills and are members of the Distribution Law Center, a pan-European initiative focused on supplier-customer relationships.

HAVEL & PARTNERS key contacts for competition law and distribution relations:



ROBERT NERUDA | PARTNER

Robert leads a team of competition lawyers and economists at HAVEL & PARTNERS. He specialises in advice on cartels, abuse of dominant position, competition law assessment of mergers and acquisitions, significant market power, and state aid and public procurement. In the area of distribution agreements, he provides clients with comprehensive legal services regarding the distribution system set-up in compliance with legal regulations. He represents clients in merger clearance proceedings and companies accused of anti-competitive conduct.

VLADISLAV BERNARD | ASSOCIATE

Vladislav specialises in competition law and particularly advises on cartel agreements, distribution systems, abuse of dominant positions and merger issues. He has experience in representing major private and public sector clients before the European Commission, the Office and administrative courts.



TAX LAW



TAXATION OF CRYPTOCURRENCIES ADDED UP, SUMMARISED, TAXED

Cryptocurrencies are an increasingly interesting asset even for investors who are not cyber enthusiasts. Yet there are still many questions and myths surrounding their taxation. Is the tax paid on the appreciation of cryptocurrencies or the profit? Does VAT apply? After all, we often hear that cryptocurrencies are tax exempt. Unfortunately, this is a rumour.

THE BIGGEST PITFALL IN THE TAXATION OF CRYPTOCURRENCIES, BOTH IN A POSITIVE AND NEGATIVE SENSE, IS THEIR MARKET VALUE AND ITS CHANGES AND THE LACK OF LEGAL REGULATION.

Czech law has not yet sufficiently responded to the existence and potential of cryptocurrencies. The legislation does not define the term cryptocurrency or any of its technical parameters – for example, there is no requirement that cryptocurrencies are created, stored or transferred in a blockchain or distributed ledger technology (DLT) environment, such as bitcoin, litecoin, ethereum or tether.

Kittens or bitcoin?

Czech legislation works with the term of a virtual asset only. If you agree with a customer that you will supply goods or services to them and will get paid with pictures of kittens sent via email, this will in fact create a virtual asset within the meaning of the only definition offered by Czech law in the Anti-Money Laundering Act. This Act sees the term as any electronically storable or transferable unit that can be used for exchange or investment and that is not subject to the Payment System Act.

Czech law has not yet looked closely at cryptocurrencies, but we certainly do not live in a legal vacuum or a cyber underworld. Cryptocurrencies in the Czech Republic are more and more attractive, even outside the groups of new technology enthusiasts. The value of bitcoin has increased by hundreds of percent over the last 5 years and, according to the opinion poll agency STEM/MARK, nearly a tenth of the population has purchased a cryptocurrency. Most people are aware that virtual currencies can be an interesting investment opportunity, yet there are still many questions surrounding this topic.

One of the most common issues we address with clients when investing in cryptocurrencies is taxation. We wish to dispel the common misconception that cryptocurrencies are not subject to taxation. If you want to invest or trade in cryptocurrencies, you need to be aware that you are taxed on the profits from their sale, and in certain circumstances you may be required to obtain a trade licence, pay social security and health insurance contributions, or become a VAT payer.

Put this down

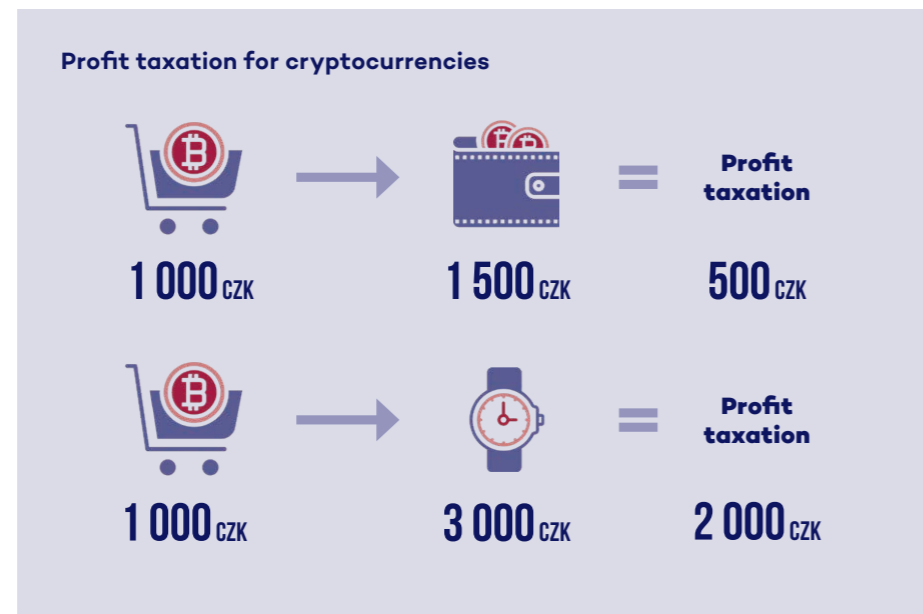
A house bought many years ago, the market value of which has increased many times since then, is not declared on the tax return just as the appreciation of the cryptocurrency itself. But what you definitely have to tax is the profit when you sell, buy

or exchange something for the appreciated cryptocurrency. This can be illustrated in an example: you buy a cryptocurrency for CZK 1,000 and sell it for CZK 1,500, then you tax the profit of CZK 500. If you exchange a cryptocurrency bought for CZK 1,000 for a watch worth CZK 3,000, you tax the profit of CZK 2,000. This is based on the difference between the purchase price (not the current market price) of the cryptocurrency and its selling price, or the price of the consideration received.

sources. A little effort and careful record-keeping will therefore definitely help you avoid any difficulties.

Gains and losses

You can also appreciate your crypto assets by staking. This works similarly to an interest-bearing term deposit in a bank. In short, you deposit a certain amount of cryptocurrency somewhere, commit to not deal with it for a certain amount of time, and get rewarded with additional units



In the Czech Republic, taxes are declared and paid in Czech crowns. However, the price of cryptocurrencies is usually only identifiable in foreign currency, typically euros or US dollars. For taxation purposes, everything must therefore be converted into Czech crowns, not just at any exchange rate, but at the rate set by the tax laws. If you keep accounting records, you must deal with foreign exchange gains/losses in terms of accounting and taxation.

As taxpayers, you must also be able to prove to the tax authority that you have taxed everything properly. In addition, the tax authority may require information from persons who publicly allow purchases using cryptocurrencies about buyers who have taken advantage of this option. Likewise, it may find out that your bank account has been credited with funds from a crypto exchange, cryptocurrency exchange office or e-wallet provider. It can then obtain more information (for now rather in theory) directly from such

of cryptocurrency. As a result, this can also be a source of taxable income in the case of cryptocurrencies. However, unlike cryptocurrency mining, the tax authorities have not yet provided a clear statement on the taxation of such assets.

One needs to be careful about taxing any profits in speculative on-chain trading in cryptocurrencies, especially if you use automated applications that buy and sell essentially on their own and at lightning speed according to the predefined parameters. Again, the big issues in such cases include identifying and substantiating the costs of such trades and then reporting any profit to be taxed. Even here, you cannot do without at least basic record-keeping to determine the purchase price of the cryptocurrencies sold.

At the end of the year, it is then always necessary to determine the amount of total available income from cryptocurrency trades and the amount of expenditure

spent on this income (the number of units of cryptocurrency sold and their purchase price). Otherwise, there is a risk that you may only be able to deduct the demonstrable initial cost at the start of trading and fees (if any) from the final trading income for tax purposes. In addition, if you are not a sole trader, the trades did not work out and you ended up in a loss, you cannot deduct this loss from income from other sources where you may have done better.

Czech law also does not yet allow virtual assets to be treated for tax purposes in the same way as securities or shares in companies, the transfer of which is exempt from income tax for an individual (and in the case of shares also for the parent company) under certain conditions. However, virtual assets carrying a right to a certain benefit or to a share in the profit of a company are not yet subject to such exemption.

Cryptocurrencies and VAT

From the perspective of private law, cryptocurrency is an intangible movable thing, similar to the electronic picture of a kitten referred to above. However, to make things less simple, a transfer of cryptocurrency is considered a supply of services for

IF YOU WANT TO OBSERVE ALL THE TAX RULES FOR CRYPTOCURRENCIES, IT DEFINITELY MEANS MORE COMPLICATED RECORD-KEEPING THAN FOR PURCHASES WITH TRADITIONAL CURRENCY.

VAT purposes. As a result, when a VAT payer buys electronics from another taxpayer using bitcoins, he or she basically pays the price with a service in return. The seller then declares and pays VAT in the same way as if the price had been paid in cash. However, the crucial difference is that the buyer guarantees, under certain conditions, that the seller will properly declare and pay VAT on that sale.

Last but not least, it should also be borne in mind that some methods of dealing with cryptocurrencies give rise not only to the obligation to obtain a trade licence, but also inevitably to make compulsory social and health insurance contributions and, potentially, to pay VAT, not to mention the obligation to identify and check clients as part of anti-money laundering measures. Typically, these cases are outside the scope of your own asset management, i.e. when you trade or otherwise deal with other owners' cryptocurrencies for a fee or when you broker such transactions.

The fact whether or not such an activity will in time also give rise to a VAT payer status depends on the content of the activity and the type of the virtual asset (a special case is typically NFTs). Only transactions that one succeeds to defend before the tax authority as 'objective financial activities' are exempt from VAT under certain conditions (but without the right to deduct), and if the provider does not carry out any other, non-exempt gainful activity, they will not become a VAT payer either.

HAVEL & PARTNERS key contacts for taxation:



DAVID KRCH | TAX PARTNER

David has many years of experience in representing foreign firms operating in the Czech Republic. He is a founding partner of HAVEL & PARTNERS Tax. He provides clients with comprehensive services, particularly in respect of corporate income tax and VAT in both Czech and international contexts, including taxation of cryptocurrencies. Previously, he worked in the tax department of PricewaterhouseCoopers.

HANA ERBSOVÁ | ASSOCIATE

As an associate specialising in tax, international taxation, tax arbitration and tax litigation, Hana focuses on tax and legal aspects of cryptocurrencies and other virtual assets using blockchain technology and DLT. This year she was named Tax Advisor of the Year in the category of Tax Administration. She has 15 years of experience from the General Tax Directorate as a tax administration methodology specialist and previously worked with leading international consulting companies (PricewaterhouseCoopers, Deloitte).



JOSEF ŽALOUBEK | PARTNER

Josef specialises in corporate tax law, international taxation, restructuring and related aspects of civil and commercial law. He has advised major international and Czech companies operating in sectors such as information technology, automotive, engineering, and the food industry. He publishes in professional periodicals on tax law.

Traditional promotions at HAVEL & PARTNERS – two new equity partners, three partners, and a total of 17 career advancements

At HAVEL & PARTNERS, we create conditions for promising career growth for colleagues who have long demonstrated excellent knowledge of the law or taxes, exceptional ability to address the needs of our clients, including in the context of their business, high work commitment and excellent management skills. Earlier this year, a total of 17 colleagues were promoted, out of them five to a partner position.

→ Veronika Dvořáková and Ivan Rámeš became firm equity partners

Veronika Dvořáková is the Marketing Director of HAVEL & PARTNERS and also became an equity partner in January 2022. In addition to marketing, communication and business support of the group, Veronika is also responsible for the pro bono and CSR policy of the firm and manages the HAVEL & PARTNERS ACADEMY. She advises major clients on strategic marketing, PR, and public affairs. As an equity partner, Veronika will be responsible for strengthening the HAVEL & PARTNERS brand, which is one of the strongest on the market, as well as further developing marketing and PR activities, which are an integral part of the group's comprehensive business strategy.

Ivan Rámeš has 15 years of experience in practicing at the top level of the legal profession; Ivan became an equity partner at the beginning of this year. He is an expert in intellectual property and technology law. Ivan focuses on setting comprehensive IP strategies, both in the Czech Republic, Slovakia and abroad. He also specialises in e-commerce and advises start-ups, as well as larger companies and international corporations. Ivan provides advice on IP law to investors, investment funds and venture capital start-ups. As an equity partner, he will be responsible for the further development of the advisory group dedicated to new technologies.



Veronika Dvořáková
Ivan Rámeš

→ Lenka Štiková Gachová, Michal Smrček and Josef Žaloudek became partners

Three colleagues were promoted to the position of partner starting from this January. The first of them is Lenka Štiková Gachová. Lenka is a leading expert in competition law, including state aid, and significant market power. She assists clients in the field of competition compliance and also represents them before the Czech Office for the Protection of Competition and the Antimonopoly Office of the Slovak Republic, as well as before the courts in all areas of competition law. Prior to joining our law firm, Lenka worked for eight years at the Office for the Protection of Competition.

Michal Smrček also became a firm partner, and he provides comprehensive advice on regulatory and private law aspects of the insurance sector, pension companies, insurance intermediaries, leasing companies, representation of clients before courts, and investigations and compliance. Prior to joining HAVEL & PARTNERS, Michal worked as a lawyer in several major insurance companies and a pension company and led the legal and investigations departments. He also served in the legislative section of the Czech Association of Insurance Companies (ČAP) and was also the chairman of the Corporate Governance Committee and a member of a number of other committees in insurance companies.

Josef Žaloudek was also promoted to the position of partner starting from January 2022. Josef specialises in corporate tax law, international taxation, restructuring and related aspects of civil law and commercial law. He has many years of experience advising major domestic and foreign companies operating in the information technology, automotive, engineering, and food sectors, etc. Prior to joining our law firm, Josef worked at the Ministry of Finance and at a major multinational consulting company.



Lenka Štiková Gachová
Michal Smrček
Josef Žaloudek



The new Building Act, in the drafting of which HAVEL & PARTNERS was involved, became the Act of the Year 2021

In the 13th year of the Act of the Year poll, the public and entrepreneurs chose the new Building Act as the best piece of legislation of 2021. Our legislative team led by partner František Korbek was involved in its preparation. This is the fourth time in a row that an Act co-authored by HAVEL & PARTNERS lawyers has succeeded in the poll.

“The aim was to reform the performance of state administration and to remove the huge level of complexity in the permitting of structures. We are convinced that in this respect the new Building Act will clearly benefit the Czech construction sector,” commented František Korbek adding, *“We want to be the ones who help shape the legal order and contribute to improving the quality of life and business conditions, which is why we are involved in the preparation of necessary legislation as well as assistance to the State, cities, chambers and associations.”*



Hana Erbsová became the Tax Advisor of the Year

Our colleague, Hana Erbsová, attorney-at-law, succeeded in the prestigious competition Tax Advisor & Tax Firm of the Year. Leading experts in taxes and tax law chose her as the Tax Advisor of the Year 2021 in the Tax Administration category.

“I very much appreciate the fact that Hana is part of the HAVEL & PARTNERS team. She is an experienced professional who has brought know-how from a top-tier tax administration authority, having worked for several years as a tax administration methodologist and department head at the General Financial Directorate. She also has experience gained at leading international consulting companies, so her reach and contribution to us and our clients is truly exceptional,” said the firm's tax partner, David Krch.



The firm's revenues continued growing in 2021

In 2021, we again achieved record economic results. HAVEL & PARTNERS' total turnover grew by 7% year-on-year, with the second half of the year being more successful, when revenue growth reached almost 20%. Revenues from the sale of legal and tax services amounted to CZK 951 million last year. The turnover of the entire group, which also includes the Cash Collectors collection agency and specialised tax advisory services, exceeded CZK 1 billion again.

“We have confirmed our strong and extremely stable position on the Czech-Slovak legal market. The firm has been growing steadily since its establishment. This trend has not been disrupted by the ongoing coronavirus crisis or turbulent economic developments. We are well prepared for changes in the market; we have precise financial management, we can respond flexibly to the needs of our clients, and we are constantly developing areas of the future such as digitalisation and technology, legislation, regulation and ESG,” commented Jaroslav Havel on the firm's economic condition.

PRO BONO



HAVEL & PARTNERS helps in connection with the conflict in Ukraine

1 As part of the Lawyer of the Year award ceremony, we handed over a charity cheque of CZK 150,000 to the non-profit organisation Dobrá rodina (Good Family) for its project to help Ukrainian orphans. As part of its initiative, the organisation managed to get 54 orphans from the war-affected areas of Zhytomyr to the Czech Republic after weeks of difficult work, negotiations, administration and

transport. "We are negotiating the evacuation of other Ukrainian children without families, for whom we are able to provide accommodation and care in the Czech Republic. The wave that has risen in recent weeks, the power of humanity, completely disarms us, is a strong motivation for us and gives us energy," said Zdeněk Soudný, director of the organisation Dobrá rodina.

500 THS. CZK

2 As part of the Czech Bar Association's "Attorneys for Ukraine" project, we contributed CZK 500,000 for social, health and humanitarian purposes.

3 We donated CZK 50,000 to the organisation Člověk v tísní (People in Need) to help Ukrainian refugees in the Czech Republic. In Slovakia, we distributed EUR 10,000 (CZK 250,000) equally between two non-profit organisations. Five thousand euros were used by the non-profit organisation Člověk v ohrození (People in Need) for border assistance, humanitarian aid in Ukraine, and long-term integration activities in Slovakia for Ukrainian citizens who remained in Slovakia after fleeing their homes. The same amount will be distributed by TPDS (Teacher Development Program Slovakia) as part of a grant call to schools to provide equipment, material support and services for pupils and students who have been forced to leave Ukraine and are being integrated into education in schools in Slovakia.



4 As part of our Academy, we donated the proceeds from a seminar on the impact of war to the organisation Červený kříž (Red Cross), which provides medical supplies, medicines and ambulances in Ukraine. We supported it with CZK 87,000.

7 We are helping a maternity centre set up in Prague for refugee mothers with young children - we are organising collections of clothing, electronics, drugstore products and cosmetics, children's toys and school supplies. Financially, organizationally and through pro-bono legal advice, we help refugees find accommodation or work, place their children in schools and kindergartens, and arrange for delivery of medicines to Ukraine.

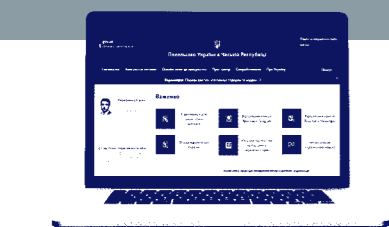
5 We have introduced "voluntary admission" to some of our events and through Darujme.cz we help food banks that provide food and basic hygiene supplies. The Czech Federation of Food Banks, through its regional branches and then other non-profit organisations, buys and distributes food to those who need it most at the moment, i.e., war refugees from Ukraine.



Running for a good cause

During the Sportisimo Half Marathon in Prague in April, we put a spring in our step and the run was a breeze when we thought of the non-profit organisations Zdravotní klaun (Clowndocor), Loono, Dobré víly dětem (Good Fairies for Children) and Dětský domov Dolní Počernice (the Dolní Počernice Children's Home), which we supported financially thanks to this event.

During the run for Světluška we ran another hundreds of kilometres under the night sky. Forty of our male and female colleagues ran in HAVEL & PARTNERS colours.



6 Through the Ukrainian Embassy, we also sent several computers, 50 mobile phones and other electronic equipment to help Ukraine.

We keep going! We are helping and will continue to help as long as the situation in Ukraine makes it necessary.

Memorial Bell #9801 as a reminder of thousands of silenced voices

Right in the present times, in the context of the conflict in Ukraine, we are aware of the need to constantly recall important moments in history so that we can learn from them, remember them and have hope for a better future.

We are therefore pleased to have been able to support, through pro bono legal and tax advice, the Bell #9801 initiative, which recalls the silenced bells during World War II and aims to replace them with a new powerful sound.



This is because thousands of bells disappeared from the country during the occupation, were taken away and then melted down to make weapons. There were 9,801 of them in total. Now a new bell is to be created that will weigh exactly 9,801 kilograms – that's 1 kilogram in the new bell for every one that disappeared. It will then symbolically stand on the Rohanský ostrov island, the place where the bells were taken from. You can support the [The Bell #9801](#) initiative through a public collection.

Helping children and promoting mental health

Three non-profit organisations and civic associations helping children and people suffering from mental disorders received a total of EUR 3,000 (CZK 75,000) from us. At the Forbes Top Covers gala evening in Slovakia, HAVEL & PARTNERS donated EUR 1,000 each to the association Deti s rakovinou (Children with Cancer), the association Buddy, which supports children who cannot grow up in their families, and the same amount to Liga pre duševné zdravie (League for Mental Health).

3,000 EUR



OVERVIEW OF EDUCATIONAL SEMINARS

HAVEL & PARTNERS
ACADEMY

We offer highly specialised educational events in current fields of law and management at the highest level, providing our clients (and other interested parties) with additional added value.

				
Current topics	Different perspectives	Modern technological facilities	Customized education	Expert assessments and consultations



We are online with you!

We broadcast all seminars live for you with maximum technical professionalism and user comfort. You can communicate with the speakers and get a video recording and a podcast.

WE ARE PREPARING THE FOLLOWING SEMINARS FOR YOU:

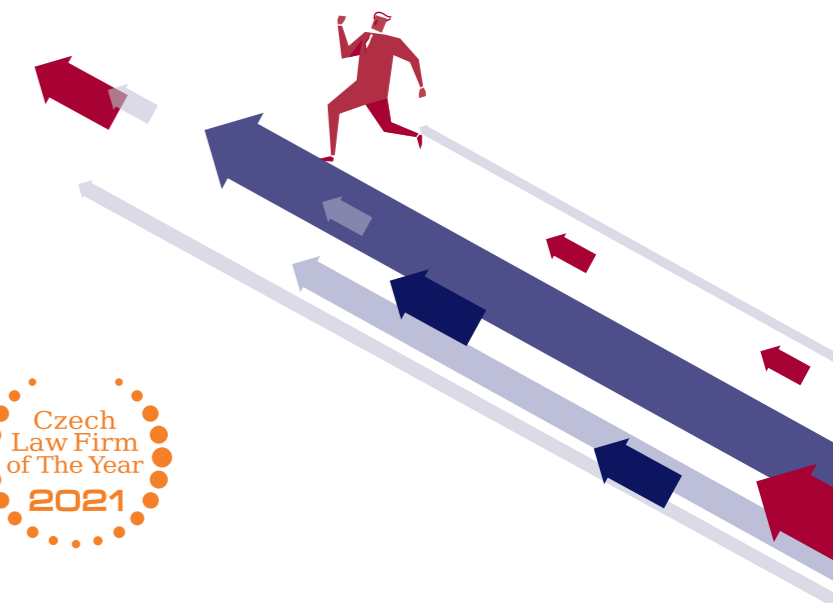
- Blockchain (not only) in legal practice
- Digitisation of legal acts
- ESG reporting and the EU taxonomy
- IT contracts
- New Construction Act
- EU and Czech competition law flash news
- Artificial intelligence and machine learning - opportunities and risks
- Public procurement flash news
- Whistleblowing - will they also blow the whistle in your company?

8 years with HAVEL & PARTNERS Academy

	280 seminars
132 lecturers	
	7 THS. participants

AWARDS RECEIVED IN THE CZECH REPUBLIC AND SLOVAKIA

HAVEL & PARTNERS is the most successful law firm, providing the most comprehensive legal services in the Czech Republic and Slovakia, based on the total number of all nominations and awards in all years of the Law Firm of the Year awards.



The firm became the absolute winner of this competition five times in the last seven years, receiving the main award **Domestic Law Firm of the Year in the Czech Republic** (2015, 2017, 2018, 2020, 2021) and ranking among the most recommended law firms in all sector categories. HAVEL & PARTNERS is also a fivetime winner of the **Law Firm of the Year award for Best Client Services** (2015, 2016, 2019–2021) and received the same award in Slovakia (2020–2022). The firm also won the **International Law Firm** category in the Slovak Law Firm of the Year competition (2022).

HAVEL & PARTNERS was named the best law firm operating in the Czech Republic by the prestigious global rating agencies **Chambers and Partners** (2020–2022) and **Who's Who Legal** (2018–2021).

In the field of M&A, HAVEL & PARTNERS ranks among the best law firms in the Czech Republic. As part of the **Law Firm of the Year** competition, it won this category both in the Czech Republic (2019–2021) and in Slovakia (2015, 2020, 2021).

Prestigious international rating agencies **EMIS DealWatch** and **Mergermarket** have ranked HAVEL & PARTNERS among the leading law firms by the number of transactions completed in the Czech Republic since 2010. Based on the number of completed transactions, HAVEL & PARTNERS is also the top law firm in the region of Eastern Europe according to the foreign ranking **Refinitiv** (2019). Based on annual awards of the **Acquisition International** magazine, HAVEL & PARTNERS has become the Law Firm of the Year 2019 in the M&A category in the CEE region.

The firm has also won a number of non-legal awards.



THE LARGEST CZECH-SLOVAK LAW FIRM WITH AN INTERNATIONAL APPROACH

110 **12**
countries languages

We provide legal and tax advice in 12 languages in almost 110 countries around the globe.



Our clients have access to international and local know-how and expertise through more than 90,000 lawyers in nearly 160 countries.

70%

Up to 70% of the transactions we deal with involve an international aspect.



We have the most comprehensive international support available to both Czech and Slovak law firms.

