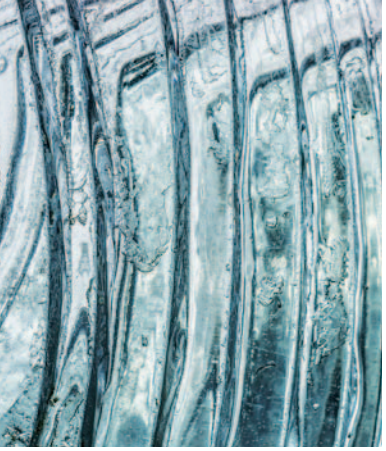

GIESE & PARTNER

CZECH REPUBLIC & SLOVAKIA

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Czech Legal News

Corporate Law Changes 2021

by Jaroslava Trojanová and Jan Valíček

Czech companies face substantial legal changes in the beginning of the year 2021. Here are the most important ones.

DEATH OF THE STATUTORY MANAGER

A joint stock company with a board of directors and a supervisory body requires establishment of two bodies in addition to the general meeting. However, Czech law provided an alternative, where a joint stock company could also opt for a so called monistic system with an administrative board *(správní rada)* and a statutory manager *(statutární ředitel)*. As of the beginning of this year, the **only obligatory body** besides the general meeting in such monistic system is the **administrative board**. This change represents a shift towards a more traditional form of monistic system.

PAYMENT MADE EASIER

A monetary contribution into the registered capital of a company needs to be paid to a **special bank account** opened by a contribution administrator. This is no longer required, if the total amount of all monetary contributions into the registered capital of a limited liability company does not exceed **CZK 20,000**. This change should make establishment of new low-capital companies with limited liability quicker and cheaper.

DECISIONS PER ROLLAM

If the Act on Business Corporations requires a decision of the general meeting to be in the form of a notarial deed, also the proposed decision per rollam has to be in form of a notarial deed. Shareholders will be provided with a copy of such notarial deed. Signatures on the shareholder's statement including the content of the proposed decision need to be verified.

PROBLEMATIC "PART OF THE ENTERPRISE"

Performance of certain legal acts by managing directors of a limited liability company is conditioned by an approval of the shareholders meeting. This applied to transfer or pledge of an enterprise or such a part of the enterprise that would imply

a significant change of the existing structure of the enterprise or the objects or activity of the company. As we have already informed you in our autumn newsletter 2019, the interpretation of the term "part of the enterprise" was disputed. Meanwhile, the Supreme Court of the Czech Republic supported the formal-material, i.e. less extensive interpretation.

Now, an approval of the general meeting or respectively the sole shareholder of the company, is needed in case of transfer or pledge of an **enterprise** or such a **part of the assets** that would imply a **significant change of the real objects or activity of the company**.

AGREEMENT ON PERFORMANCE OF THE FUNCTION

The **consequences of non-approval** of an agreement on performance of the function were changed. Now, the agreement would be ineffective, while previously, non-approval would have caused invalidity of the agreement. Further, the new regulation introduces **vis majeure** as an additional exemption to cases when even if the agreement was not concluded, the performance of the function should not be considered as free of charge. Also, a general rule dealing with contradiction between the Articles of Association of a business corporation and an agreement on performance of the function was introduced. Generally, provisions of the Articles of Association are to be used. In case the agreement on performance of the function is approved by such a majority of votes that would be required for a change of the Articles of Association, the provisions of the agreement are to be used.

RESIGNATION FROM THE FUNCTION

Previously, the office of a managing director or the member of a board terminated **1 month** after the delivery of a resignation, unless agreed differently. The legislator decided that this period is too short and does not provide sufficient protection to companies.

Now, the office shall terminate **on the day when** the appointing body **discussed or should have discussed**

his/her resignation. The respective body shall discuss the resignation without undue delay, however at the earliest meeting after the resignation was delivered. If the resigning member notifies his/her resignation at the meeting of the respective body or to the sole shareholder, the office shall terminate **2 months** after such notification, unless agreed differently.

LEGAL ENTITY AS MEMBER OF THE BOARD

If a managing director or the member of the board is a legal entity, a **physical person** shall be appointed that represents such legal entity. This person must fulfill the conditions and requirements necessary for performance of the function of a managing director or board member. Otherwise, it is not possible to register the legal entity into the Commercial Register. Should the registration not be perfected within 3 months, the **function of the legal entity terminates**.

PROFIT SHARE

The rules for distribution of profit, other resources and advance payments to shareholders have been clarified/modified. The current practice of the Supreme Court of the Czech Republic is reflected and the approved financial statements might be used as basis for the distribution of profit **until the end of the accounting period following the accounting period for which the financial statements were prepared**. That means that the approved financial statements might be used during the whole accounting period (instead of only 6 months as previously sometimes interpreted). Therefore, there is no need to distribute the profit generated in the previous accounting period during the second half of the following one in the form of advance payments. On the other hand, an **equity test** shall now also be applicable to limited liability companies and cooperatives. The legislators also clarified that the rules for the distribution of profit also apply to the disbursement of other resources in the company, unless excluded by law or the Articles of Association.

The obligation to return **advance payments** on profit to the company has been clarified. In case that the profit available for distribution does not reach at least the sum of the disbursed advance payments, the shareholders are obliged to return their advance payments within 3 months after the financial statements have been approved or should have been approved.

INSOLVENCY – MEMBERS OF THE STATUTORY BODY

Also the regulations relating to the liability of members of the statutory body of a company have been adjusted. For example, the French concept of a claim to **make up the shortfall in assets** has been introduced.

INACTIVE COMPANIES

Finally, more pressure will be put on inactive companies. Should a business corporation not present ordinary/extraordinary financial statements for publication in the Collection of Deeds for at least **2 consecutive accounting periods**, the Registry Court shall request presentation of all missing financial statements. If this is not fulfilled by the corporation within one month, a **penalty of up to CZK 100,000** might be imposed. In case it is not possible to deliver this request to the respective corporation, the Registry Court shall commence **dissolution proceedings against the corporation**.

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Secured Creditors Celebrate

by Martin Holler and Radek Werich

A December's decision of the Czech Constitutional Court (I. ÚS 760/18) came as sweet ending for banks and other creditors of the otherwise grim year. The Constitution Court pleased the lenders by annulling a decision of the Supreme Court in the case known as "Elma-Therm" (29 Cdo 4340/2011).

In its 2015 decision related to the bankruptcy of the company Elma-Therm, the Supreme Court ruled against Komerční banka (No. 3 bank in Czechia). In the court's opinion, the bank's claims, which arose as a result of payments under a bank guarantee, cannot be registered as secured claims. This was rather surprising as the bank's claims under the guarantee were secured by the debtor's assets. Moreover, the guarantee and the related security were granted long before the beginning of the insolvency proceedings against the debtor.

To put it simply, the bank guarantee was drawn by a third party only after insolvency filing against the debtor. The Supreme Court concluded that since the bank's claims against the debtor related to the drawn guarantee arose after the insolvency filing, they cannot be considered secured claims. Although the reasoning was based on a the Czech insolvency code in force at that time, its effects actually stretched also to the current regulation, which precludes the debtor from establishing security over its assets after an insolvency filing.

The decision has been widely criticized by lenders and legal professionals as too formalistic and lacking economic rationale. Security for the bank's claims related to disbursement of the guarantee was perfected in line with the hardening period. Challenging its enforceability could jeopardise the whole concept of bank guarantees on the Czech market.

The issue was so serious that even the lawmakers had to react and have passed an amendment to the Insolvency Act which partially rectified the situation. Nevertheless, a certain degree of uncertainty for creditors remained.

The Constitution Court went the extra mile to make sure that secured creditors are appropriately protected and may rely on their security in case of the debtor's insolvency when annulling the above decision. The court held that the mortgage shall be protected under the Czech constitution to the same degree as an ownership right. In the view of the Constitutional Court, the "Elma-Therm" decision of the Supreme Court negatively affected the constitutional rights of the creditor. The Constitution Court cited the Supreme Court's failure to properly distinguish between the security purpose and payment purpose of the mortgage.

The conclusions of the Constitution Court and the related reasoning may be extended to the current legal and market practice. The key arguments of the court strengthen the position of secured creditors. They may refer to the persuasiveness of the decision in case of dispute or litigation.

The emphasis of the Constitution Court on protection of legitimate interests and expectations of the creditors may be useful in other cases as well. For instance, the main arguments should also apply to other security instruments, which are subject to somehow ambiguous legal assessment when it comes to reliance on these instruments in insolvency; in particular pledge of future claims (typically insurance proceeds, rent payments, trade receivables) and enforceability of such pledge if those claims (i.e. object of security) arise after insolvency filing. In our opinion, the conclusions of the Constitution Court should apply accordingly and thus support the actual lending and collateral practice on the market.

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Splitting up the House

by Lenka Charvátová

In order for co-ownership to continue peacefully, a great deal of mutual respect of the co-owners is crucial. The individual co-owners have to be prepared to put up with the fact that their ideas and plans won't always be carried through and that they might have to live with a decision they do not agree with. Co-ownership may thus be a really complicated matter, especially with regard to an apartment house. Decisions range from those that occur on a day-to-day basis such as minor repairs through extensive refurbishments of single flats, to major decisions made with the other co-owners. These may regard the future economic development of the shared property, e.g. the transition from an apartment house to an airbnb. It may easily happen that the opinions of the individual co-owners will diverge to such an extent that the further existence of the co-ownership is unimaginable. What are the solutions and means that Czech law provides to solve such situations?

The usual way to split co-ownership of an apartment house is a swap. A rather

logical drawback of a swap is the fact that it is necessary to have something to swap the apartment house share for such as land or other real property. Another possibility is to simply purchase the realty share. Please note that the right of first refusal that applied to co-owners, has recently been abrogated.

The Civil Code also provides a direct legal regulation for the co-ownership split in terms of the assignment of property to one or more co-owners, for an adequate compensation. However, the best option stated by the law, is to split the co-ownership of the shared property. In the case of an apartment house, it means splitting the apartment house into individual units. This practice has been supported by both the Constitutional and the Supreme Court.

How does it work in real life? The court, based on an expert's statement or the mutual agreement of the co-owners, assigns the newly formed units proportionally to co-owners so that they correspond to the co-owners' apartment house shares, and makes decisions regarding a possible compensation. A counterargument to this might be the obvious fact that the former co-owners, who decided to split the shared property due to disagreements, have to continue together at least to take care of the common areas of the apartment house. The opinion of the Supreme Court regarding this matter is that neither the mere existence of disagreements nor the hypothetical possibility of complications related to the management and maintenance of the house prevent the apartment house from being split into units. Hence the reasons will always depend on the circumstances of a given case.

In conclusion, a split of an apartment house into units is probably the smoothest way to end co-ownership. The former co-owners keep their assets as well as an eventual annuity and do not need to raise money to compensate the other co-owners.

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New Real Estate Brokerage Act

by Karolína Szturc

The year 2021 has brought many legal changes effecting the real estate market in the Czech Republic. Abolition of the property acquisition tax and a major amendment to the building act are just a few examples. However, for many players on the market the all new Real Estate Brokerage Act has brought the most important changes. As a result, real estate brokerage has become a regulated profession and agents must now fully comply with brand new rules and conditions. What is the impact on real estate brokers and their clients?

Agents have to provide evidence of education and professional experience within a certain period to obtain the now necessary trade licence. Further, professional liability insurance shall be arranged. The breach of these obligations shall be deemed an offence and thus a fine may be imposed.

The interest of clients shall be protected more efficiently by the new act. First of all, the brokerage agreement must be in writing, otherwise its invalidity can be claimed. The amount of brokerage fees or the manner of their determination shall be stipulated. Moreover, the real estate agent has to notify the client of any defects, which the agent either learned of from a public register or should have known of in the light of his expertise. The client also has to be provided with an excerpt from the public register regarding the respective object. If the real estate agent fails to do so, the customer may withdraw from the agreement.

Another novelty brought by the real estate brokerage act is the prohibition of escrow offered by the real estate broker unless specifically required in writing by the client. Further requirements such as e.g. the necessity to hold the escrow on separate accounts must be met.

Finally, but surely not the last aspect in the count of changes brought by the act, is the regulation of exclusive brokerage. Such exclusive representation with the consumer may be arranged for a maximum of 6 months with the option to prolong such agreement.

Remarkably, there were several opinions on the actual date of effectiveness of the act. One was 3 March 2020, which has been proclaimed by the Ministry of Interior, the other was 1 July 2020, both depending on the interpretation of an amendment to the collection and international treaties act. This has a significant importance for real estate agents as they have to comply with the rules within certain periods. However, some of the periods have been prolonged due to COVID-19 regulations until 3 March 2021 and the act has already been amended several times. Thanks to these changes it is now clear that the earlier effective date shall apply.

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An Old New Institute in the Inheritance Law for Spouses and Unmarried Couples

by Jana Kostěncová

If you are from Germany and would like to make a Berliner Testament in the Czech Republic, you will find yourself disappointed. Unfortunately, the Czech legal system does not know such instrument. However, there is one possibility how to achieve the aim of transferring the inheritance in whole first to your spouse and after his/her death to a third person, e.g. your children. It rests in the old new institute of Czech inheritance law, the **fideicommissary substitution**. This institute is also favorable for unmarried couples.

Fideicommissary substitution has been reintroduced in the Czech inheritance law again after more than fifty years together with the new Civil Code, effective from 2014. By the fideicommissary substitution the testator orders that at the death of his first heir or upon an event or condition stipulated in the will, the first heir (the **fiduciary heir**) shall be substituted by a second heir (the **fideicommissary heir**). For example, the testator may stipulate that the fideicommissary heir or heirs will not acquire the inheritance before the age of 18 or before the death of a fiduciary (first) heir.

The institute is suitable not only to preserve certain property in the family between spouses or unmarried couples and their children. It also regulates the financial circumstances of minors or persons, who don't have the full legal capacity to decide about their property, e.g. because of a mental health disorder.

It should be noted that even though the fiduciary heir is the owner of the inheritance, his proprietary rights are limited to the right of using and enjoying the fruits or profits arising from the inheritance. Therefore, he is not entitled to alienate or encumber the property, unless he is given a consent by the fideicommissary heir in the form of a public instrument. On the other hand, the testator may order such right of free disposal of the inheritance in favor of the fiduciary heir.

Given that fideicommissary substitution is a relatively new institute, case law has not developed yet. And there are at least two questions to be determined by the judiciary. Firstly, children are according to the Civil Code forced heirs. They are entitled to inherit at least three-quarters of their statutory inheritance share as minors and at least one quarter as adults. The question is, when? If children are according to the will to inherit as fideicommissary heirs, they might wait for the inheritance for a long time. Therefore, it is not entirely clear whether they are entitled to the statutory share already at the time of transfer of the inheritance to the fiduciary heir or only after the conditions of the substitution are fulfilled.

Secondly, the right of free disposal of the fiduciary heir might cause damage to forced heirs as they, theoretically, might be left with nothing from the inheritance. And if the fiduciary heir inherits in parallel with the substitution by which he gains the right of free disposal, there is a legitimate concern a court would contest the fact that his inheritance claim is fully satisfied and in addition to that he controls a large amount of the inheritance without restrictions or limitations. Therefore, his right of free disposal of the inheritance together with the fideicommissary substitution could be challenged.

At his moment, we have to await the answers to these questions by the higher courts. However, should court decisions lead to a change in the already adopted inheritance concept, the testator has the right to revoke the testament and make a new one at any time.

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Piercing the Privacy Shield

by Radek Werich

The Privacy Shield framework was meant to allow for lawful transfer of personal data from the EU to the United States. Based on the Privacy Shield it was possible to legally transfer personal data related to data subjects in the EU to US-based businesses listed in the Privacy Shield list. Such transfers of data are much more common than expected by the general public as a lot of online services and remote software (including cloud solutions) are run on servers located in the United States.

Privacy Shield was intended to be a suitable replacement for the International Safe Harbor Privacy Principles, which had been in place for many years until being declared invalid by the Court of Justice of the European Union (CJEU) in October 2015 in the case Max Schrems vs. Facebook Ireland ("Schrems I" decision).

Having been in operation for merely four years, Privacy Shield was effectively pierced by another decision of the CJEU in July 2020: in its "Schrems II" judgment, the CJEU also declared the European Commission's decision on implementation of the Privacy Shield invalid. This was reasoned by existence of invasive US government surveillance programmes (notably PRISM and UPSTREAM operated by NSA). As a result, transfers of personal data on the basis of the Privacy Shield were considered illegal.

In addition, the CJEU set forth stricter requirements for the transfer of personal data based on standard contract clauses (SCC) which is a special agreement between the parties exchanging the personal data.

Therefore, despite having valid SCC in place, data controllers and processors transferring data based on that SCC have to ensure a level of protection equivalent to that guaranteed by the General Data Protection Regulation (GDPR). This may be achieved by putting additional measures and safeguards in place (sophisticated encryption methods etc.)

Unfortunately, the broader implications of Schrems II judgement are not yet entirely clear. Some experts argue that personal data transfer to the US should not take place at all as the surveillance programmes are designated to penetrate almost any conventional safeguards. Other legal professionals contradict this citing SCC and additional safeguards (if necessary) as sufficient and proportionate, in particular taking into account economic interests of the transatlantic trade.

However, the European Data Protection Board and many data protection authorities in the EU member states made it clear that the liability is with the entities transferring the data to the US: it is up to them to decide on a case by case basis, whether SCC are sufficient for the given purpose, or extra safeguards have to be taken.

This is a rather unfortunate attitude as the vast majority of businesses cannot properly assess to what extent US surveillance programmes can affect the personal data processed by them, thereby putting them at risk for non-compliance with GDPR and local data protection rules.

But there is a silver lining: local authorities overseeing data protection will be hardly in a position to distinguish appropriate level of protection for transferring the data as the details of the US surveillance programmes are kept top secret.

Finally, Brexit which was formally completed as of 31 December 2020 can make data transfers to the United Kingdom as well challenging. After leaks by Edward Snowden, it is no secret that the British intelligence agencies run their own online surveillance systems (codeword Tempora). Will the EU pick up the gauntlet?

Labour Law Changes

by Radek Werich

The Czech Labour Code has been amended substantially. Here are the most important novelties:

JOB SHARING

Czech lawmakers finally reacted to a trend which has gradually spread worldwide since 1980s.

The idea is to allow two or more employees with the same job description to share a job. In other words, two or more people on a part-time or reduced-time basis do, what is normally done by one person working full-time.

The goal is to promote flexibility in the workplace and to achieve a more favourable work/life balance. The concept is especially beneficial to certain groups of employees such as single parents, employees on parental leave, persons with disabilities, etc.

The job sharers rotate on the position, so that the workplace is always occupied by one of them during the assigned working hours. The job sharers my split the working hours among themselves as long as the combined hours cover the required working hours. The working schedule must ensure that each of the job sharers meets the working hours under their respective contract over a period of four weeks.

Job sharing is subject to an agreement in writing between the employer and all employees who will share the job. The agreement shall provide for details such as scheduling of the working hours, notifications, terms of representing a job sharer by the other(s) etc.

The agreement on job sharing may be terminated upon mutual agreement or by 15 days' notice by any party.

CALCULATION OF ANNUAL LEAVE

The rules for calculation of annual leave have been significantly altered. The major shift relates to a calculation of leave: the former concept based on "days" is replaced by a new method based on "hours". Though many technicalities may only be important to payroll processors and HR staff, certain aspects are rather important: First, annual leave may be reduced for unexcused absence only by the exact number of hours of such absence (previously, a reduction of up to three days of leave was permissible for unexcused absence). Second, any part of unused annual leave may be transferred to the next year based on the employee's request. This is nevertheless limited to the part exceeding the minimum statutory extent of four weeks.

EXTRA PAID LEAVE

Employees who participate as camp leaders, educators, caretakers or instructors in activities for children and youngsters are allowed up to three weeks of unpaid leave for taking part in those activities. However, one of those three weeks shall be provided by the employer as paid leave (limited by the amount of average salary) as long as the event is organised by a legal entity, which has been registered in a public register at least for five years with activities for children and youngsters as its main registered scope of activity. The employer may apply for reimbursement of the costs of the paid leave with the district welfare office so it is up to the public coffers to ultimately settle the bill.

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Anti-Money Laundering Made Easier

by Renáta Sedliačková

AML (anti-money laundering) is a crucial and dynamic area of law that always deserves particular attention as the AML regulation imposes substantial obligations on entities such as banks, tax advisors, auditors, law firms etc. Namely, they are obliged properly identify clients and to check and report suspicious transactions.

The client's first identification shall be performed with physical presence of the identified person. This may however constitute a serious problem, particularly in case of foreign clients. Travelling hundreds or thousands of kilometers only because of this may be a considerable obstacle for clients. The latest amendment to the AML Act effective as of 1 January 2021 reacts to this and introduces the possibility of client's identification by electronic means as an alternative.

Client's identification is always related to collection and processing of a broad scope of personal data. Personal data shall be strictly protected, especially if shared by electronic means. This is the reason why electronic identification is subject to strict security conditions. Only electronic identification performed under strict compliance with all legal conditions is regarded as valid.

There are two main forms of client's electronic identification. As for the first one, electronic identification may be performed only if a mean of electronic identification (e.g. electronic ID card) (i) meets specific technical specifications and a high level of assurance arising from the relevant EU regulations and (ii) is issued and used within the qualified system according to the Act on Electronic Identification. As for the second form of electronic identification, it can be performed if a mean of electronic identification meets some specific criteria for electronic identification introduced by the latest amendment to the Act on Banks.

Although the AML amendment may seem a little bit abstract and requires also knowledge of other laws, it will undoubtedly upgrade the AML regulation and will play an important role in case of distant identification. There are still some questions about electronic identification, however its practical application as of 1 January 2021 will definitely bring answers to them.

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Slovak Legal News

Important Changes in Slovak Corporate Law

by Valter Pieger

Slovak Corporate Law is a living organism – the legislator frequently amends the Commercial Code as a reaction to current issues of corporate law. The latest Commercial Code Amendment has introduced changes that may influence many businesses. The most important changes are highlighted in this article.

NEW RESTRICTIONS FOR INVESTORS AND MANAGERS

The aim of the legislator is to have registered "healthy" companies, able to fulfil their duties towards state entities. The first and very important assumption for accomplishment of such aim is to have a "clean" and responsible company founder and owner. When filing an application for registration of a shareholder or managing director, the court shall now verify whether the person is registered in the Register of enforcement proceedings. A record in such register would mean, that this person cannot establish a company or become its shareholder. This restriction only applies to limited liability companies.

END OF RESTRICTIONS FOR MANAGING DIRECTORS IN THE COMMERCIAL REGISTER

The Registration of a restriction of the managing director's right to act., e.g. to execute certain legal acts exceeding a specific value or to sign real estate purchase agreements in the Commercial Register, is no longer possible. Any such registration shall be changed until 30 September 2021. If this does not happen, the court may impose a fine on the company. At the same time, the company cannot make any further changes of the

entries in the Commercial Register. Any further proposal to change the entry in the Commercial Register will be rejected by the court, unless the same filing also proposes a corresponding abolition of the managing director's restriction to act.

COMMERCIAL REGISTER CLEANING

In the Commercial Register, there are still a lot of old or "empty" companies which have not performed any activity in several years. The legislator now removes these companies. This applies e.g. to (i) companies who entered into liquidation prior to 1 October 2016 and the liquidator did not fulfil his obligation to file the list of the company's assets with the court, (ii) companies which did not fulfil the obligation to convert the nominal value of shareholders' contribution and registered capital from Slovak Crowns to Euro even by 1 December 2020 or (iii) organisational units / branch offices of foreign or Slovak legal entities which do not confirm the data entered in the Commercial Register or do not propose a change in the data entered in the Commercial Register until 30 September 2021.

NEW RULES FOR LIQUIDATION OF COMPANIES

The process of liquidation is now more formal and in several aspects similar to bankruptcy proceedings. For example, the advance payment for liquidation in the amount of EUR 1,500 shall be deposited in a notarial deposit prior to the registration of the liquidator in the Commercial Register. The advance payment shall be used to pay the remuneration and reimbursement of the liquidator's expenses. Moreover, the position of the liquidator, especially his duties are now more precisely regulated by the Code. One of his new duties is, for example, that he shall prepare a list of registered claims of the company's creditors and publish it in the collection of documents held by the court.

CONSENT OF THE PROPERTY OWNER WITH THE REGISTRATION OF THE REGISTERED OFFICE

In the past it could happen that a building owner received the mail of companies he had never heard of. Companies easily faked a signature of a building owner and filed the building owner's "consent" with the registration of the property as the company's office with the Commercial Register. This circumvention of law is now not longer possible. The consent of the property owner with the registration of the property (or part thereof) as a registered office or a place of business in the Commercial Register now requires an officially (e.g. notary) certified signature.

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Discount for Defects

by Zuzana Tužilová

The statutory regulation of claims arising from defective piece of work appears to be clear. Should the defects represent a material breach of contract, the injured party can choose from several applicable remedies, i. e. *repair of defects, subsequent delivery / delivery of goods superseding the defective ones (as the case may be), price discount or withdrawal from the contract.*

If no material breach occurs, the injured party can choose only between repair of defects or subsequent delivery on the one hand or price discount on the other hand. Should the injured party fail to notify remedy choice arising from the material breach to the other party without undue delay, it shall be entitled to remedies only as if the breach was not material.

Irrespective of the fact that no significant misunderstanding is to be expected in this connection, the Slovak Supreme Court had to clarify the conditions of the price discount in one of its latest judgements.

The claimant ordered construction of a photovoltaic energy plant from the defendant. As a part of the plant was defective, the claimant claimed remedy of defects. The defendant accomplished the remedy, however intentionally not fully in compliance with the claimant's request. Following this, the claimant arranged for the remedy as originally intended in cooperation with a third party and requested from the defendant a price discount equal to the costs paid to the third party.

Both lower courts denied claimant's request ruling, *inter alia*, that the claim for a price discount can be made only until the remedy of defects is accomplished.

The Supreme Court considered this interpretation incorrect arguing that the injured party is entitled to request price discount if all of the following conditions are met:

(i) the piece of work is defective,
(ii) the injured party notified the defects to the party in breach in due time,
(iii) the party in breach shall be liable for the defects in question, and
(iv) the party in breach fails to remedy the defects properly.

On top of it, the Supreme Court outlined that it is inevitable to strictly distinguish between notification of defects on the one hand and the notification of remedy choice on the other hand. If the injured party fails to notify the defects to the other party in due time, the injured

party may – in certain circumstances – loose its claims arising from such defects.

In contrast, the delay in notification of remedy choice has different consequences. The delayed notification in case of material breach of contract weakens the injured party's position – the other party is entitled to arrange for remedy of such breach through repair of malfunction or subsequent delivery, unless the injured party requires a price discount. Thus, the breaching party can basically freely decide on suitable remedy in such case. However, this 'freedom of choice' of the party in breach ends, if the injured party chooses the price discount.

Considering the above stated and the fact that the breaching party in our case repeatedly refused to remedy the defects as requested, the Supreme Court ruled that ***the claimant as injured party was entitled to require the price discount from the defendant after the defects were fully remedied by a third party***.

The court based its ruling on the fact that it would be completely unjustified to allow the injured party to arrange for a factual remedy of defects only after receiving the final judgement awarding the price discount to the injured party.

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Giese & Partner News

Team News: Karolína Szturc Promoted to Senior Associate at Giese & Partner

Giese & Partner is pleased to announce that our colleague **Karolína Szturc** has been promoted to senior associate at our firm.

Karolína joined our Prague team in 2014 as junior lawyer and became associate in 2018. She specializes in corporate law, banking law and financing, real estate projects and employment law.

Further activities of Giese & Partner lawyers

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