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HAVEL & PARTNERS

CONNECTED THROUGH SUCCESS

H&P magazine

II/2023

AI IN A COMPANY
WITH THE BLESSING OF A LAWYER

INADVERTENT
VAT FRAUDS

FROM EMPLOYEE
TO MILLIONAIRE

WHAT HAPPENS AFTER DEATH?
DO NOT FORGET TO MAKE A WILL

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

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HAVEL & PARTNERS IN FIGURES

OUR TEAM

6 *offices*

320 *lawyers and tax advisors*

500 *employees*

OUR CLIENTS

3000 *clients*

150 *of the largest Fortune 500 global companies*

50 *of the Czech Top 100 companies*

20 *of the TOP 100 Slovak companies*

INTERNATIONAL APPROACH

110 *countries*

12 *languages*

70% *of cases with an international element*

FOREWORD

Dear Clients and Business Friends,

We live in an era where perhaps the only constant is change. The world is changing at a pace like never before in history. Those who cannot keep up and adapt to change have little chance of success in such a reality.

Today, innovation is the driver of development. Companies that are not afraid to take risks and look for new approaches have a better chance of success. Innovation creates competitive advantage and enables companies to adapt to changing customer needs. We see this today in all areas of business, where artificial intelligence is increasingly penetrating. It enables automation and optimization of processes that save time and costs. But such rapid and massive development also entails its own risks. These are described by colleagues from the IT Law and Intellectual Property team, who give you ten tips on how to use AI in your company with the blessing of a lawyer.

Motivation plays a big part in being able to keep up with the rapid pace of change. We see this as a key aspect of success not only in the legal profession. It is all about motivating the people who stand behind the company. Great people are one of the most important assets for any company, so motivating people to work together for the long term and make continuous progress is essential to the success of the entire company. We, at HAVEL & PARTNERS, know it too. We have our own employee stock ownership plan (or ESOP) that has been tested over the years, and we also help our clients implement these plans. You can read what it‘s actually good for and how to practically make an employee a motivated ‘driver’ of the company who won‘t go elsewhere in the article by our venture capital specialists who help dynamic start-ups with ESOPs.

These days bring not only new challenges, but also risks. For example, did you know that virtually any company that does not check its business partners thoroughly can unwittingly become involved in VAT fraud? How is that possible? Read this article by our tax experts, who explain how this can happen, and how you can prevent it.

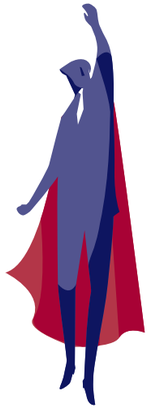
What happens after death? This is a question that everyone should know the answer to, as our lawyers in the Inheritance Law team have pointed out. How best to protect your loved ones for the times when you can no longer help them is also discussed by our colleagues on the pages of this issue.

And there‘s more. In the magazine you will also find other articles, interviews and analyses on current topics – for example, the situation on the real estate bond market, the green revolution in real estate, multi-family office solutions or the new rules for controlling transactions by competition authorities, and many more.

We believe that all the information shared with you by our colleagues will be useful and practically applicable for you in further developing your business strategy or private activities. We wish you a pleasant and inspiring read, and look forward to further cooperation, in which we will be happy to be your reliable guide to the new reality in business.

Jaroslav Havel | Managing Partner

The most desirable employer among law firms for the ninth consecutive year



The law firm has again succeeded in the TOP Employers award, becoming the most sought-after employer among law firms in the Czech Republic for the ninth time in a row. This year, the law firm also won the first place in the Lawyer category based on results of the voting among university students.

“We value young talents and we open the way to the business world for them. In our law firm, students find the background of a stable company with an outstanding reputation. Above all, we offer them the opportunity to quickly gain experience and practice in top-class counselling. When working with the new generation of lawyers, we in turn appreciate their progressiveness and enthusiasm, which we see as a necessary prerequisite for their further professional growth in our firm to become top professionals in their fields,” said Daniel Soukup, HR Director at HAVEL & PARTNERS, on the results of the survey.

HAVEL & PARTNERS’ revenues again see double-digit growth

The law firm’s revenue from the sale of legal and tax services in 2022 amounted to CZK 1,058 million. The firm’s total turnover grew by more than 11% year-on-year. Within the Czech offices, the year-on-year increase in turnover amounted to less than 10%, while the Slovak office grew by 17%.

Tax services, in particular, saw significant growth, with turnover increasing by 53%. The turnover of the entire group, which also includes Cash Collectors, a collection agency, and specialised tax consultancy services, exceeded CZK 1,250 million.

In the first half of 2023, the firm recorded double-digit growth – 12% year-on-year – in revenues from net legal and tax services. The Slovak office, in particular, achieved excellent economic results. “We successfully responded to the dynamic market situation with a targeted strategy and adaptation to the current needs of our clients in the first half of 2023. In this period, we recorded an overall positive trend with a good growth rate,” commented Jaroslav Havel, the firm’s managing partner, on the economic results.

HAVEL & PARTNERS again becomes the best international law firm in the Law Firm of the Year competition in Slovakia

In the Law Firm of the Year competition in Slovakia in 2023, our law firm again won the main prize in the International Law Firm category and also won in the Competition and Health Law categories. We ranked among the top law firms in the other 11 categories.

The results have confirmed our exceptional position on the Slovak and Czech legal market and also our unique position in Europe. “Our law firm is a reliable legal and tax partner not only in Slovakia and the Czech Republic, but our successes and skills go far beyond the borders of these two countries. Therefore, winning the Main Award in the International Law Firm category in Slovakia again confirms that thanks to our unique knowledge of the legal and business environment and comprehensive services, we are able to implement and manage cross-border transactions and projects anywhere in the world,” commented Ondřej Majer, a partner at the law firm.

Ondřej Florián becomes an equity partner of HAVEL & PARTNERS, the law firm also has 5 new partners and has promoted a total of 20 lawyers

With the start of the second half of 2023, we have traditionally announced internal promotions. Ondřej Florián, the partner leading the firm’s corporate and private client services team, became an equity partner as of 1 July. Kateřina Slavíková, Jaroslav Baier, Ondrej Čurilla, Petr Opluštil and Miroslav Vozáb have moved to the position of partners in the firm. Another 14 lawyers have been promoted to senior positions.

“Ondřej Florián is one of the key members of the firm’s management team, and in previous years significantly contributed to setting and implementing the group’s strategic objectives in the area of corporate law and our services to private clients. As an equity partner, he will be responsible for the further strategic development of these areas and the continuous strengthening of key business relationships with our clients,” commented Jaroslav Havel, the managing partner, on Ondřej Florián’s promotion.

“Further promotions to partner positions are also aimed at developing areas key to consolidating our position as a leader in the Central European legal market, particularly in venture capital, public procurement, ESG, healthcare, and pharmaceutical law. What is also crucial for us is the strengthening of the team in Brno, where another partner will be involved in the management of the local office from July,” Jaroslav Havel added.

Juraj Dubovský and František Neuwirth have been promoted to the position of counsel. Veronika Bočanová, Tereza Hrabáková, Irena Munzarová, Martin Stančík and Karolína Steinerová have been promoted to the position of senior associate and senior counsel. Matúš Holubkovič, Lukáš Jakoubek, Patrícia Jamrišková, Tomáš Kalenský, Peter Košecký, Vojtěch Šváb and Dušan Valent have moved to the position of senior associate.

HOW TO IMPLEMENT AI IN A COMPANY WITH A LAWYER'S BLESSING

Artificial intelligence (AI) can already handle some tasks much more efficiently than humans. And we're only just getting started. AI integration opens up unprecedented opportunities for business and entrepreneurship. But as with any new technological advancement, there's always a BUT. In the case of AI, there are a number of legal considerations you should address before implementing AI in your business.

THE LEGAL IMPLICATIONS OF THE USE OF AI TOOLS ARE CRUCIAL IN TERMS OF INTELLECTUAL PROPERTY RIGHTS, PERSONAL DATA PROTECTION, CONFIDENTIAL INFORMATION, AND OTHER AREAS.

The pressure for the use or even full-scale implementation of AI in companies is growing, not only from strategic advisers, but also from virtually all suppliers of technological solutions, office apps, educational agencies, as well as employees themselves – enthusiasts of digitalisation and new technologies.

However, Czech companies are still getting used to the use of artificial intelligence and are testing how it can benefit them. A May 2023 survey by Blindspot Solutions, which queried top managers of large Czech companies about AI, revealed that about half of large Czech companies have not yet addressed generative AI in a comprehensive way. A total of 21% of companies use ChatGPT without limitations, while a fifth of companies regulate its use by internal guidelines, and 6% even strictly. Their primary concern is the inaccuracy of the information generated, and the loss or misuse of corporate data. And we, as lawyers, advise you to use the possibilities of rapidly developing technologies smartly, but also to keep in mind the associated legal risks.

Who is the author?

In the context of AI, we most often address the question of authorship of the outputs that AI generates, and consequently who holds exclusive rights to them. Whether it's lyrics "written" by ChatGPT, pictures "drawn" by Midjourney, videos "edited" by Pictory or music tracks by Amper Music.

There is no comprehensive regulatory framework for AI yet (in the Czech Republic or the EU). Nonetheless, AI can be generally perceived as a set of algorithms, databases and other protected objects that can be legally regulated.

The use of AI-generated content is primarily subject to the terms and conditions of the tool providers. They may significantly restrict usage rights, or in extreme cases, prohibit you from using the outputs for commercial purposes. But if they don't do so, and you're using AI to create content based on mere "prompts" (text inputs from the user), the answer to the question of authorship and protection of the content created is rather ambiguous.

A clue in this context may be the recent recommendation by the U.S. Copyright Office that humans do not have ultimate creative control over AI tools, as prompts essentially act as "instructions" for the artist. Ultimately, it is up to the AI how it chooses to implement them. According to this approach, the output generated in this way is not the result of human creative activity and therefore cannot be protected by copyright and can be used in practice by virtually anyone. How Czech practice will approach this issue is, however, still uncertain. Some experts have argued that if the content generated by an AI tool is created by a technology that merely complements an individual's creative process without overshadowing their personal contribution, it can be attributed to a human creator. However, a clearer opinion on this issue is likely to be forthcoming with the first court cases on this issue, which may come relatively soon given the general popularity of AI tools.

AI and Ed Sheeran or J. K. Rowling

It's essential to consider whether you're "feeding" any protected content into AI tools when you're generating outputs – for example, you might want to generate a melody based on Ed Sheeran's latest song for a corporate video, or write a new script based on the text of J.K. Rowling's book. Unless you are utilising such results for personal use only, the use of works protected by exclusive rights, such as images, melodies or songs, etc., generally requires the consent of the respective rightsholders.

Therefore, for the purposes of commercial use of such content, you must procure adequate licences, both for the original content and for any derivatives created by AI tools. This combination is not always commonplace. Don't be thus misled by some AI tool providers who claim that "all inputs and outputs belong to the user". Instead, always check that the rights to the inputs entered into AI and the generated outputs have been properly cleared. Ideally, you should acquire the source base content from official photo banks, video banks and other verified sources, which always define their licensing terms and usage conditions. For AI tool providers, always carefully read the rules for the use of the source base and generated content in the respective terms of use.

Attention, sensitive!

The advent of AI completely changes the established system of personal data processing. While your company may be adept at data handling, the nuances of how AI processes this data remain somewhat enigmatic. With AI's rise, Silicon Valley is increasingly being dubbed "Cerebral Valley". While it is too early to call it a conscious intelligence, it is still important to remember that millions of people around the globe are entrusting their private data to a technology that lacks complex regulation. Consequently, the exact extent of AI's data processing remains undefined, leaving the possibility for data to take on a "life of its own".

At the same time, generative AI tools can easily compromise the confidentiality of documents, trade secrets, or other protected information. When your employee copies sensitive contract data into ChatGPT or uploads a confidential document for translation into the free version of DeepL, commercially sensitive information or documents can easily be exposed. In such cases, your company would be accountable for the breach of confidentiality. It's thus imperative to instruct employees against inputting proprietary company details, or any information related to clients or fellow employees, into AI tools.

Even Homer nods

Also, remember that AI trains its abilities on the basis of sources, known as datasets, which may contain data whose processing requires third-party consent. Moreover, you have no guarantee that the sources do not contain fictitious or outdated information or even incorrect or false information. Take, for instance, the pair of American lawyers who used AI-generated content in a court submission without any prior fact check. It later emerged that the court judgements referenced by the AI did not exist at all.

Therefore, remind your employees that if they wish to use AI outputs, they are always responsible for ensuring that such content is factually correct and does not violate third-party personality rights, engage in unfair competition or infringe upon intellectual property rights. Failure to do so may of course have significant legal implications not only for the providers but also for the users of these AI tools, i.e., you and your employees. As such, we strongly recommend thoroughly checking the relevant inputs and outputs.

Robot's ethics
Don't overlook the ethical issues too – an AI system is only as impartial as the "impartiality" of the data it's trained on. Again, it is always necessary to check and verify that AI outputs avoid any discrimination and unequal treatment, such as in employee recruitment or assessing the creditworthiness of a loan applicant. Overlooking this may also raise further legal complications for users of AI tools.

What's the way to go?
In practice, we currently see two approaches to AI tools – enthusiastic optimism, typical for start-ups or technological innovators, and the more reserved approach of larger companies, which are well aware of the pitfalls associated with introducing these tools into day-to-day business, whether they're technical, procedural, or the legal issues highlighted above.

Additionally, some companies have prohibited the use of online AI tools for both professional and personal use completely, mainly due to the risk of potential information leaks or claims for intellectual property rights infringement.

Banks are typically the most sceptical about AI tools (e.g., DeutscheBank, Goldman Sachs, JPMorgan Chase & Co.). Given the strict public regulation (especially of banking secrecy), their caution is justified. However, some tech giants such as Samsung and Apple are also taking a cautious approach, with the latter even issuing a ban on the use of online AI on the same day it independently launched the ChatGPT app for its own iOS operating system. Selected AI tools have also been banned by some countries, not only non-democratic regimes such as China or Russia, but also Italy has temporarily imposed a ChatGPT ban, citing concerns over possible misuse of personal data.

While AI tools can streamline a number of internal and external processes, taking business activities to a whole new level, we recommend approaching the implementation of these tools with caution. Ideally, ensure that both the implementation and use of AI tools are carried out in a way that complies with your company's relevant contractual, legal and other obligations.

Adopt technical measures and establish internal guidelines within your company. Train your employees properly. Involve experts in the development of your corporate AI strategy and collaborate closely with team members on its rollout. The fact that this is not a "Mission Impossible" can be seen from the example of Česká spořitelna, which has introduced an internal ChatGPT model for its employees and has also adopted the necessary safeguards to reduce the risk of leaking sensitive data.

WE SEE TWO APPROACHES TO AI TOOLS – ENTHUSIASTIC OPTIMISM, TYPICAL OF START-UPS OR TECHNOLOGICAL INNOVATORS, AND THE MORE RESERVED APPROACH OF LARGER COMPANIES, WHICH ARE WELL AWARE OF THE PITFALLS ASSOCIATED WITH INTRODUCING OF THESE TOOLS.

Here it comes!
While legislation typically lags behind technological progress, the most relevant upcoming legislation regulating AI at the EU level is the forthcoming AI Act, which proposes a number of obligations for AI providers and users. Following initial approval by the European Parliament, this draft is currently under deliberation by EU institutions and it aspires to become the world's first legislation to comprehensively regulate AI by late 2023.

The AI Act aims to classify AI systems based on their level of risk, from the lowest, such as video games, which will be essentially unregulated, to those with "unacceptable risk" that will face outright bans (e.g., social credit allocation systems or some biometric identification systems).

High-risk AI systems, e.g., AI systems for the management and operation of critical infrastructure (such as road transport or energy supply), will be subject to strict controls under the forthcoming legislation. The aim is to ensure that these systems are not only risk-compliant but also adhere to relevant technical standards. In addition, generative AI tool providers should be obliged to label AI-generated content and publish training data that fall under copyright protection.

If you are not developing AI, the AI Act will have a rather marginal impact on you. On the other hand, developers of riskier AI systems are likely to have to exercise greater caution before launching their solutions on the EU market from 2026 onwards, ensuring that their technologies undergo comprehensive clearance and meet the relevant legal standards.

This could lead to a significant change in the dynamics of the technology market, where major market players could decide to "bypass" the EU and move their technology hubs to more legally flexible jurisdictions. We therefore hope that the final text of the AI Act will represent a balanced regulatory approach that considers the need for technological progress as well as prudence and the necessary level of security.

Carefully and thoughtfully
When using AI tools for business purposes, we always recommend involving competent experts and, if possible, choosing a business-oriented AI tool business model, as the functionality of free versions can be restrictive for commercial use.

AI certainly brings huge potential for optimising and streamlining corporate processes. However, to make the most of these advances while safeguarding yourself from potential legal challenges, you should proceed in an informed, proactive way and with due care. The use of AI tools for business purposes should definitely not be seen as a taboo, after all, we ourselves also often use them. However, always do so ideally with the "blessing" of a lawyer. ■

Ten pieces of legal advice

1. Check the relevant terms of use of AI tool providers to understand the regulations surrounding commercial output usage.
2. Ensure you're either using original content or, if sourcing from repositories like photobanks, verify licensing terms. Confirm that your AI inputs are properly cleared (i.e., you have the necessary permissions) and the generated content doesn't violate any exclusive rights.
3. Do not enter any sensitive information or data into AI tools. Instruct all employees on this as well.
4. Consistently check that AI outputs are factually true. Verify all information from another trusted source.
5. Verify that AI-generated outputs do not contain elements of discrimination.
6. Ensure the adoption and utilization of AI in your business aligns with all the company's contractual, legal, and other obligations.
7. Introduce technical measures and guidelines concerning AI usage. Ensure staff training is thorough and up to date.
8. Involve experts in the development of your corporate AI strategy and engage in discussions with your team members.
9. Opt for AI solutions tailored for business applications over generic, limited free versions.
10. Stay updated on AI's evolving legal landscape, such as through resources like the HAVEL & PARTNERS blog, for the latest in legislation, court rulings, and sector advancements.

Key contacts

DALIBOR KOVÁŘ | PARTNER
Dalibor leads the IT law practice group. He specialises in intellectual property law, information technology, innovation and electronic legal acts and related digital transformation. Dalibor assists clients in implementing the latest technologies in compliance with legal requirements into their business processes. He focuses mainly on licensing and implementation agreements, copyright protection, and legal regulation of innovative technologies.

MICHAL KANDRÁČ | ASSOCIATE
Michal specialises in information technology law, intellectual property law, and entertainment law. He provides comprehensive advice related to information technology, artificial intelligence, digital services, movies, video games and software systems. Michal also focuses on copyright and media law and specialises in digital content liability.

NIKITA FESYUKOV | JUNIOR ASSOCIATE
Nikita specialises primarily in technology law, artificial intelligence, and any legal aspects of new technologies, including their overlap with intellectual property law or consumer law. He assists clients with the implementation of comprehensive technology solutions into their business processes, and also focuses on media law and gaming law.

VOJTĚCH ZAVADIL | JUNIOR ASSOCIATE
Vojtěch specialises in copyright law and industrial property law, including the cross-border aspects of IP protection and enforcement, and transactional advice in connection with IP acquisitions. He also focuses on artificial intelligence, media law, and patent law.

OVERVIEW OF SELECTED TRANSACTIONS INVOLVING HAVEL & PARTNERS

B+N CZECH REPUBLIC FACILITY SERVICES

Acquisition of companies by a European player in the field of facility services

We advised B+N Czech Republic Facility Services from the B+N Referencia Zrt. Group, which provides comprehensive facility services in five European countries, on the acquisition of TESPRANET SERVICES and TESPRANET LANDSCAPING. Partner Jan Koval, counsel Robert Porubský, associate Jan Krejčí and tax advisor Kateřina Havlínová assisted B+N in this transaction, which further strengthened the group's position on the European facility services market.

ALBATROS MEDIA

Acquisition by Albatros Media Group of shares in Yabyrinth and Elibro

Partner Jan Koval and senior associates Ivo Skolil and Josef Bouchal acted as legal advisors for the publishing group Albatros Media in arranging for an equity entry into Yabyrinth, which operates an e-shop with English literature (enbook.cz) and music and film media (endisc.cz) in Slovakia, Poland, Hungary and Romania; and into Elibro, which specialises in buying used books (vykupujeme-online.cz) and operates an online second-hand bookshop and audiobook shop (audiovesmir.cz).

GEVORKYAN

IPO of Slovak hightech company Gevorkyan

A HAVEL & PARTNERS team helped with the first IPO of Gevorkyan, a Slovak hightech company and technology leader in powder metallurgy. It was the largest IPO (initial public offering) on the Prague Stock Exchange's START market to date and the first Slovak company ever to finance production expansion by subscribing for shares through this capital market. The company subscribed CZK 727 million (approx. EUR 30 million) in the IPO. This was a unique case of a Slovak company issuing shares on the Czech capital market. The advice was provided by the Czech-Slovak team led by partner Jan Topinka, managing associate Martin Stančík and associate Kristina Saktorová. Gevorkyan's IPO also became the Slovak Private Equity Deal of the Year at the CVCA&Slovca Awards 2023.

ICM

Legal services for a construction company in the framework of the Slovak railway modernisation project

Partner Štěpán Štarha and associate Oliver Benda provided comprehensive legal advice to the major international construction company ICM in connection with the project of modernisation of the railway line section Devínska Nová Ves – the state border with Slovakia/Czech Republic. Legal services were provided from the preparation of the project, through the contracting of subcontractors to the resolution of all related legal issues. The line is part of the global interconnection of the pan-European rail corridor.

AGILITAS PRIVATE EQUITY

Acquisition of Danish ICT services business

We participated in an international transaction in the field of information and communication technologies ("ICT"), where our office provided counsel to funds advised by Agilitas Private Equity LLP ("Agilitas") on the carve-out of the IT infrastructure outsourcing business from the NNIT Group in Denmark. The business, which is now named Aeven, has a presence in the Czech Republic, Denmark and the Philippines. Agilitas is a pan-European mid-market private equity firm. Partner Jan Koval, lead associate Silvie Király, senior associate Pavla Kaufmannová and tax associate Kateřina Havlínová assisted.

WOOD & COMPANY

Advising on the purchase of a minority stake in Footshop and subsequent listing of the brand on the Prague Stock Exchange

We advised the investment company Wood & Company on the purchase of a minority stake in Footshop, a streetwear shoes and clothing retailer, as well as on the subsequent merger with Wood SPAC One, through which the Footshop brand entered the Prague Stock Exchange. We handled all M&A aspects of the transaction and the subsequent advisory services for the company's listing on the stock exchange. For HAVEL & PARTNERS, partners Jan Koval, Jaroslav Baier, Jan Topinka and Jiří Kunášek and senior associate Josef Bouchal were involved in the transaction.

ROHLÍK GROUP

Acquisition of a competing German grocery store by Rohlík

Our M&A specialists have assisted Rohlík Group, which operates an online shop for groceries and other products in the Czech Republic and abroad, to further expand its business activities in Germany. Partner Václav Audes and senior associate Josef Bouchal assisted Rohlík as legal advisors in the acquisition of Bringmeister, which has been selling groceries to German customers and delivering purchases to their homes for over 20 years. Rohlík bought Bringmeister from the Rockaway investment group. The transaction was subject to approval by the German antitrust authority.

TURK ELEKTRONIK PARA

Advising a Turkish fund on the purchase of Twisto payments

Partner Jan Koval, managing associate Martin Stančík and senior associate Josef Bouchal, together with associate Martin Rott, provided comprehensive legal services to the Turkish fund TURK Elektronik Para in the acquisition of Twisto payments, the largest fintech company in the Czech Republic specialising in online deferred payments and crowdfunding. On the seller side was the Australian company Zip.

BELL HELICOPTER TEXTRON

Providing advice related to the sale of helicopters to the Slovak Interior Ministry

Comprehensive legal advice to Bell Helicopter Textron, a major U.S. helicopter manufacturer, was provided by partner Ondřej Majer and managing associate Ján Kapec in connection with challenging an illegal procedure of the Slovak Interior Ministry in the direct purchase of two helicopters through a direct negotiation procedure. The legal advice also included the successful application of review procedures where the Ministry, as the contracting authority, was obliged to cancel the procurement procedure in question, and successfully obtaining an interim court measure prohibiting the purchase of helicopters from a competing bidder.


David Neveselý

WITH HEALTH PROBLEMS TO A MEDICAL EXPERT, WITH ASSETS **TO A MULTI-FAMILY OFFICE**

When you break your leg, you want the best surgeon or orthopaedic surgeon to take care of you. It should be the same when it comes to family assets. Today, experienced professional management is increasingly used, not least because the family successors of entrepreneurs who have managed to build significant wealth over the last 30 years now face the difficult task of ensuring that their assets are managed so that their value does not fall, and the revenues continue to provide for the family.

INCREASINGLY, THE CONCEPT OF A MULTI-FAMILY OFFICE IS COMING TO THE FORE. ONE WITH AN INTERNATIONAL REACH IS BEING ESTABLISHED UNDER THE WINGS OF HAVEL & PARTNERS.

A family office generally operates on the basis of simple and common legal and tax solutions that, tailored to the specific family, put together a robust and secure, yet flexible, system of rules and relationships for managing assets and businesses.
A multi-family office works similarly, but for multiple families at the same time.

A family office includes a structure for holding, managing, and protecting assets that enable it to increase the value of investments, develop family assets, and also provide for the distribution of revenues to family members or for philanthropic and charitable activities. It is a professional team of experts who, in cooperation with the family, ensure the allocation of part of the assets, control investments, and consistently manage the associated risks.

"When a person takes care of his/her health, he/she sees doctors and specialists in the respective field. They will perform a detailed screening, identify ailments and tell you how to combat them and how to take care of yourself so that you can enjoy a long, high-quality life with your loved ones. Within the family office, we do the same with family assets," explained David Neveselý, a partner at HAVEL & PARTNERS.

Sharing for success

Compared to a traditional family office structure, a multi-family office offers the same top professional services. Additionally, sharing them among multiple families allows for greater diversification of the costs of asset management and part of the investment strategy. This is ultimately efficient for all the families involved, as such a multi-family office serves clients with similar financial goals or values.

Compared to a single client, a multi-family office is also better positioned with foreign asset managers or banks with which it negotiates investment cooperation. Clients thus have better access to investment opportunities with the possibility of interesting revenues that often do not even reach the public.

HAVEL & PARTNERS now offers this solution to its clients. The new multi-family office will provide clients with professional services and representation in Prague, Brno and Bratislava and, thanks to our cooperation with foreign specialists, will also connect them with global destinations such as London, Dubai, Frankfurt or Zurich.

"It will be a combination of investment professionals with extensive experience, the team will be complemented by our elite legal and tax specialists and other experts from Czech and Slovak investment funds and companies," said David Neveselý.

From generation to generation

Even in the Czech Republic, entrepreneurs can rely on the advantages of an asset management structure based on the experience of the world's richest families. Since 2014, the Civil Code has offered options that were until then the exclusive domain of the Western world.

These are institutes of inheritance law and also endowment funds and trusts. Thanks to their subsequent incorporation into the tax system, they quickly gained considerable popularity. An effective set-up helps protect assets in the future from the effects of family events, unexpected tragedies or failed family relationships that could cause the family wealth to fragment. The aim is not only to manage financial assets, but also to invest in real estate and other assets or to ensure the efficient transfer of family wealth from one generation to the next.

Extra services

Many people entrust the management of family wealth to advisers lacking their own experience of building and maintaining such a large amount of wealth, but experience plays a key role – just as in medicine. "We have many years of experience in private client services and have the largest team on the market. We have implemented hundreds of family holdings and holding structures in the Czech Republic and Slovakia, as well as dozens of private endowment funds and trust solutions. Our added value is that we are successful in business ourselves. We have managed to build the most successful Czech-Slovak law firm. We can thus offer our managerial and investor know-how to our clients alongside our top legal expertise," said Jaroslav Havel, the firm's managing partner.

HAVEL & PARTNERS' private client services go beyond legal and tax advisory. Experts in the family office can also take care of unpopular activities such as paying bills, communicating with authorities and banks, dealing with insurance or real estate management issues, etc.

Private family matters are also handled for clients by a dedicated inheritance and family law team. It offers comprehensive services in the field of marriage or divorce or complex inheritance disputes.

The firm provides excellent service even when dealing with serious problems or crisis situations that threaten the client's reputation, security or economic stability. "This is a completely unique service with high added value that averts fatal damage and the often devastating negative impacts on a person or company. No other law firm or consultancy company offers it to this extent," added David Neveselý.

This article was first published in Forbes magazine Czech Republic. The text was abridged for H&P Magazine.


Jaroslav Havel

NEXTŽENY

WHO MANAGES CZECH FAMILY ASSETS? **INCREASINGLY, IT'S WOMEN**

Women are becoming more actively involved in managing assets and addressing financial issues. A fifth of women decide on family wealth independently. They tend to invest more conservatively than men, taking sustainability into consideration. This was found in an extensive survey conducted by our law firm in cooperation with RSM CZ and the research agency Ipsos. The international partner of the project is UBS, the largest private bank in Europe.

Women get rich faster than men
Women are becoming more successful, more educated, more courageous and able to build wealth on their own. But women are also more likely to inherit assets. Statistically, they marry older men and on average live 6–7 years longer. Family wealth also passes on to them when assets are transferred from generation to generation. Globally, women's wealth is growing by USD 5 trillion a year, increasing at a faster pace than men's wealth. This is a global trend monitored by renowned consulting firms and also confirmed in the Czech environment by our NextŽeny study. We also asked whether women and men have any specific needs in terms of assets and finances. In cooperation with RSM CZ and the research agency Ipsos, we therefore asked the following questions about investments and assets in the survey.

Family assets as a partnership task
According to the survey data, a fifth of women decide on family assets and twice as many men make the decisions on financial and property matters for the entire household. Compared to the global figures from the UBS' 2022 study, where the majority of married women admitted that they leave their financial decisions to their husbands, Czech women decide to a much greater extent on family assets by themselves. Traditional gender stereotypes and inequalities in the area of property are gradually disappearing, and 35% of people make decisions on these issues jointly in the family.

"More than ever, couples and families tend to approach financial and property issues as a partnership task in which both partners are actively involved and often work together to find the best solution for the family. However, we still perceive that men have greater self-confidence and tend to have the final say," commented David Neveselý of HAVEL & PARTNERS.

In fact, for people who make decisions about assets in the household jointly, nearly 70% of men said that they make the final decision. Only 45% of women had a final say. Women are also more likely to have mixed feelings when making decisions about investments and assets. A fifth of them said they were even insecure and felt worried. On the other hand, a quarter of women make decisions about their assets with confidence and clarity.

Women are more conservative, men diversify more.
Men incline more to diversified investments, according to the NextŽeny survey. They are more likely to divide their assets between more conservative products and riskier, higher-yielding areas. They invest more than women in stocks, hedge funds, bonds or cryptocurrencies.

Women, on the other hand, are more likely than men to gravitate towards conservative investments and care about their security and stability. In addition to traditional savings accounts or pension savings and conservative investment funds, they also put a lot of faith in real estate. It is important for them to invest in line with their values. Compared to men, they therefore prefer to invest more in education or sustainability. Men, on the other hand, more often see prospects in the fields of technology and innovation, pharmaceuticals or automotive.

Advisory services on property and financial matters are used by 45% of people. Slightly more by women than men. "Women value professional advice more than men. Increasingly, women who are successful in business are turning to us with the need to plan and organise their asset management and invest wisely. With advisers, they not only address investment strategies and plans, but also mediate discussions and implement succession plans," said Monika Marečková, managing partner of RSM CZ.

350 male and female investors
A total of 350 people participated in the survey, 143 of whom were women. Clients and business partners of HAVEL & PARTNERS and RSM Czech Republic, i.e., a group of affluent clients from the ranks of owners or co-owners of companies or top and middle management and people with assets reaching up to hundreds of millions of crowns, responded in the survey to questions about investments and assets. The survey also contributed to a good cause. For each completed questionnaire, HAVEL & PARTNERS contributed CZK 200 to the non-profit organization Dejme dětem šanci (Give Children a Chance), and RSM CZ supported the operation of the Paraple Centre with the same amount for each questionnaire.

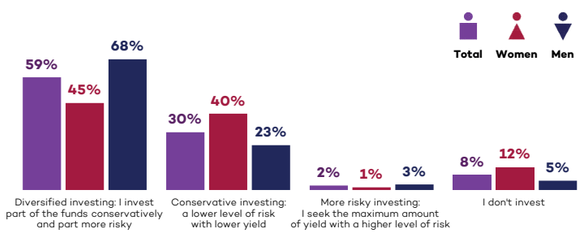
NextŽeny around us
NextŽeny is a project focused on the global trend of shifting wealth to women, but also on women's power and growth, entrepreneurship, investing and networking. When we were thinking about who should be the face of NextŽeny, we immediately had a clear idea. All we had to do was look around. We have many female colleagues in our firm whose talent, enthusiasm, skills, energy and personal stories are extremely inspiring. Our successful female colleagues – from students to partners – who can be found in the photos, in the special magazine, in the video and on the NextŽeny website, have given the NextŽeny project a face.

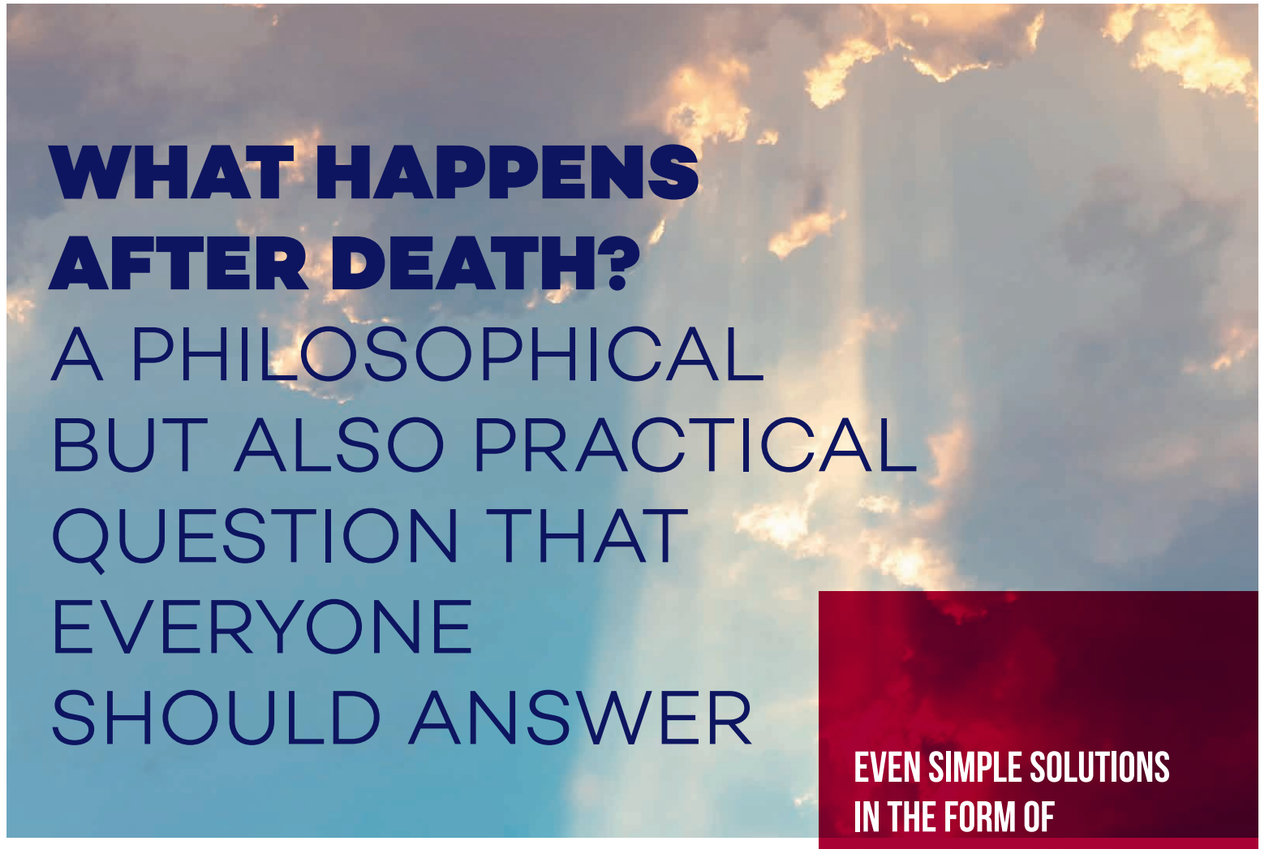
Women Power on paper
The NextŽeny project also aims to motivate. And because it is important to show examples of successful women who can serve as role models and inspiration, a special magazine NextŽeny was created in cooperation with Premium Media Group. In addition to the survey results, it was entirely dedicated to inspiring women who are leaders in their fields across the world of business, education, investment, consulting or the non-profit sector, all proving that their success knows no boundaries. Their stories and the interviews with them thus gave a concrete face and content to previously abstract sociological figures.

What feelings do men and women have when making financial decisions?

76%	Responsibility	77%
24%	Certainty and clarity	24%
20%	Uncertainty and worries	6%
10%	Stress and pressure	6%
6%	Satisfaction	6%
4%	Joy	4%

What strategy do women and men choose when making investments?





WHAT HAPPENS AFTER DEATH?

A PHILOSOPHICAL BUT ALSO PRACTICAL QUESTION THAT EVERYONE SHOULD ANSWER

EVEN SIMPLE SOLUTIONS IN THE FORM OF A TESTAMENT OR AN INHERITANCE CONTRACT CAN MAKE A DIFFICULT TIME FOR RELATIVES AT LEAST A LITTLE EASIER.

Life brings different situations and some of them are unfortunately not very happy. Safety and security – that's what anyone would want for their loved ones. Yet many people do not address what will happen to their property when they are gone. They thus put their family in an unenviable situation

Soul legend James Brown died in 2006. He left behind not only a major legacy in the world of music, but also the property and publishing and copyright rights worth tens of millions of dollars. A fortune that everyone would want to inherit. And so it was. What followed was 15 years of wrangling, when the singer's grandchildren, children and ex-wife sued for the inheritance. And why all this? James Brown left no testament or other form of last will that his survivors would respect.

Dealing with what happens to your property after your death is a thankless topic that few people want to talk about. On the other hand, few people would not want to provide for their family as best as possible in case they carelessly step into the road. Yet, only about every second person prepares for the transfer of property in the event of an unfortunate incident. This was found in our NextŽeny survey conducted among high-income earners. Only 10% of the wealthy respondents have a more comprehensive solution to similar issues – for example, in the form of a home family office, family foundation, etc.

Even if you don't have the complicated family relationships that James Brown had, it is not at all unusual for some of the more complex probate proceedings to take several years. In practice, we have even encountered a case that lasted almost two decades. This, of course, leaves relatives in uncertainty.

When the law comes

In the absence of a testament or an inheritance contract, or if the fate of the property is not regulated by other special institutes, the settlement of the inheritance is governed by a statute, which lays down clear rules as to who inherits what share of the decedent's estate.

Under the statute, heirs are divided into six classes. If there are no heirs in the first class, the property passes to the second-class heirs, and so on. In most cases, the property passes to heirs of the first class, which includes spouses and children (and their descendants, if any). The spouse and children then share the inheritance equally. However, in the case of marriage, the property is assessed within the community property (CP) and only the part of the property that belonged to the decedent is included in the decedent's estate after the CP settlement, which takes place in the probate proceedings. Under the unregulated CP regime, it is therefore usually half of the family property.

We can show this, for example, in the Boháč family. Mr Boháč has a wife and two children – a daughter and a son. Mr Boháč and his wife did not sign any pre-nuptial agreement, nor do they have a contractual property regime within the CP. They also made no testament. In the event of Mr Boháč's death, the property transfer will therefore be addressed strictly under the statute. Considering the CP, the property is first divided into two halves, with the wife retaining the first half and the other half belonging to Mr Boháč going to the inheritance and being divided equally between Mrs Boháč and each of the children. As a result, 4/6 of the community property will go to Mrs Boháč, 1/6 to her son and 1/6 to her daughter.

Family property under the statute

If there are no first-class heirs, the other family members inherit according to class. Thus, inheritance under the statute may often not correspond to what a person would have wanted during his lifetime, and in practice the legal succession can have quite significant consequences for the distribution of the family property.

Classes of heirs

1.
The decedent's children and his spouse inherit, each of them equally. If any of the children does not inherit, his/her share of the inheritance is acquired equally by his/her children (and more distant descendants of the same ancestor).

2.
The decedent's spouse, the decedent's parents and those who lived with the decedent in the common household for at least one year before his death and, as a result, cared for the common household or were dependent in maintenance on the decedent, inherit. Second-class heirs inherit equally, but the spouse always inherits at least half of the decedent's estate.

3.
The decedent's siblings and those who lived with the decedent in the common household for at least one year before his death and, as a result, cared for the common household or were dependent in maintenance on the decedent, inherit. If one of the decedent's siblings does not inherit, his/her share of inheritance is acquired by his/her children equally.

4.
The decedent's grandparents inherit equally.

5.
Only the grandparents of the decedent's parents inherit. The grandparents of the decedent's father are entitled to half of the inheritance, the grandparents of the decedent's mother are entitled to the other half. Both couples of the grandparents will equally divide between them the half to which they are entitled. Specific rules apply to the accrual of shares if any of the grandparents is not alive.

6.
The children of the decedent's siblings' children and the children of the decedent's grandparents inherit, each of them equally. If any of the children of the decedent's grandparents does not inherit, his/her children inherit.

Imagine, for example, a situation where your only son takes care of and invests a significant part of the family property. He's in his prime, he's doing well, he doesn't have children yet, but for over a year he's been living with a woman you don't really know and have only seen a few times. If an unfortunate event were to occur at this point and the son left no testament, the son's partner, who is in the second class of heirs, would inherit a significant part of the family property and thus divide the inheritance with you as parents. Such a situation can easily end in contentious, lengthy and, above all, painful probate proceedings.

There are also frequent questions about the inheritance of children from different marriages, which affects practically half of the population in our country due to the divorce rate. So, for example, if Mr Boháč were married for the second time, upon his death half of the property would go to his new wife (if they have community property), but the other half would be inherited between the new wife, her children, and any children of Mr Boháč from the previous marriage. After the death of Mr Boháč's second wife, only his younger children from his second marriage will inherit a substantial part of the property that Mr Boháč built up when his business was flourishing. Any older children from the first marriage (often more involved in the business because of their age) will inherit jointly only ¼, while younger ones from the second marriage (even minors) will inherit the remaining ¾ of the whole. In our experience, clients are usually not aware of this either.

Many people also do not realise that if they have children with their partner but are not married, then the position of the partners is not optimal and secured. The inheritance passes almost exclusively to the children and the partner is without any security. In such cases, we often look for solutions that can adequately provide for the family in the event of the death of a partner.

Last will

When it comes to a partner, this can be avoided quite easily – by making at least some kind of testament. That's the bare minimum. A testament must (save for very exceptional cases – such as being stranded on a desert island with an imminent threat to life) be made in writing. You can write and sign it in your own hand, or type it up on a computer, print it out and sign it. However, you always need to sign in your own hand the printed testament, or even a testament that someone else has handwritten for you and declare in front of two witnesses present at the same time that it is your last will.

But beware of situations that can cause problems. For example, if witnesses were not in the same place at the same time, or if a person who cannot be in the capacity of a witness testified about the testament, the testament would be invalid. This is also the case in the extreme situations where witnesses in a dispute over the right

of succession simply do not remember the circumstances of the acquisition of the decedent's estate years later or distort it, which has fatal consequences for the heir under the testament.

Both forms of a testament made in this way are so-called private instruments and it is up to the heir to defend its qualities, even before a court. This again puts him in an unenviable situation and the risk of lengthy probate and court proceedings. A separate chapter involves cases when the testament is lost or concealed by a relative because it is disadvantageous for him/her. Here too, complications arise, and the resolution of the inheritance is prolonged.

At the notary's

It is therefore preferable to make a testament in the form of a public instrument before a notary. Such a testament eliminates the risk of its loss and also questions of authenticity. However, if you are to inherit something from your grandmother on the basis of a notarised testament, you may not yet have your inheritance certain. Any testament can be easily revoked or changed and anyone else can be appointed as heir. So, if the grandmother makes a testament before a notary, but then changes her mind, makes a new testament and appoints as heir, for example, a neighbour who has been visiting her regularly for the last few months, in the probate proceedings the property may then go to that neighbour. Even the date on the testament is therefore an important element that can greatly confuse and complicate the probate proceedings.

But there are other ways to decide what happens to your property after you die. The new Civil Code of 2014 has also made it possible to divide the decedent's estate by means of an inheritance contract. So you can still agree with your relatives during your lifetime to whom and what property you want to bequeath after your death and then draw up a contract with a notary.

Unlike a testament, the inheritance contract cannot be revoked or amended by the decedent, and any amendments must always be agreed by both parties. The inheritance contract thus guarantees greater certainty for the heirs. However, from the heir's point of view, even this contract may not guarantee that the decedent will not sell the property during his lifetime, and thus there will be nothing to inherit. Moreover, it is not possible to cover the entire property in the inheritance contract. The statute allows only ¾ of the property to be divided among the heirs in this way. By law, the decedent must subject the remainder of the property to a testament or succession under a statute.

The administrator will help

As we have already indicated, probate proceedings are not a sprint, but a long-distance run, which is not without problems in the case of inheritance where assets (apartments or shares in companies) need to be administered. This can again be shown, for example, in a family of four with two young children. A wife is an entrepreneur and owns a successful company where she is also the managing director and manages the company herself. But she dies suddenly. However, the business goes on, the company has its employees, its liabilities, it has to pay invoices and deliver goods. But until the inheritance is resolved, who will decide on the running of the company?

In such cases, it is advisable to appoint a possible administrator of the decedent's estate before the notary during one's lifetime. It is also possible to give him/her instructions on how to administer the decedent's estate and to award him/her a fee for the administration. After the decedent's death, the administrator of the decedent's estate administers the decedent's estate until the end of the probate proceedings.

In the example we have mentioned, the wife-entrepreneur could, for example, specify in advance before a notary that the company will be administered by her husband or one of the managers of her company in the event of her death, and the administrator of the decedent's estate will then arrange this by the relevant decisions. This will ensure the smooth running of the company even in the event of an unexpected tragedy.

In our experience, the appointment of an administrator of the decedent's estate is not used very often by people, yet it helps to address the complex situation of survivors in the event of a family tragedy. Situations in which the administrator is needed are quite common, and in practice, especially in complicated probate proceedings, it is necessary to go through the complicated process of appointing an administrator with the competent notary. We can therefore again recommend that you deal with everything early and with a calm head, which will significantly ease the life of your relatives at times when you can no longer help them.

Key contacts

DAVID NEVESELÝ | PARTNER

David manages the private client service team. He specialises in comprehensive legal and tax advice in relation to succession planning and strategic management issues for family businesses. David focuses on the management, possession, and legal protection of family property, especially in the area of trust law, inheritance law, and the issue of family holdings and local and foreign foundations and trusts.

JIŘÍ KUNÁŠEK | PARTNER

Jiří leads the inheritance law practice group. He offers private clients comprehensive legal advice related to the protection and management of personal and family property, private assets, and intergenerational capital transfer. Jiří represents clients in large and complex inheritance disputes and their settlement. He was involved in building our specialised group focused on family property law.

FINANCE / INSOLVENCY

REAL ESTATE BONDS MAY FACE PROBLEMS, WARNS AN EXPERT

LOW DEMAND AND EXPENSIVE RESOURCES WILL LEAD TO DIFFICULTIES ESPECIALLY FOR SMALLER REAL ESTATE PROJECTS FINANCED BY BONDS INSTEAD OF ISSUERS' EQUITY CAPITAL.

Many real estate bond issuers will not be able to pay interest, says Jan Topinka, partner at HAVEL & PARTNERS. He explains why bonds will "fall" and what investors should be careful about.

According to HAVEL & PARTNERS analysis, at least 68 bond issues maturing in the next two years are from issuers operating in the real estate sector. You have warned us about the potential problems. Can you give us a closer look at the analysis?
We have reviewed the parameters of all bond issues with prospectus that mature this year and next year. We have left out bank, state and municipal bond issues. Unfortunately, data on issues without a prospectus are not publicly available, but these are small issues up to CZK 25 million, i.e., less significant.

At least 68 of the roughly 140 bond issues maturing in 2023 and 2024 with an estimated volume of approximately CZK 37 billion – out of a total volume of roughly CZK 100 billion – are issued by issuers operating in the real estate sector. This is a significant portion of the entire bond market.

To put it very simply: the Czech real estate market has long been used to approximately 10% annual growth in real estate prices, developers used a 70% loan leverage at about 3%, and often replaced the necessary 30% capital by bonds with a coupon of about 6%.

But the situation has changed. Real estate prices are stagnating or falling. Demand for housing has fallen sharply as the mortgage market has declined. Loan financing is five percentage points more expensive – if it exists at all. Construction costs have skyrocketed. Projects are being delayed or stopped.

Thus, low demand and expensive resources will logically lead to difficulties, especially for smaller real estate projects financed by bonds instead of issuers' equity capital. And problems are already emerging now.

What motivates investors to buy bonds from developers?
To invest in real estate, you need a relatively large amount of money. You can buy an investment apartment in the order of millions of crowns, and you have to take care of it. You can invest in real estate funds, but no one will promise you a predetermined yield.

In contrast, a developer offers you a bond from ten thousand crowns upwards. It looks tempting, after all, he offers a decent fixed yield of 6%, regular interest payments and the distributor tells you that it's a "brick that doesn't lose value". Compared to the negligible interest rates in the bank at the time, it sounded like a good investment, didn't it?

Distribution plays a key role. The developers did not have or did not want to put up their own capital, so they used commissions to motivate intermediaries to sell bonds to retail investors. Such motivated distribution networks were able to push huge volumes of bonds onto inexperienced and naive retail investors.

Why may such issuers face troubles now? What are the most significant influences that affect their solvency?
Let's look at the matter from the perspective of the issuer's financial management. One thing is the interest on the bonds itself. The average of those maturing this year and next year is 5.83% per annum. But beware, you need to consider the total cost of money and also the cash flow side of the matter.

In addition to the interest itself, there are significant distribution costs (up to 8–10% of the volume for very risky issues) and issue preparation and administration costs (typically 2% of the volume). Spread over time, the cost of debt management for a typical three-year bond with 6% interest can be 8–11% per annum.

How will the issuer's cash flow affect ongoing interest payments? Is it common to pay interest on an ongoing basis?
Where the issuer pays interest on an ongoing basis, but his yields depend on the completion of projects, the situation becomes more dramatic – the developer will sell the apartments only at the end, if at all. All issues maturing in 2023 and 2024 pay interest annually or more frequently.

Thus, the issuer has to reserve a part of the yields from the issue at the beginning for the ongoing interest payments and use only the rest in the project. The realisation of project revenues and the maturity of bonds rarely occur at the same time.

All this increases the demand for a return on capital in real estate projects, which must be as high as 15–20% in order to be able to repay the bonds and pay the interest. It is clear that the economic factors described above make it very difficult, to put it mildly, to achieve such return.

Jan Topinka specialises in banking, finance and capital markets. He focuses on debt financing on both the creditor and debtor side, financial services regulation, and capital market transactions. Previously, Jan worked for five years in various legal positions at the Czech Securities Commission.

THE BIG PLAYERS, THE RENOWNED DEVELOPERS, CAN HANDLE THE PROBLEMS – THEY CAN PREDICT, THEY CAN MANAGE CASH FLOW, THEY HAVE CAPITAL. BUT MANY, MAINLY SMALLER ISSUERS, DO NOT SEEM TO REALISE THE COMPLEXITY OF THE SITUATION AND OVERESTIMATE THEIR ABILITY TO REPAY THEIR DEBTS.

In addition, some issuers may have had problems before, but often solved them or are still solving them today by issuing new bond issues and using the yields to repay earlier issues. This was possible in a world of low interest rates, but that ended in 2022. Thus, issuers may have had the problem for some time, but may not be able to repay the current high required yields on new issues.

What else is specific about real estate bonds?
It is a project model that is demanding for cash flow management. You need a lot of money for construction. Until the real estate is built and sold or rented, you simply don't have the money. But bonds have a predetermined maturity, it's still debt!

Everybody has problems. The big players, the renowned developers can handle them – they can predict, they can manage cash flow, they have capital. However, according to our findings, many, mainly smaller issuers, do not seem to realise the complexity of the situation and overestimate their ability to repay their debts. Or they do not care anymore...

How should issuers proceed if they begin to suspect future financial difficulties?
At the beginning there is a simple algorithm. Are you sure you'll repay the bonds? Are you? Do the math again. Make a detailed and realistic cash flow plan. Do you still think you will be able to repay? If so, great, repeat the exercise regularly. If it doesn't work out, take a breath, acknowledge the problem and start solving it. Take the insolvency test. Don't stick your head in the sand, don't expect it to "work out". Communicate with investors.

With timely solutions, much can be saved and damage can be limited. Sell something, extend maturities, get an investor... the possibilities are many. But if you let the matter go into insolvency, you will lose control. You will face forced asset sales at discount prices, indiscriminate raids by debt collection predators and usually the interest of law enforcement authorities. And your investors will go away empty-handed.

If an issuer has a problem and wants to solve it honestly, we can help effectively. We help find and implement solutions not only to the satisfaction of our clients but also to the satisfaction of their creditors. We have been involved in several very successful reorganisations and insolvencies with high proceeds for creditors. We do not represent rogues and crooks.

What should retail investors be most careful about when buying real estate corporate bonds?
First of all, they need to realise that it is by nature a risky investment and approach it accordingly. I'm not talking about the big established players, but the smaller or "unknown" issuers. Don't give in to distributor's pressure, take your time, don't be ashamed to ask... Successful investors don't invest in what they don't understand.

What options do investors have to verify issuers?
There are a number of verification options, most of the data is freely available online. The history of the issuer and its shareholders, accounting statements of the issuer and its group dating a few years back, nature and status of projects financed, negative media reports. Don't rely on "shiny" websites and distributors' sweet talk.

Read the emission terms. Are the bonds secured? Is the issuer willing to commit to limit indebtedness, to maintain the amount of equity capital or the project value to debt ratio? Unusually high interest rates, pressure from the distributor, big plans for the future versus short history, emphasis on "guaranteed yield", swearing by the CNB approval, unclear purpose of using the money from the bonds... These are indications that you should pay attention.

And be careful! Approval of the prospectus by the Czech National Bank does not mean that the issuer is financially sound and will repay the bonds properly. The CNB only monitors whether the prospectus contains the necessary information – it is then always up to the investor to evaluate it.

Even if the issuer is a big-name company, a specific project can get into problems. How can an investor catch such problems early?
Creditors should pay attention to the warning signs and not wait passively "for maturity", it will often be too late. The most frequent signs are postponement of interest payments, silence in communication or, on the contrary, unusually brisk communication by issuers, loud sales campaigns for the issuance of new bonds and the intensive offering of new bonds to existing creditors, often in conjunction with the unavailability of their accounting statements.

Is the issuer obliged to redeem the bond before maturity at the investor's request? Do they usually use early repayment clauses or the right to demand redemption?
No, he isn't. The vast majority of bond issue terms do not give the investor a right of redemption or early repayment. You can't escape early.

Will the proposed amendment from the Ministry of Finance help in the area of risky corporate bonds in general in relation to retail investors?
It will help, but it is far from saving the situation. Moreover, it applies only to the so-called below-limit bonds (below CZK 25 million), for which the investor will have to be provided with information about the issuer, its management and plans, including financial statements for the last two years. However, everyone will have to evaluate this information by themselves. The most problematic, in my opinion, is rather the combination of the lack of financial literacy of retail investors, their naivety and greed, combined with intensive distribution.

This interview was published on the Peníze.cz website

FROM AN EMPLOYEE TO A MILLIONAIRE **WHAT ESOP PLANS ARE GOOD FOR?**

The history of companies, especially those that have changed the world, is full of stories of employees who became millionaires thanks to holding shares in the company. How did companies achieve this success? They used employee stock ownership plans, so-called ESOPs. How do such incentive programmes work and what options do we have in the Czech Republic?

BY SETTING THE RIGHT PARAMETERS FOR ESOPS AND HENCE MOTIVATING EMPLOYEES, THE COMPANY CAN START UP THE BUSINESS AND ENSURE EFFECTIVE GROWTH.

Remember the huge Silicon Valley tech boom of the 1990s? Start-ups starting from scratch became giant corporations, and one of the key tools that supported their growth were so-called ESOPs, aka Employee Stock Ownership (Option) Plans. The model where employees acquire a share in the company that they help grow is not new at all. One example is Microsoft, which, according to some estimates, created approximately 10,000 millionaires in the first ten years of its existence.

In the United States in 2022, according to data from the National Center for Employee Ownership, more than 6,250 companies had ESOPs, and over 2,300 companies were even 100% employee-owned. As part of their ESOP plans, companies in the USA pay out nearly USD 90 billion in annual contributions.

An ESOP is generally a program that allows employees (or other associates) to become involved in the operation of the company and gain a share in its success and the value of its growth. ESOPs therefore motivate employees by linking them directly to the success of the company. As the company grows and increases in value, so does the value of the employee's shares or options. In addition, ESOPs often contain terms that restrict the sale of stock or the exercise of options until a certain time. This gives employees a strong incentive to stay with the company and contribute to its growth.

The competition in the job market is huge, so start-ups and fast-growing companies today face challenges in recruiting and retaining talented employees. The vast majority of start-ups are technology companies whose greatest value is copyright in all its forms, especially source codes, new technologies or innovations. Key employees or co-founders are their carriers. If the company was unable to retain them, such a departure could spell the end of the start-up.

Talent hook

An ESOP is one of the most effective methods to attract and retain these talented employees, especially in the competitive environment of start-ups. However, ESOPs are useful in this respect not only for fast-growing start-ups, where it is often crucial to "hook" people who have a unique idea or technology, or to attract new talent and keep up with steep growth, but also for large corporations that want to motivate their key employees and managers to work together for the long term and thus support continuous business growth.

ESOPs are particularly important for companies that plan to grow at around 20% per year, also for cash flow reasons. Of course, as companies grow, the pressure to raise employee wages and remuneration increases, which can have a financially fatal impact on these companies. For start-ups with limited funds, ESOPs can therefore be an attractive form of compensation that does not require an immediate financial expense. Options are often exercisable only after certain conditions are met, which can help start-ups keep their cash flow under control.

ESOP in numbers

6 257 COMPANIES in the USA have an employee stock ownership (option) plan (ESOP)

At least **2 355 COMPANIES** in the USA are 100% employee-owned companies

As part of their ESOPs, U.S. companies make annual pay-outs of nearly **USD 90 BILLION**

Source: NCEO

Attractive financial remuneration in the form of shares is also often less costly than increasing wage costs. For example, you can offer employees a share in the profit only from the sale of the company, which might compensate them for the lower remuneration you offered when they joined the company. Such an employee has an interest in the company growing, functioning, and being sold well.

Companies with well-designed and managed ESOPs are also more attractive to investors because they show the management's commitment to employees and their long-term success. Last but not least, it is certainly worth noting that, if set up correctly, certain forms of ESOPs can offer tax benefits for both employers and employees. Tax reliefs and benefits vary by jurisdiction, but may include income tax reduction, tax deferral or capital gains tax reduction. However, it depends on what form of an ESOP you choose in your company.

And how does it all work? In the Czech Republic, start-ups can offer their employees four basic and most used forms of ESOPs, which can be partially combined.

There are therefore several options, and they vary depending in particular on whether the employee acquires a share in the company or its stock or receives a financial reward equivalent to his/her virtual share in the company.

ESOP in the shadow

The most commonly used option plan in the Czech Republic is a so-called virtual or shadow ESOP. This is a plan where the participant acquires a virtual share in the company, which carries with it a number of rights. These are detailed in the ESOP. A participant in a virtual ESOP does not acquire an equity interest (shares or stock) in the company but does acquire the right to receive a financial reward, subject, of course, to predetermined conditions. Such conditions are most often time and performance related. Time related conditions are used mainly to allow for employee retention for a certain period of time. Performance related conditions may be set to different performance indicators, which may be variable for each employee, particularly due to the type of work activity and segment.

For example, an employee can receive a percentage of the profit if his/her department achieves a one-third year-on-year increase in profit, or if he/she completes an important project for the company, etc. Most often, however, it is the payment of some financial consideration to the employee at the sale of the company (a so-called exit), where a portion of the purchase price for the sale of the company is distributed to the employees who participated in the ESOP. This is always the main motivator for all employees having such a right.

In any case, participants in virtual ESOPs do not become actual shareholders in the company, which simplifies the ownership and management structure and allows the

company's founders or owners to maintain tighter control over decision-making in the company.

These virtual ESOPs are quite variable and can be prepared individually, i.e., tailored to key people in the company, which is usually an option for start-ups in the early stages. However, in the case of start-ups that are already in a later stage of their life (e.g., Series B) and have more employees, then rather general plans work better, which are also simpler administratively and easier to implement. However, companies can combine both general and individual virtual ESOPs together as needed.

Last but not least, the tax aspect should always be kept in mind. The payment of financial consideration to employees under a virtual ESOP is a standard wage bonus from a tax perspective and such financial consideration is therefore subject to the same taxation as the employee's other ordinary income.

This means that you have to pay not only income tax, but also social security and health insurance contributions for the employee (a difference from equity ESOPs, where the regime is partly different).

Therefore, virtual ESOPs may seem quite interesting, especially from the company's perspective. However, the perception of this model by the participants themselves may not be so optimistic. Employees do not hold a real share in the company, so the question is how much they are motivated to be loyal in the long term. Virtual shares also do not have the same capital growth or dividend potential as real equity shares.

Motivated shareholder

Another option for implementing incentive plans in the Czech Republic are so-called equity ESOPs. These are classic (equity) option plans in which, after meeting specific conditions, the participant acquires an option (i.e., the right) to purchase a share or stock in the company.

In other words, after meeting predetermined conditions, the employee acquires the right to acquire an equity interest in the company and thus becomes a member or shareholder of the company. These conditions are the same as for virtual ESOPs.

In equity ESOPs, special types of shares (stock) are created and then offered to participants. These shares often lack the right to vote at general meetings and the right to dividends. However, such members or shareholders may at least attend general meetings and have the right to information or access to documents. It is therefore important to note that if you give participants a direct share in the company, you are likely to meet them at general meetings where the company's strategic matters are addressed. Therefore, in some cases, the acquisition of a share is executed just before the actual sale of the company (i.e., before the exit) so that the employees only hold the share for a really short period of time and for the purpose of selling it.

Compared to virtual ESOPs, equity ESOPs also take a different approach to taxation – taxation can occur as early as the acquisition of the share, on the difference by which the participant acquires the share below the market price. At the exit, the difference between the sale price and the purchase price, or the "already taxed" price, is subject to taxation. However, a tax exemption is also possible if the so-called time test is met. At this point, an equity ESOP is more advantageous because the income from the sale of the share is not subject to social security and health insurance contributions.

Direct sale

A modification of the classic (equity) plan, whereby the ESOP participant acquires an equity interest in the company without having to meet additional conditions, is the direct sale of shares or stock. It is not a pure option plan, but it is also a way to motivate key people in the company, where the company offers them a share in the company, and they decide to acquire it from the company for a predetermined price or nominal value.

This type of ESOP is particularly suitable for top key employees or associates of the company (company management, etc.) or for people who bring important know-how to the company or hold essential copyrights to technologies, projects, etc. that are key to the further development of the company.

TODAY, AS TECHNOLOGY AND INNOVATION ACCELERATE CHANGES THE BUSINESS, IT IS ESSENTIAL TO HAVE TOOLS THAT ALLOW COMPANIES TO ADAPT QUICKLY WHILE KEEPING KEY TALENT MOTIVATED.

A vehicle with a purpose

The last modification of the classic option plan is a so-called employee SPV (Special Purpose Vehicle). An employee SPV is formed, i.e., a company, typically a limited liability company or joint stock company, in which a portion of the shares belong to the ESOP participants. The employee SPV therefore has two types of shares. One belongs to the ESOP participants and the other to the founders. It is therefore necessary for the founders (or some of them) to join and manage the employee SPV.

The employee SPV then has a direct share in the company (start-up) equal to the ESOP pool that is determined in the ESOP. This is the size of the shares (stock) in the company that are distributed under the ESOP to the SPV participants. The standard in the Czech and Slovak markets is that a share of 5 to 10% is distributed in this way. The ESOP pool is therefore particularly important for founders and investors. It gives them an overview of how much will be "cut" from, for example, the gain from the sale of the company, or at another event defined in the ESOP.

The advantage of an employee SPV is the complete shielding of employees from the operating company. Often this form is used by start-ups at a later stage of life, for example from 100 employees and above.

Keep up with the trend

An ESOP not only represents a new and flexible way of rewarding employees and other associates, but also symbolizes a deeper trend in human resource management and corporate culture. Today, as technology and innovation accelerate changes in the business environment, it is essential to have tools that allow companies to adapt quickly while keeping key talent motivated.

When implementing ESOPs in the company, it is always important to correctly identify the key employees and associates who should receive this form of reward. At the same time, it's important to consider what stage the start-up or company is at, as all of the above forms have their pros and cons. You must always consider these and adapt the model to your needs. The choice of the right form ultimately depends on the current state of the company itself, the area of business it is in, or its financial situation or expected exit scenario.

Various extracts and summaries of foreign legislation that emphasise the various tax (and often only alleged) advantages of ESOPs appear in the public domain.

However, a close look at the relevant legislation usually reveals that virtual ESOPs do not enjoy any tax benefits at all and equity ESOPs only in that in some countries the taxation of non-monetary income at the acquisition of securities or shares is deferred until the sale ("liquidity event"). This possibility is now also being discussed in the Czech Republic. However, e.g., due to the generous tax exemption of income from sale with respect to individuals (although it is planned to limit it to CZK 40 million per year) compared to foreign arrangements, we often conclude that the Czech tax regime for equity ESOPs is not bad at all.

At the end of the day, properly structuring an ESOP and tailoring its form to each company is always a critical milestone for a properly functioning ESOP. As a matter of fact, in the case of ESOPs, the proverb "When two do the same, it is not the same" is doubly true, because ultimately an ESOP can be the key to rewarding and recognizing those who play a critical role in the success of the company.

Key contacts

ONDŘEJ FLORIÁN | PARTNER

Ondřej specialises in corporate law, covering comprehensive domestic and international transactions, including pre-transaction and post-transaction restructurings. He has a long-standing focus on the effective set-up of shareholder relations, the set-up and proper implementation of employee stock ownership plans (ESOPs), as well as corporate transformations and other aspects of corporate law.

JAROSLAV BAIER | PARTNER

Jaroslav focuses on venture capital and investment. He has extensive experience in creating incentive schemes for top management and key employees of start-ups (ESOPs), creating holding structures abroad, and advising on the foreign expansion of Czech companies.

JOSEF ŽALOUDEK | TAX PARTNER

Josef specialises in corporate tax law, international taxation, restructuring, and related aspects of civil and commercial law. He provides tax advice to major international and local companies and offers services related to the tax aspects of ESOPs.

JOSEF BOUCHAL | SENIOR ASSOCIATE

Josef is an expert in mergers and acquisitions, private equity and venture capital, and capital markets. He provides comprehensive advice to investors entering start-ups and in setting up internal legal relations between founders and investors. Josef deals with the structuring of employee stock ownership plans (ESOPs).

HOW TO STOP RAIDS OF SPECULATORS IN AGRICULTURE?

Shareholders' mutual disputes, as well as disputes between shareholders and the company, are as old as business corporations themselves, and agricultural companies are no exception. On the contrary. Agriculture has become an increasingly attractive investment area in recent years, attracting those with potentially speculative intentions. How to resist these modern-day raiders? Prevention is the key.

THE RISK LIES IN THE UNFAIR EXERCISE OF SHAREHOLDER RIGHTS BY MINORITY SHAREHOLDERS, WHICH CAN LEAD IN EXTREME CASES TO FATAL CONSEQUENCES FOR THE CORPORATION.

We know from our experience that efforts to assert the interests of minority shareholders in an otherwise legitimate manner in the domestic context are more and more often translated into investment plans of various speculative groups. The procedure is simple: to make life more difficult for other stakeholders in the company through one's minority share to the extent that it is more profitable to buy out such a minority shareholder at a premium price. This may be due to the fact that the minority shareholder managed to completely paralyse the company's activities. And sometimes it can happen that a minority shareholder ends up taking over the company.

Back to the past

The position of minority shareholders is historically more important in countries with a strong tradition of stock markets (typically the USA). The possibility of acquiring even a few shares in a capital company very easily and quickly inevitably brought with it a higher incidence of minority shareholders who claimed their own idea as a "fair" arrangement of the companies concerned.

Although the Czech Republic is not a country with a strong stock market tradition, the issue of minority shareholders is more than topical and important. A significant catalyst in this respect was the privatisation of state-owned enterprises and large agricultural cooperatives, which resulted in the formation of many companies with a fragmented shareholder structure. According to the Government Report on the State of Czech Society of 1999, in 1992–1993 agricultural cooperatives farmed two-thirds of the entire agricultural land. At that time, the property transformation of cooperatives was underway, coupled with the transformation into new business entities, and 1,321 new private cooperatives and companies were formed from 1,197 agricultural cooperatives.

Thus, since the early 1990s, a huge number of companies with a large number of shareholders with minor shareholdings, often with unlimited transferability, have emerged in the industry. Most of these shareholders probably did not want to exercise the rights attached to their shareholdings in principle. Already then, groups of so-called professional minority shareholders, or raiders, appeared, which (even today) buy such shares from the original owners in large amounts. Among the companies most exposed to the risk of share transfers with the aim of gaining undue advantage today are privatised water companies and large agricultural companies and cooperatives. The reason for the interest of potential "raiders" in agricultural companies is that this is a lucrative investment segment, which can even beat inflation with its profits in the current market.

Agriculture in demand

Continuous demand for foodstuffs and agricultural raw materials creates a stable and sustainable market for agricultural products. The price of agricultural land is also rising. According to FARMY.CZ's Land Market Report, the average market price of agricultural land in 2022 was CZK 335,000/ha, which represents a 13.5% increase compared to CZK 294,000/ha in 2021. And the price has been rising continuously for the last 18 years. Compared to 2005, the price of agricultural land has almost quadrupled.

Investments in the agricultural sector can thus work as a form of portfolio diversification and also do not carry as much risk as other areas, as agriculture is not as susceptible to market fluctuations as, for example, stocks or real estate in general. Agriculture, where modern technologies are increasingly becoming more prevalent today, can also be expected to continue to develop and is a sector that has a future, not least because of the pressure for sustainable investments. Such a highly attractive field naturally attracts people with potentially speculative intentions.

Rights in the hands of speculators

As a rule, the investor has an interest in seeing his/her investment prosper so that he/she can make a proper yield on it. But not every owner has to have only the best possible condition of the company or other shareholders at heart. It is not even decisive whether the company is a limited liability company, a joint-stock company or an (agricultural) cooperative. All these legal forms place in the hands of minority shareholders, shareholders or cooperative members (for clarity we will use the term "shareholder" hereinafter) tools that they can use even to the detriment of the corporation.

The risk lies precisely in the unfair exercise of shareholder rights by minority shareholders. In fact, many rights are not attached to the size of a shareholding (except for voting rights and the rights of the so-called qualified members and shareholders). This may include, for example, the right to information (in the case of a cooperative, depending on its statutes), the right to attend a general meeting (members' meeting), or the possibility to challenge the validity of a resolution of the general meeting (members' meeting). These rights may be a good servant, but in the hands of individuals with bad intentions, they can also be an evil master.

In our experience, minority shareholders attack the corporation itself by exercising their rights. However, they can also target other shareholders directly. They can, however, only attack shareholders who are members of the statutory body. Typical grounds for provoking a dispute may be an alleged conflict of interest or a dispute as to whether the statutory body members have performed their duties conscientiously using the due care of a prudent manager.

Minority shareholders may therefore exercise their rights in different ways, which entails various risks. For example, they may seek to recall all or at least part of the members of elected bodies and seek to deny them their remuneration. They may also challenge the statutory body members directly by addressing the alleged damage caused by them and then seeking to recover that damage. They may also claim that the contracts on the performance of the office are wrongly set up and that the statutory body members have allegedly paid themselves remuneration improperly and will be asked to return such remuneration, etc. They may thus sue the current or even already recalled management.

Another option is that they will attempt to take control of the general meeting (members' meeting of the cooperative) by various prohibitions on the exercise of voting rights by other shareholders. They may also try to initiate a number of lawsuits intentionally, often due to even formal errors of the statutory body. These may include a failure to comply with any of the formalistic requirements of the law, for example, in negotiating remuneration, convening a general meeting (members' meeting) and its management, or performing other, typically routine acts of corporate governance.

Such disputes are, of course, very costly for the corporation. The practices may even escalate to the stage of taking complete control of the corporation or paralysing it to the point of its liquidation by the court.

Put up a defence

There is no more effective defence than prevention. That is, to anticipate that such a situation may arise and to prepare the (agricultural) corporation for a possible attack by minority shareholders. The first protective tool that should be on the radar of any corporation at risk is so-called preventive legal due diligence and a compliance program.

These will comprehensively verify whether the corporation is not creating, by neglecting (albeit marginal) duties, potential opportunities for minority shareholders that they could take advantage of. At the same time, through an appropriately set compliance program, the risk of the corporation being placed in a risky situation in the future is significantly reduced. For these purposes, however, it is advisable to set up documents, either by modifying the statutes or the memorandum of association, in which the rights of minority shareholders can be limited to a certain extent (for example, limiting the right to information, etc.) or at least specifically and precisely determine the manner of their exercise.

If an agricultural cooperative or other company already suspects that it faces

a planned "shareholder raid", a very cautious approach is in order, especially when organising general meetings or cooperative members' meetings. In such a case, the corporation must be sure to prepare a perfect invitation that takes into account the current case law of the Supreme Court (especially in the part of the justification of the individual items of the general meeting or members' meeting, depending on its specific agenda), and to ensure the smooth course of the meeting of the supreme body, including the proper drafting of the minutes.

This includes the fair handling of all requests for information (or requests for clarification), which are also a powerful tool for shareholders to obtain information that they may later seek to use to their advantage. It is therefore always necessary for the corporation to examine in detail whether it has the right to withhold the requested information from minority shareholders. This is generally assessed according to the extent to which such information is related to the activities of the corporation or whether it is classified information under the law.

If such preparation is not done in the corporation, it can easily happen that a professional minority shareholder with experience from dozens of other general meetings or members' meetings can use his/her position to cause serious harm to the corporation and eventually "forcefully" take over the corporation. Moreover, in practice, we are seeing this topic starting to gain momentum in the market again in recent months and years. Therefore, we cannot but recommend fortifying the corporation in advance by setting up appropriate legal documents, and thus preparing in time for a possible attack by raiders.

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Verdi Agro Fund

Our new client is Verdi fond farem (Verdi Agro Fund), the first investment fund on the Czech market that offers qualified investors the opportunity to invest directly in agricultural farms and primary production.

It is part of HAVEL & PARTNERS' corporate philosophy to co-invest with clients and further support their projects when the opportunity arises. The firm's partners also invested in Verdi Agro Fund through a company set up to manage the private capital earned during their years in the legal profession.

In the six months since its establishment, Verdi Agro Fund has produced a net yield of 10.1%. It not only has agricultural land in its portfolio but also farms, which it continues to modernize to stimulate their further economic development. The Fund currently owns shares in two Czech farms – in the Karlovy Vary and Pelhřimov regions, which together operate on more than 2,600 hectares of land.

Key contacts

JAN KOVAL | PARTNER

Jan specialises in mergers and acquisitions, legal audits and due diligence, as well as employment law. In the field of agriculture, he provides comprehensive advisory services related to setting up relations between shareholders or members of agricultural companies or the purchase and sale of agricultural and food companies and enterprises.

JIŘÍ KUNÁŠEK | PARTNER

Jiří specialises in commercial and corporate law, focusing in particular on the resolution of corporate disputes, corporate transformations and holding structures, and also provides comprehensive advice in connection with the implementation of compliance programs in companies as a prevention against potential commercial disputes. He also specialises in financial law and capital markets.

VLADIMIR IVANOV | MANAGING ASSOCIATE

In the area of mergers and acquisitions, Vladimir advises on the sale and purchase of companies, the formation of joint ventures, and restructuring. He provides legal advice to clients in the agricultural sector and assists them in selling and purchasing agricultural companies or shareholdings in them.

KAMIL KOVAŘÍČEK | ASSOCIATE

Kamil is an expert in the field of corporate law, the legal aspects of building and managing groups and holding structures, and corporate litigation matters. He also specialises in corporate transformations, contract law and other aspects of commercial law.

TAX LAW

That there is no way your company can be involved in VAT fraud? What you may not realise is that all it actually takes is for one link in the supply chain to fail to pay VAT and then you find out that you weren't careful enough when verifying your business partners. And the problem arises. The tax office may then ask you to pay the VAT that the potential fraudster has not paid. So how can you effectively defend yourself against unwitting involvement in VAT fraud?

THE TAX OFFICE USES THE SO-CALLED 'KNOWLEDGE TEST' TO DETERMINE WHETHER YOU COULD OR SHOULD HAVE KNOWN ABOUT POSSIBLE FRAUD.

According to Europol's latest estimates, VAT fraud is the most profitable crime in the EU, causing Member States tax losses of around EUR 50 billion per year. Often, however, these can be cases that few would expect. The typical reaction of the affected company is as follows: "We are a leader in the industry in the Czech Republic, Germany, but also in the United States, where the parent company is based. The company's core values include moral integrity. We meet our obligations to customers, employees, business partners and the government duly and on time. We were all the more shocked by the tax office's suspicion that we were part of a VAT fraud chain."

This is not an unrealistic case at all. Virtually any company that does not pay sufficient attention to the setting up and following of control mechanisms in relation to suppliers and business partners can become a victim of unwitting involvement in VAT fraud. And unfortunately, we know from tax due diligence we conduct and from our dealings with tax authorities in the context of tax inspections that companies do not often address prevention.

In the case of VAT fraud, we are talking about situations where a supplier of goods or services in the supply chain fails to pay VAT to the State as required by law. If the company has not declared or paid the correct amount of VAT, the tax office will take steps to assess the VAT properly and ensure that the arrears are paid.

As part of the investigation, the tax office also investigates whether it was a fault of the taxpayer or whether it was deliberate VAT fraud. In such a case, there is a risk that the claim of other companies in the supply chain to deduct VAT will be disputed.

A lot of questions that need to be answered

Then comes the so-called knowledge test (also known as the Kittel principle), which is designed to reveal how much the company may have known about the fraud. If the tax administrator suspects that although the company is complying with its VAT obligations duly and on time, it could still have become part of a VAT fraud chain, it will usually ask the company to answer questions about its business partner, usually the supplier who has not paid the VAT.

For example: Who initiated the cooperation with the supplier; whether the company's representatives met the supplier in person; whether the supplier's history and background (location of the registered office, business premises, qualifications of employees, etc.) correspond to the agreed transaction; who agreed on the price for the taxable supply; why the price is too low or too high; how invoices for goods or services were paid; whether the company verified if the supplier is listed as an unreliable payer, etc.

KNOWLEDGE TEST IS BY NO MEANS A THEORETICAL DISCIPLINE. TAX OFFICES ARE VERY ACTIVE IN WORKING WITH THE KNOWLEDGE TEST AND WE HAVE ENCOUNTERED SEVERAL CASES WHERE TAX ADJUSTMENT ASSESSMENTS IN THE HUNDREDS OF MILLIONS OF CZK HAVE BEEN ADDRESSED.

All these questions are part of the above-mentioned knowledge test and are dealt with not only by the Czech tax administrator, but also by the Supreme Administrative Court and the Court of Justice of the EU (CJEU), which has repeatedly dealt with VAT fraud cases and whose conclusions are crucial for the assessment of similar cases.

Evidence on the table

According to the CJEU, tax authorities have the right, and even the obligation, to deny a claim to deduct VAT if it is proven that the claim was made fraudulently. Therefore, tax authorities may deny the claim to deduct tax not only if the taxpayer himself committed the VAT evasion, but also if it is proven that the taxpayer who received the taxable supply in the form of goods or services knew or should have known that by purchasing them, he was participating in the supply which was part of the VAT evasion.

It is therefore sufficient if a supplier or another entity in the supply chain commits VAT fraud and suspicion may fall on the other companies involved in the transaction. Here it should be stressed that VAT fraud may occur both upstream and downstream in the supply chain. The tax office will also deny the claim to deduct VAT in a situation where the taxpayer did not benefit from the fraud, but nevertheless assisted the perpetrators of this VAT evasion (whether knowingly or unknowingly) and became an accomplice.

However, it is up to the tax office to prove that you could have known about the fraud in the first place. In defence of taxpayers, the CJEU has repeatedly confirmed that it is not possible to sanction the taxpayer who did not know or could not have known that tax evasion had occurred. The mere fact that VAT fraud has occurred in the supply chain, or that the supply chain members knew each other, or that the supplier has been identified as an unreliable taxpayer, is not sufficient evidence. But if we were talking about a combination of similar findings, the situation would be quite different.

Trust, but verify

On the one hand, it is therefore up to tax authorities to prove, in a legally sufficient manner, the existence of objective circumstances on the basis of which it can be assumed that the taxpayer has committed VAT evasion or knew or should have known about it. On the other hand, you should prove (and be prepared to do so) that you have exercised a standard duty of care that may be required to prevent yourself from being unwittingly involved in VAT fraud. This means that you have properly and repeatedly verified your business partners to ensure their credibility.

If there are indications of tax evasion or if it is an area of business that is often at risk of tax fraud, the taxable person can be expected or required to conduct enhanced vigilance in accordance with existing case law. However, the tax administrator cannot require the taxpayer to verify its business partners as thoroughly as the tax administrator can do itself. As a taxpayer, you are not obliged to verify whether the supplier is a taxable person, has the goods available, has fulfilled his obligations to file a tax return and pay VAT, etc.

The knowledge test that is not known

From our experience over the last five years, we can confirm that most entrepreneurs are not aware of the existence of the knowledge test and therefore are not aware of related requirements for the implementation of processes and control mechanisms when concluding significant transactions. Most of them thus live in ignorance and think that the only threat in the field of VAT is the guarantee for tax in connection with the institute of the so-called unreliable taxpayer. However, the guarantee for tax and the so-called knowledge test are two completely independent institutes that exist separately in tax law, case law and current administrative practice, and each taxpayer must be able to deal with the pitfalls of both institutes.

Our experience over the past years also clearly confirms that the so-called knowledge test is by no means just a theoretical discipline. Tax offices are very active in working with the knowledge test and we have encountered several cases where tax adjustment assessments in the hundreds of millions of CZK have been addressed.

Rules to prevention

So how can you ideally reduce this risk? First and foremost, you should have proper internal control mechanisms in place to verify business partners. They include a set of information about business partners to be verified, which should be prepared at the beginning of the cooperation and then regularly updated and archived. Also, set up an action plan in advance in your company for situations where you find that some of your business partners (or the transactions) are risky.

If you identify the risk but do not take any action, the risk of being denied the claim to deduct VAT by the tax office increases significantly. Do not underestimate the archiving of relevant documents and information for future communication with the tax administrator.

Usually, the procurement department is the first that comes into contact with business partners. A prerequisite for future success is the training of the representatives of this department, and possibly other employees who come into contact with suppliers and customers. All such employees should be aware of the risks associated with potential VAT fraud and be able to identify clues that may reveal future fraud. Clearly, the finance department cannot be alone in this, as it often has limited or delayed access to some information.

You should also verify contractual documentation templates. They should contain appropriate clauses to enable you to take preventive action when you identify any risk in the supply chain. This includes, for example, the possibility of securing VAT payment to the tax administrator's account. Also check how your processes for concluding significant contracts with regard to verifying signs typical of transactions affected by tax fraud are set up.

Key contacts

DAVID KRCH | TAX PARTNER

David has many years of experience in representing foreign corporations operating in the Czech Republic. He provides a full service to clients, especially in the area of corporate income tax and VAT in both domestic and international contexts. David is a founding partner of HAVEL & PARTNERS Tax.

JOSEF ŽALOUDEK | TAX PARTNER

Josef specialises in corporate tax law, international taxation, restructuring, and related aspects of civil and commercial law. He has provided consulting services to major international and local companies operating in the fields of information technology, the automotive industry, engineering, the food industry, etc.

PETR TUŠAKOVSKÝ | TAX DIRECTOR

Petr provides long-term, ongoing tax advisory support to clients, as well as comprehensive VAT advice. He leads the team that prepares VAT returns and related reports, and also focuses on tax due diligence. Petr also represents clients in local investigations and tax audits.

THE FUTURE OF REAL ESTATE IS GREEN

HOW THE RULES OF THE GAME ARE CHANGING

REQUIREMENTS FOR ENERGY SUSTAINABILITY IN BUILDINGS, EMISSION REDUCTIONS, AND CONDITIONS FOR SUSTAINABLE INVESTMENTS ARE BECOMING STRICTER. PREPARE FOR THE NEW REALITY IN TIME.

The European Union has undertaken to reduce greenhouse gas emissions by 55% by 2030. What are the implications for the real estate and construction industry? Buildings will have to be greener and comply with new legal requirements that the EU is adopting on its journey towards carbon neutrality. Here is our overview of the requirements.

Buildings account for two-fifths of energy consumption in the EU. Hence, they have a significant share in greenhouse gas emissions associated with energy consumption – 36% in total. Logically, therefore, many of the legislative measures designed to ensure carbon neutrality in the future affect the real estate sector.

The year 2023 has seen the adoption of important legislative measures, such as regulations on energy performance of buildings and energy efficiency. The legislation also tightens taxation on the activities and assets of producers of greenhouse gas emissions, again including in the real estate and construction sectors, and the regulation is also generally aimed at redirecting private capital into sustainable assets and activities.

No emissions in five years

While EU legislation has so far only addressed the operational emissions of buildings, the new regulation will address the sustainability of real estate throughout its life cycle. The construction and operation of new buildings and the renovation of older ones will be fundamentally affected by the draft Energy Performance of Buildings Directive, which is expected to receive its final EU approval this year.

According to the current draft of the directive, all new buildings should be emission-free from 2028; public sector buildings as early as from 2026. If technically and economically feasible, new buildings should also be equipped with solar technologies from 2028, while refurbished buildings have an extra four years to meet this requirement. Existing buildings will have to gradually become more energy efficient and reach at least Class E within seven years and Class D within 10 years. For some types of buildings, such as public sector buildings, shorter time limits have been set.

There will also be tighter requirements for heating systems within buildings. Currently, natural gas has the largest share, accounting for approximately 42% of the energy consumed to heat residential areas. Oil (14%) and coal (approximately 3%) are the second and third most important fossil fuels for heating, respectively.

Member States, however, will have to ensure that new or renovated buildings are no longer heated with fossil fuels. Fossil fuels should be phased out completely by 2035 unless the European Commission allows their use until 2040. On the other hand, the EU is also counting on subsidy programmes to encourage investments in reducing the energy performance of buildings.

The directive is now being discussed by other EU institutions, so the details may still change, but the trend is very clear, namely a significant tightening of the rules that should be taken seriously by developers, construction companies and private property owners alike. We therefore advise you to start preparing for these changes as soon as possible.

Tighten your belts

The Energy Efficiency Directive, passed by the European Council at the end of July, will also have a dramatic impact on real estate. Under the directive, Member States will be obliged to ensure that final energy consumption is reduced by at least 11.7% by 2030 compared to the energy consumption forecasts for 2030 made in 2020. This will also step up the pressure to make buildings more energy efficient.

Sustainability should also bring more tax benefits in the future. Draft regulations and amendments to directives governing the Emissions Trading Scheme (the EU ETS) propose higher taxation of unsustainable assets and activities and redistribution of the money thus raised towards sustainable projects.

The EU Emissions Trading Scheme has been in place since 2005. However, it originally only covered greenhouse gas emissions from stationary industrial sources of pollution. However, it is gradually expanding to cover other activities. According to the draft directive from this May, in addition to air and sea transport, it will also cover buildings and building-related emissions.

Emission allowances will not apply directly to building owners, but to fuel suppliers. They can only supply fuel to buildings on the basis of greenhouse gas emission permits. They will thus have to buy the number of allowances corresponding to the amount of greenhouse gas emissions from these fuels. The suppliers, needless to say, will then reflect the costs in the price ultimately paid by the property owner or tenant. The method and sources of energy supply (heating or cooling) to the buildings and their energy performance have been gaining importance.

In this context, it is interesting to note that, for example, the incineration of municipal waste to supply heat to a large part of Prague and Brno, will not be covered by the emission allowance system. Buildings heated from these sources will thus have a competitive advantage at least for the term of the directive.

However, energy sources and energy performance will determine the value of real estate investment and potential returns in the future. This will be true even more so since many tenants and building owners will have to start tracking and reporting their own carbon footprint, which will include the carbon footprint of the buildings they occupy.

The (carbon) footprint
Under the CSRD, the Corporate Sustainability Reporting Directive, many companies will be required to publish a so-called sustainability report, or ESG reporting, alongside their annual financial reports. This should include information, data and risk assessments of the company in the environmental (E), social (S) and corporate governance (G) areas. To prepare these sustainability reports, companies will need to start tracking a range of data, including information relating to their own carbon footprint. And this is linked to monitoring the carbon footprint of the buildings themselves.

From 2025 at the latest, companies will be required to monitor and report such data if they meet at least two of the three criteria: total assets of over CZK 500,000,000; net annual turnover of over CZK 1,000,000,000; or more than 250 employees. In addition, after a certain period of time, these companies may start to require carbon footprint information from their suppliers, even if they themselves are not legally obliged to track their carbon footprint.

Thus, companies might be expected to have an incentive to reduce their carbon footprint and might want to cooperate with other low-carbon-footprint companies. In real estate, this will translate into companies being interested in properties that are as energy efficient as possible, not to mention that given the emission allowances imposed on fuel supplies, these assets will be more cost-efficient for owners as well as tenants. The companies will also be motivated by banks and investors who will also be keen on having environmentally sustainable investments in their portfolios.

What is and what is not sustainable?
Investments and activities in construction and real estate that comply with the EU taxonomy will be considered environmentally sustainable. The taxonomy was introduced by the EU Regulation on the establishment of a framework to facilitate sustainable investment in 2020. This Regulation contains principles and objectives for the classification of environmentally sustainable economic activities. The specific criteria for determining sustainability of an activity are then contained in the so-called technical screening criteria, which also include specific requirements for the construction and real estate sectors. These cover, e.g., the acquisition and ownership of real estate, construction or renovation of buildings and many others.

Therefore, in order to qualify as sustainable according to the taxonomy, buildings must make a significant contribution to one of the six environmental objectives – for example, mitigating climate change by reducing CO_2 emissions by meeting even more stringent energy efficiency requirements than the minimum requirements set by legislation. At the same time, they must not significantly harm the environment. According to the taxonomy, buildings should minimise their environmental impact, engage in sustainable waste management and promote recycling. Projects should also comply with strict biodiversity protection requirements and promote economical water management. Meeting these requirements can be challenging, even financially. This is why investors should ideally already consider these criteria at the project preparation stage.

They can then be rewarded for meeting these criteria with higher interest in such properties and thus higher profits. Projects that have already set out on this road will have a competitive advantage.

Green bonds
Preparing and implementing buildings to comply with the EU taxonomy also makes sense because of the possibility to obtain more favourable financing. Banks will provide more favourable bank financing for sustainable investments than for investments that will not be sustainable.

In this context, in addition to bank financing, we can also mention the possibility of financing investments in sustainable real estate through green bonds. The European Commission is drafting a regulation as its own standard for this type of bond. To be green, for example, all the proceeds of the bonds will have to go into investments that are again in line with the EU taxonomy. ■

Key contacts

JAN KOVAL | PARTNER
Jan has 18 years of experience in international mergers and acquisitions and, among other things, many years of experience in transactions and projects in the field of renewable energy and sustainable investments. He is also a corporate governance expert. In compliance, he also focuses on sustainable strategies and advice in connection with setting ESG parameters in companies according to an internationally recognised framework.

JAN TOPINKA | PARTNER
Jan specialises in banking, finance and capital markets. He focuses on financial services regulation and fintech. He also specialises in sustainable finance and green finance, including green bonds.

PETR OPLUŠTIL | PARTNER
Petr focuses on public law, particularly environmental law. He provides clients with comprehensive advice on ESG, the EU taxonomy, and sustainability law. He has long been involved in legal services in property transactions and infrastructure projects in the public sector, including PPP projects, particularly in the water management, waste management, and transport sectors.

SLOVAKIA

PREVENTIVE RESTRUCTURING OR HOW TO OVERCOME A COMPANY CRISIS

Uncertainty and rising prices in Slovakia have caused a number of entrepreneurs to see their cash flow decrease, leading to a risk that they will not be able to pay their debts on time in the coming months. But legislation offers the possibility of overcoming a financial crisis in the company in the form of preventive restructuring. When is it time to act and when is it too late?

THE AIM OF PREVENTIVE RESTRUCTURING IS TO PRESERVE THE COMPANY'S BUSINESS MORE ECONOMICALLY AND TIME-EFFICIENTLY THAN BANKRUPTCY OR RESTRUCTURING (WHICH IS THE SLOVAK EQUIVALENT OF REORGANISATION IN CZECH LAW).

From the times of uncertainty during the COVID-19 pandemic, through the financial crisis due to the sudden rise in prices, high inflation and the ongoing war in Ukraine, many in Slovakia expected and still expect companies to go bankrupt, declare bankruptcy, or seek restructuring permission.

New legislation providing for the possibility of preventive restructuring was adopted by the National Council of the Slovak Republic in May 2022. The new form of preventive restructuring should be more cost-effective, less formalistic and faster than the classic restructuring we know from the Bankruptcy and Restructuring Act.

The main difference with restructuring in the Bankruptcy Act is that preventive restructuring may only be used in the time of impending insolvency, and protection from creditors is not automatic. Last but not least, preventive restructuring does not contain minimum limits for the satisfaction of unsecured creditors. Satisfaction may be below 50% of the nominal value of a claim, a threshold that significantly limits the applicability of judicial restructuring in Slovak law.

The preventive restructuring process itself is very similar to the restructuring process under the Bankruptcy Act. The debtor must draw up a draft plan or, where appropriate, instruct the trustee to draw up such a plan. Subsequently, the court appoints a special trustee, who, among other things, supervises the debtor, once the preventive restructuring has been permitted. At the same time, at the request of the debtor, the court grants temporary protection from creditors and sets up a creditors' committee. The restructuring plan, known as a public plan, is reviewed by the trustee, then approved by the creditors at a creditors' meeting, and finally confirmed by the court.

As regards the publicity of public preventive restructuring, it is the same as under the Bankruptcy Act. Details of the debtor are published in the Commercial Bulletin, together with information on the permission and termination of the debtor's public preventive restructuring, the granting of temporary protection, and a list of the debtor's creditors. In contrast, in a non-public preventive restructuring, which may only be carried out between the debtor and banks, nothing is made public.

PREVENTIVE RESTRUCTURING WILL CLEANSE THE COMPANY OF SOME OF ITS OLD DEBTS, AND HELP ENTREPRENEURS, FOR EXAMPLE, START NEW PROJECTS THAT WILL ENSURE THE OPERATION OF THE BUSINESS FOR YEARS TO COME.

So when is the right time to act?
Statutory body members should already be vigilant at the time of impending insolvency. Failure to use preventive procedures and to act in the state of impending insolvency may result in the only solution to the company's financial crisis being the filing of a bankruptcy petition, and the closure of the business, which will, among other things, increase the risk of liability of statutory bodies.

In Slovakia, a company's insolvency is impending in particular if its inability to pay is impending, i.e., if, taking into account all the circumstances, it can reasonably be presumed that it will become unable to pay within 12 calendar months. Impending insolvency is also defined as a low ratio of internal and external resources, or in other words, the company's high loan exposure.

If this situation arises, statutory body members are obliged to take appropriate and proportionate measures to prevent the company's insolvency. One option is to take appropriate measures to increase the liquidity of the assets (for example, by selling the company's assets) or to increase the share capital or equity in order to increase the equity funding ratio (including, for example, capitalising the company's receivables). In addition to the standard measures related to increasing the cash flow in the company, Slovak law allows the use of preventive restructuring, whether public with all creditors or non-public with banks.

Ability to pay and inability to pay
A statutory body member is obliged to file a bankruptcy petition within 30 days of becoming aware that the company is insolvent. Thus, if it is unable to pay, it is unable to pay at least two monetary obligations within 90 days past due to more than one creditor. Or it is over-indebted if the value of its liabilities (both due and undue but excluding subordinated liabilities and liabilities to related parties) exceeds the value of its assets.

Previously, the obligation to file a bankruptcy petition only applied in the event of over-indebtedness, but with the new regulation of preventive restructuring in Slovakia, this obligation also applies to inability to pay – thus extending the liability and increasing the risks for statutory body members of Slovak companies.

Under the Bankruptcy Act, it still applies that "a legal entity is able to pay if, having regard to all the circumstances, it is reasonable to assume that the management of the assets or the operation of the business can be continued and the difference between the amount of its outstanding monetary obligations and its monetary assets (the so-called 'coverage gap') is less than 1/10 of the outstanding monetary obligations". If the coverage gap is more than one tenth (10%) of the outstanding monetary obligations, the company may not yet be insolvent, but if a creditor files a bankruptcy petition with respect to the company, the court will declare bankruptcy.

Another novelty is the regulation on inability to pay, which refers to enforcement proceedings. "If a monetary receivable cannot be recovered from the debtor by enforcement, the debtor shall be presumed to be unable to pay." In view of this, the responsibility of statutory bodies to act in a timely manner and either take appropriate measures to prevent insolvency or, if it is too late, to file a petition for bankruptcy or restructuring in a timely manner is increased.

However, it is still the case that a creditor may only file a bankruptcy petition due to the debtor's inability to pay. At the same time, however, if the court, when examining the debtor's assets before declaring bankruptcy, finds that the presumption of ability to pay cannot be rebutted by the debtor, it shall declare bankruptcy over the assets of such a company, regardless of whether the company is insolvent or not.

A company in crisis
In addition to the above regulation of bankruptcy law concerning insolvency and impending insolvency, since 2016 there has been the specific regulation of a so-called 'company in crisis' in Slovakia, enshrined in the Commercial Code. This regulation prohibits the possibility of repaying certain liabilities of the company to certain related parties (the so-called 'performance replacing own resources') in a situation where the company is in a so-called crisis – i.e., in particular when the company is threatened with insolvency or when the ratio of its equity to all liabilities is less than 8%.

Managers' liability
In general, of course, statutory body members are not liable for the company's debts. However, there are exceptions where a statutory body member may be personally liable, to a certain extent, for the debts of the company to its creditors.

As regards bankruptcy, statutory body members are obliged to file a bankruptcy petition in a timely manner. In case of failure to file the petition in a timely manner, they may be liable to pay a fine of EUR 12,500 to the bankruptcy estate, they are liable for damage to creditors up to the amount of a creditor's claim, and they may also be entered in the register of disqualifications and prohibited to perform the office of a statutory body member for up to three years.

In addition, in the context of a "company in crisis", the Commercial Code regulates the obligations of a statutory body member, the breach of which will give rise to the personal liability of such a statutory body member. If a statutory body member breaches the prohibition to return the performance by replacing own resources, he or she shall be jointly and severally liable to the company itself and to its creditors for the return of said performance. Even the next member of the statutory body shall be liable together with them for such return if they do not duly recover the return of said performance for the benefit of the company.

Last but not least comes the criminal liability of statutory body members for intentional or fraudulent insolvency of the company. Although not widely used in practice, if the management by a statutory body member exceeds the limits of criminal liability, creditors may file a criminal complaint outside the aforementioned claim for damages and let the law enforcement authorities impose the alleged criminal liability on the statutory body member.

Statutory body members are therefore obliged, in addition to their duties in the ordinary course of the company's business, to monitor the state of liquidity of the company's assets and, in the event of an impending insolvency or crisis, to take such measures as may be necessary to prevent the company's insolvency. One solution is to go down the path of preventive restructuring, which will cleanse the company of some of its old debts, and help entrepreneurs, for example, start new projects that, although requiring higher initial funding, will ensure the operation of the business for years to come.

If the measures taken are ineffective and the company nevertheless ends up insolvent, statutory body members are obliged to file a bankruptcy or restructuring petition in a timely manner in order to avoid personal liability to both the company and its creditors. ■

Key contacts

ONDŘEJ MAJER | PARTNER
Ondřej specialises in corporate law, litigation, and bankruptcy law. He has extensive experience in providing comprehensive legal services in the field of corporate restructuring and bankruptcy proceedings. Ondřej has represented clients in a number of comprehensive litigation matters, including cross-border disputes and insolvencies.

LENKA OSTRÓ | ASSOCIATE
Lenka specialises in restructuring and insolvency, and as a bankruptcy trustee she also provides legal advice on bankruptcy law and litigation. She has significant experience in providing legal services both on the creditor and debtor side.

THE UNEXPECTED OBSTACLES ON THE ROAD TO A SUCCESSFUL ACQUISITION

COMPANIES FAILING TO COMPLY WITH THE REGULATORY REQUIREMENTS FACE FINANCIAL PENALTIES AND A BAN OF THEIR ACQUISITIONS.

The clear regulatory environment for corporate acquisitions in the Czech Republic and Slovakia is a thing of the past. Regulators' ability to check transactions expanded in the areas of competition, foreign investments, and foreign state aid.

Until 2021, the regime for review of corporate transactions, including acquisitions in the EU, prided itself on being predictable. The obligation to notify mergers applied to companies that met easily verifiable criteria based on their annual turnover. However, in February 2021, the European Commission took an unprecedented step in the Illumina/GRAIL case, investigating the transaction based only on requests from the EU Member States' competition authorities under the Dutch Clause.

The Illumina/GRAIL case was specific in that the acquired company GRAIL, a US biotech start-up for blood-based early cancer detection, did not have a developed product at the time of the transaction, achieving no turnover in the EU. Thus, it did not meet the notification criteria of either the Member States or the Commission. Nevertheless, the Commission asked Member States' authorities to request an investigation of the transaction – several of the authorities complied. In the investigation that followed, the Commission not only banned the transaction, but fined Illumina EUR 432 million for violating the prohibition of implementing the transaction without the Commission's approval.

This was, in a nutshell, a case showing that the Commission can investigate any transaction, regardless of whether it meets the notification criteria or not. What is more, if the Commission decides to investigate and the transaction goes ahead without its approval, the parties will face fines worth millions of euros. As a result, the parties involved should assess the potential effects of their transaction even if the transaction does not meet the notification criteria.

Foreign investments under tight scrutiny

There have also been changes in the control and screening of foreign investments. Under the new system in the Czech Republic and Slovakia, non-EU investors must notify the affected ministries (the Ministry of Industry and Trade in Czech Republic and the Ministry of Economy in Slovakia) of acquisitions of companies operating in the areas of national security or public order. Foreign investors include not only entities based outside the EU but also EU entities controlled by entities based outside the EU.

In some areas, such as critical infrastructure, critical information systems, or broadly defined production and development of products with potential military applications, foreign investors are subject to a notification obligation if they acquire 10% of the voting rights (which is a much lower threshold than the one typically required by competition authorities in case of notifications).

Foreign investors must, therefore, carefully consider whether they have to notify the competent authorities of their intended transaction in the Czech Republic and Slovakia. If they fall within the fields listed above, they should brace themselves for a months-long, information-intensive notification process, and for having to wait for the Ministry's approval to implement the transaction – or face heavy fines. Foreign investors can notify the authorities of a transaction even if they are not subject to the notification obligation. If they fail to do so, they will not be fined, but run the risk that the Ministry opens an ex officio procedure, with the possibility of banning the transaction retroactively.

In addition, the Commission's Foreign Subsidies Regulation came into force this year, having a major impact on the implementation of transactions. The regulation primarily concerns public subsidies in corporate transactions and public procurement. The regulation provides for mandatory notification of the transaction to the Commission where: one of the undertakings involved in the transaction or the joint venture being established is active in the EU and the aggregate turnover of all of the undertakings involved exceeds EUR 500 million; and the undertakings involved in the transaction have received financial contributions of more than EUR 50 million from a third country or an undertaking controlled by the third country in the previous three years. This also enables the Commission to assess subsidies granted to companies by non-Member States, such as the US, the UK, Switzerland, or China.

A transaction meeting these criteria is subject to notification to the Commission under a procedure which is very similar to merger control under competition law. This is thus another thing to keep in mind when contemplating a merger.

Our team has long specialised in competition advice on transactions and state aid analyses (EU and non-EU). Over the short time that the Czech and Slovak foreign investment screening legislation has been in force, we have already gained experience in a number of notifications. With our extensive expertise, we can assist you as a one-stop shop with all aspects of the acquisition-related regulation.

Key contacts

ROBERT NERUDA | PARTNER

Robert leads a team of competition lawyers and economists focused on competition law. Prior to joining our firm, he served as Deputy Chairman of the Czech Office for the Protection of Competition. Robert is considered by Who is Who Legal as one of the top 100 competition lawyers in the world (Global Elite Thought Leader). In 2017, he was named Innovative Lawyer of the Year.

LENKA GACHOVÁ ŠTIKOVÁ | PARTNER

Lenka co-leads the Slovak competition team. She specialises in competition law, state aid and significant market power. She provides comprehensive advice on cartels, abuse of dominance, M&A assessment under competition law, and state aid. Lenka also specialises in competition compliance and internal investigations – both preventive audits and audits related to investigations by competition authorities.

I don’t lose my balance in law or in my free time

Is it possible to maintain a balance between workload and free time when working at the top of the legal profession? These are questions we hear more and more often in job interviews, and we see how important this topic is, especially for the generation that is starting their professional careers. What is it like here at HAVEL & PARTNERS? The questions were answered by junior colleagues Anna Sergejko and Vojtěch Zavadil.

You will surely see Anička, a legal assistant in our commercial team, in the firm’s hallways wearing a big smile. She specialises in pharmaceutical law, food regulation and also commercial law, including IP. Outside, she slips out of her pumps and you’ll most probably see her wearing running shoes or carrying a yoga mat over her shoulder. “I know that balance is not just a concept in yoga or running. At HAVEL & PARTNERS, I balance the space for know-how and free time,” said Anna Sergejko.

What does your day at work look like?
Sometimes I sit for a long time writing contracts and other texts, but other times I have meetings half a day. The work is not monotonous and the changes in my activities energise me. I got straight into client work while I was still a student. I can learn a lot from very skilled people. I could also work on more interesting projects earlier. These are mainly interesting technical matters, be it various regulatory assessments or contractual agenda. I assist senior colleagues, and by doing so, I also learn from them.

How can you combine work and school?
There is a lot of work, but at the same time it can be managed in a certain way. We are very flexible – both me, my colleagues and my superiors. If I need to take time off for exams or home office, it’s never a problem and my colleagues and I can always make arrangements. On the other hand, I’m also available when something urgent comes up or a project requires a little more work.

How do you find balance between work and your free time? Do you have enough space to do what you enjoy doing?
I believe that one has to organise the time to be able to do both. In our office, one can balance work and free time. I’ve been running for about ten years now, and it clears my head. Yoga helps me with that. I think sport is very good for this because one can separate their work day from a day off. Sport activity generally energises me and balances the sometimes more demanding work, which mainly occupies my head.

Does your work help you in any way with your running, and, vice versa, do you use your skills from your running practice at work?
I’ve learned a lot about endurance both while working and running, so this setup helps me in both activities. When things don’t go well, I know how to work on my skills thanks to endurance, and improvement comes almost as a matter of fact. I know from running that sometimes it pays off to overcome an imaginary barrier in your head when you are at work and raise the bar for yourself.

What do litigation and IP law have to do with fencing and history? Vojtěch Zavadil, who combines these hobbies as a junior associate, gives his answers to the question in an interview. “At HAVEL & PARTNERS, I can overcome challenges at work and in my free time,” he said. Vojta is a member of the pro technology team, Vojta specializes in IP and IT law, media law, cybersecurity and legal issues related to artificial intelligence. And he also stays alert after work during his historical fencing practice.

Vojtěch, what do you do at HAVEL & PARTNERS?
I started at HAVEL & PARTNERS as a legal assistant and from the very beginning I have been in the team that does IP, modern technologies, media and e-commerce. I am also interested in AI and the related legal aspects. But I also have a great affinity for history, so I like to look for areas in law that overlap with it. For example, trademarks.

So you enjoy history at work and in your free time…
In my free time, I relax by reading books but also actively – by doing historical fencing. Most people think fencing is done in historical costumes and armour, but the HEMA I do is more of an attempt to understand how fencing really worked. We have modern equipment. My weapon is not a foil or a sabre, but a langschwert (one-and-a-half-handed sword), which must be matched by equipment to protect a man mainly from fractures. But as the medieval adage goes: “If you are fearful, you should not learn to fence.”

What is the historical connection of fencing with law?
Fencing was a very specific form of alternative dispute resolution. The court duel had precise rules and was usually decided by the ruler. Contrary to the idea of many filmmakers, however, don’t expect a 30-minute bloodbath; the fight was usually ended on the first appearance of blood. I see a parallel with law in fencing in that you need trust, predictability, and fast and accurate communication with your sparring partner during training. The same is necessary when dealing with clients.

What helps you keep your balance?
There’s a lot of work, but at least in a good team it goes well and you can often laugh. You have to accept that you don’t have as much time for yourself and as much free time as you would like. How you set your boundaries also has a big impact on your workload. Over time, as I get older :-), I learn to work with it, to divide tasks better within my team and to find time after work for the things I enjoy. It’s not easy, but it’s feasible.

New dedicated patent services team at H&P Patents

We have expanded our IP practice with the addition of the H&P Patents team specialised in providing comprehensive services to clients in finding the optimum industrial property strategy involving obtaining patent, utility model or industrial design protection in the Czech Republic, Slovakia and abroad.

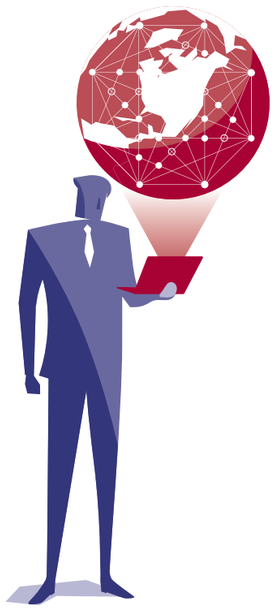
“We have established a dedicated group specialising in patents and related matters, which is composed of experts with extensive experience in patent law. Together with our colleagues from the litigation group, who have been successfully dealing with patent disputes for a long time, we have built the largest and most comprehensive IP team in the Central European market,” said Ivan Rámeš, partner at HAVEL & PARTNERS.

The team consists of more than 15 experienced patent attorneys, IP specialists and attorneys with many years of experience that represent clients before patent offices and courts in complex patent disputes. H&P Patents has been strengthened to include Tomáš Pavlica and Ivana Beranová, patent attorneys with more than 25 years of experience.

Ivan Rámeš
Partner

Tomáš Pavlica
Patent Attorney

Ivana Beranová
Patent Attorney



HAVEL & PARTNERS in the international ranking of top law firms contributing to green transformation

We are the only law firm in the Czech Republic and Slovakia to be listed in the prestigious The Legal 500 EMEA Green Guide. It publishes a list of the best law firms focusing on sustainability services and promoting green transformation principles in the EMEA region.

“ESG and sustainability consulting is a rapidly growing segment of our services and is an important part of our business strategy. We help clients put key sustainability principles into practice and advise them on new green opportunities. The transition to sustainable business models has quickly evolved from a level of enthusiasm to an obligation that companies must fulfil. This is not only due to tightening regulations, but also to the business and economic implications that already make the transition to sustainable operation a significant competitive advantage in business,” said Jan Koval, a partner.

PRO BONO

Wax *and go*

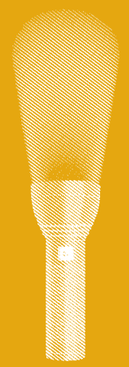
We are fans of the snow trail – HAVEL & PARTNERS is a partner of the Jizera arterial cross-country skiing trail. As part of our pro bono services, we help with the ideal setup of legal relations for Jizerská o.p.s., which enthusiastically takes care of the maintenance of almost 200 km of cross-country skiing trails from Bedřichov and Jizerka through Oldřichov v Hájích, Nové Město pod Smrkem, Desná, Horní Polubný to Martinské údolí in Kořenov. Classic or skate, beautiful scenery and the ideal base and smooth track... When you add luxurious weather, there's no reason to hesitate. The Jizera Mountains are the number 1 choice.

Almost 200 kilograms *of aid*

For seven years now, we have been bringing the idea of sustainable fashion into our wardrobes and organising charity collections of clothes and other items in our offices, which we then send on to be reused for a good cause. So far, it has been 162 kilograms of clothes in total. We cooperate with MOMENT ČR, a beneficial company operating charitable second-hand stores. MOMENT brings used items back to life, sells them and the proceeds go to where they are needed – for example for the mobile hospice Mobilní Hospic Ondrášek, o.p.s., Žebřík day-care centre for people with disabilities, the early care association Společnost pro ranou péči, Bikes for Africa, CCBC (Czech Coalition for Biodiversity Conservation) or Save the Elephants! In Slovakia, we collected another 30 kilograms of clothes, which went to EKO Charity.

Each is different *and all are beautiful*

In our Prague, Brno and Bratislava offices, there was an array of colours on International Women's Day. More than a hundred of our colleagues gathered at the flower arranging workshop to make a floral gift for themselves. Flowers and advice on how to arrange them were provided by Aranžérie, who prepared the workshop for us. This way, we supported a business that not only makes people happy with beautiful flowers, but also employs the elderly, caring mothers, and people with epilepsy.



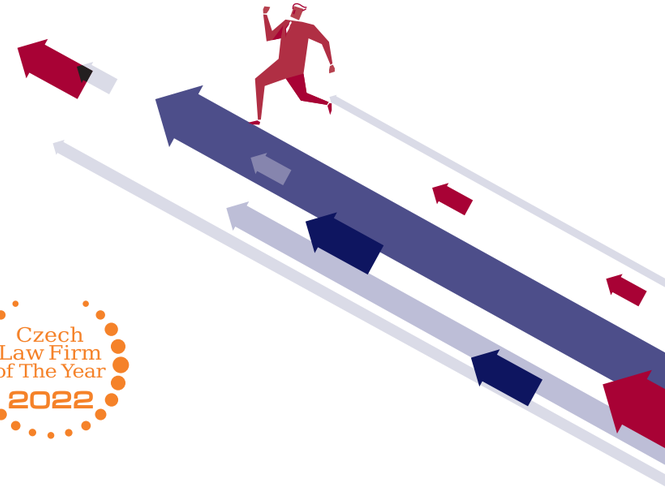
We've put a spotlight *on assistance*

Wearing a headlamp and running shoes – we had the lights on and were running for the Světluška foundation in May in Stromovka park in Prague. A total of 42 colleagues took part in the night run for the Czech Radio Foundation. They raised money for Světluška, a public fundraising event, from which money goes to direct aid and services for people with severe visual impairment.

Computers and mobile phones *for a good cause*

We have donated monitors and mobile phones to the People in Need organisation to be used for online education for children and youth or for Ukrainian refugees. More computers and laptops went to ADRA International, a non-profit organisation. The funds raised from their sale will go to support volunteer activities – for example, helping seniors, children and people with disabilities.

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.

Czech Law Firm of The Year 2022

Chambers Winner Europe 2022

WWL

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REFINITIV

The firm became the absolute winner of this competition six times in the last eight years, receiving the main award **Domestic Law Firm of the Year in the Czech Republic** (2015, 2017, 2018, 2020–2022) and ranking among the most recommended law firms in all sector categories. HAVEL & PARTNERS is also a six time winner of the **Law Firm of the Year award for Best Client Services** (2015, 2016, 2019–2022) 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 and 2023).

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** (2018–2023).

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 (2019–2022) 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 **Refinitive** (2019).

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

Czech Superbrands Business Award

Top zaměstnavatelé 1. místo Advokátní kancelář 2023

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HAVEL & PARTNERS

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

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