GIESE & PARTNER

CZECH REPUBLIC & SLOVAKIA

Newsletter 1/24

General Interest

Czech Laws Officially Online

Czechia finally in the 21st century. Or is it really?

by Marie Zámečníková

After almost eight years, the Act on the Collection of Laws and International Treaties, which was passed in 2016, is coming fully into force to take us one step further – towards an official and legally binding electronic database of laws. As it happens, however, the reality has been much more complicated and the law's effectiveness has had to be postponed several times. So what does the long-awaited result look like and was it worth the wait?

The so-called eSbírka system was first planned by the Ministry of the Interior in 2007 and the project amounted to CZK 719 million in total. The necessity of this collection is evidenced by the fact that there had been no official electronic database of legal regulations in the Czech Republic – only paper versions. The only way for the public to access legislation online was through unofficial databases run by legal enthusiasts or through commercial legal systems. In the meantime, similar systems have already started to operate in Germany, Austria or almost any other country in Europe.

According to the Ministry of the Interior, the eSbírka and eLegislativa systems, collectively referred to as eSeL, are intended to ensure the availability, clarity and comprehensibility of applicable law for every citizen. They should make the creation of regulations more transparent and efficient from the beginning of the legislative process. eSel will include about 44,600 legal regulations, all valid and invalid norms since 4 April 1945 and selected regulations since 1918. Content should be gradually added over the next year.

The electronic collection was to undergo a year-long testing before launching. Initially, the system was to be tested, for example, by representatives of law schools or legal professions. However, this test phase did not eventually happen; only persons from the Union of Towns and Municipalities, regional authorities, the Police Presidium or selected departments of the Ministry of the Interior were given access to the test version. According to the Ministry, the reason was cybersecurity. However, no further postponement was possible, as the Czech Republic would have lost European funding and the cost of

the project would have risen to one billion. The fact that the database has not undergone a thorough testing phase is unfortunately noticeable in its functioning.

The first faux pas shows when typing "eSbírka" into a search engine, the search engine does not find a link to the collection among the results. The ordinary citizen is therefore likely to give up trying to find the official texts of legal documents at this point. If, after a lengthy search, one finds the way to the collection, it may be surprising that it is not under the official state domain gov.cz. Even the way of logging in to the user account raises questions. It is not possible to use the so-called Citizen's identity, which is normally used for logging into other public administration portals.

The new eSbírka also seems to be incomplete, for example, the so-called "consolidation package", one of the most important documents adopted last year, cannot be found there. Other laws from the last three months are also missing and should be added soon. Moreover, for example the very first paragraph of the Act on the Collection of Laws and International Treaties is out of date. However, the unofficial commercial legal systems already contain all the regulations in the updated version. In addition, the legally binding texts of the laws are only the PDFs of the "initial" version of the legal act as published in the Collection of Laws, without taking into account any amendments. The consolidated texts used in the system are therefore only of an informative nature. Change is likely to come with the launch of eLegislation later this year.

Unfortunately, after years of developing and an investment of three quarters of a billion, we have not received anything that the free unofficial systems cannot handle equally or better. The collection offers similar functions to commercial legal systems, but lacks, for example, the announced explanatory statements to laws or interpretative opinions.

To sum up, after several years of waiting and endless postponements, we got an unfinished and incomplete database that gives neither the citizen nor the lawyer any reason to prefer it to commercial systems. Or at least not yet.

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Czech Legal News

Changes to Prepayment of Consumer Loans

by Denisa Molnár

Following extensive public discussion, rules for calculation of prepayment fees for consumer loans shall finally change from September 2024. The adopted changes shall be less strict against the consumers than originally expected.

Currently, banks can charge merely the costs reasonably incurred due to early repayment of residential loans. The Czech National Bank interpreted this term to cover only administrative costs of the lending institutions and excluding any financial costs such as decrease of the interest income. Newly, lenders will have the right to charge costs up to 0.25 % from the prepaid amount for each year remaining till the end of the fixed interest rate period, however, maximum 1 % of the prepaid amount. Such maximum limit protects primarily the clients with five-year and longer fixed interest periods.

The amended Consumer Loan Act further specifies in more detail, what shall fall under the definition of costs reasonably incurred by a lender in connection with prepayment. Such costs shall consist of necessary administrative expenses, up to CZK 1,000, plus the difference between the agreed interest rate and a reference interest rate to be published by the Czech National Bank.

The new rules shall also apply to consumer loans agreed prior to the effectiveness of the amendment from the day of the start of the next new fixed interest rate period.

Czech lawmakers also extended the catalogue of cases, in which the banks are not entitled to request any prepayment charges. Existing exceptions include prepayment due to death or long-term disease of the borrower, prepayment within 3 months after the lender informed the borrower about the newly applicable interest rate, etc. In addition, consumers should not be obliged to pay charges connected to early repayment of residential loans after 24 months from conclusion of the loan agreement, in case the underlying real estate has been transferred or if the real estate is subject of division of joint matrimonial property.

Due to the new maximum limit of prepayment charges, it can be expected that consumer loan providers will tend to shorter periods for loans with a fixed interest rate.

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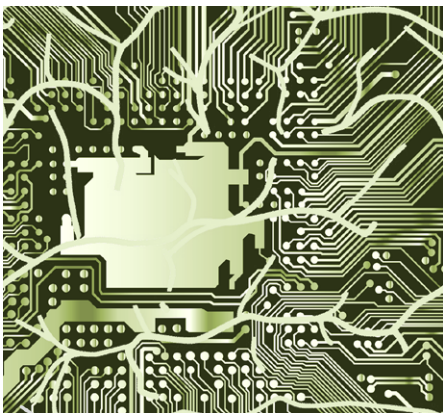
Who Owns AI-Generated Images

by Radek Werich

The end of 2023 saw the first Czech court ruling on the copyright of graphics created by artificial intelligence. The plaintiff sought to establish his authorship and copyright of an image created by artificial intelligence.

The image was created based on the plaintiff's specific instructions (commonly known as "prompts"), which were as follows: "Create a visual representation of two parties signing a business contract in a formal setting, e.g. in a meeting room or a law office in Prague. Show only the hands". At trial, both parties considered it undisputed that the work was created using AI. The court asked the plaintiff to prove how the image was created, who asked the AI to create the image and what the specific prompt was. As the plaintiff did not comply with the court's request for evidence, the court found that the plaintiff had failed to prove its claim.

The court also ruled that the AI itself could not be considered an author under Czech copyright law. The ruling stressed that authorship, as defined by Czech



copyright law, applies only to natural persons who have engaged in creative activity. The AI does not meet this definition, as it is not a living person. As a result, the court considered the nature of the graphic and concluded that it could not be considered an original and unique result of human creative activity.

The judge concluded that the plaintiff did not personally create the work as it was created by artificial intelligence. As for the actual instructions used to generate the image (prompts), the court considered them to be merely an inspiration or idea for the work, which is not copyrightable as such under the Czech Copyright Act.

The plaintiff did not appeal, so the decision came into force without being reviewed by the High Court. An affirmative decision by the appellate court would strengthen the persuasive effect of the judgment. Nevertheless, there does not seem to be much room for the courts to take a different approach.

Perhaps the courts could be persuaded to grant at least some rudimentary copyright protection to an author in the future if very elaborate and unique prompts were a prerequisite for an AI-generated image. However, it would still remain an open question whether such copyright would cover the resulting image or only the prompt as a verbal work. The latter possibility would probably not be of much economic benefit to the author. In any case, it is advisable to keep records of the prompts used for the work generated by AI. One never knows when they become useful maybe even from a legal point of view.

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Costs Reimbursement for Remote Work

by Jaroslava Novotná

A new home office regulation sets new rules for the reimbursement of costs connected with remote work.

There are basically three ways to deal with costs reimbursement: (i) the respective employee proves to the employer the costs that have arisen in relation to work from home, or (ii) if agreed in writing or stipulated under an internal regulation, a lump sum is provided to the employee per each commenced hour of work, or (iii) the employee and the employer agree in writing in advance that no costs reimbursement (or its part) shall be provided to the employee.

The (actual) amount of the lump sum was set by the Ministry of Labour and Social Affairs for the year 2024 at CZK 4.50. It needs to be noted that unless we deal with a specific category of employers specified under the Czech Labour Code, such as the state, a state fund etc., a higher lump sum may be provided to the employee.

The payment shall be made no later than in the calendar month following the month in which the employee became entitled to the lump sum. In case the costs reimbursement shall be provided also to an employee working on the basis of an agreement to complete a job or an agreement to perform work (DPP / DPČ), this needs to be agreed with the employer.

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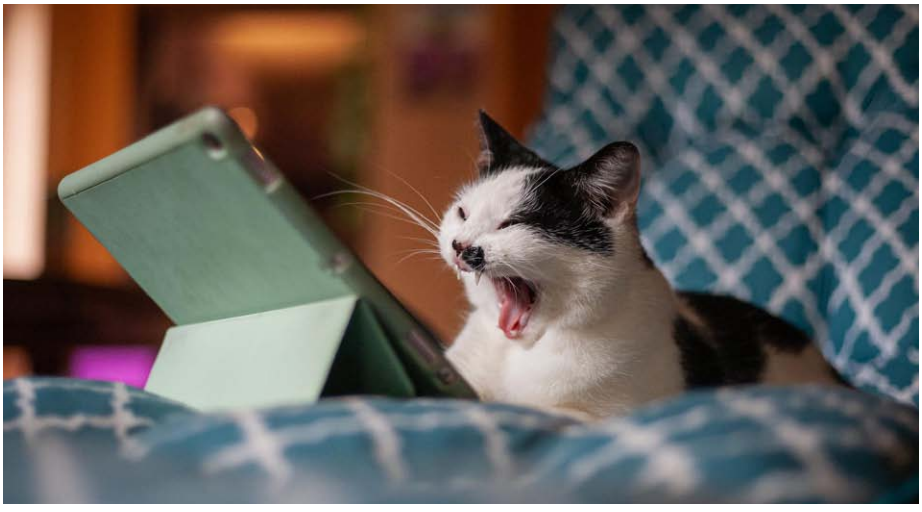
Hiring and Firing Electronically

by Dagmar Junková



The Labour Code now (as of October 2023) expressly allows electronic contracting and delivery of documents. However as employment law aims to protect the rights of employees, this principle is also reflected in electronic procedures. Employers must be careful to comply with statutory conditions when using electronic contracting and delivery. Let's take a look at the key principles that must be followed.

I. ELECTRONIC CONCLUSION OF CONTRACTS AND AGREEMENTS

The Labour Code now explicitly sets out the rules for delivery of the following documents when concluded electronically

- employment agreement
- agreement on the performance of work
- agreement on work activity

including their amendment or termination by agreement of both parties.

This clearly indicates that the aforementioned documents can also be concluded electronically, which was unclear until now. These documents can now be signed via email or a suitable HR signing system.

New rules

In order for a contract to be concluded, the parties must consent to its final wording. Consent is generally expressed by signing. **For electronic methods, a so-called simple electronic signature, such as a signature in the footer of an email, will now be sufficient.**

Additionally, it is essential to **send the final version** of the concluded contract t**o the e-mail address, which the employee has provided in writing to the employer for these purposes. Without this step, the contract is not valid.** If an employer decides to use electronic contracting, we recommend that certain internal procedures are put in place and that the relevant documentation is prepared. We also recommend that all communication is frequently backed up.

For the sake of completeness, it should be added that the employee has the right to withdraw from the electronic agreement within 7 days from its conclusion. However, the employee may only withdraw before they have started to work.

II. ELECTRONIC DELIVERY IN EMPLOYMENT LAW

Regarding the delivery of documents, which must normally be delivered in person (e.g. termination documents, etc.), fundamental changes have been made.

Delivery via data box

First of all, if the employer sends the documents via an official data box, the employee's consent is not required anymore. The data box must permit private messages.

The document is delivered when the employee has logged into the data box. If the employee does not sign into the data box within 10 days from when the document was sent to the data box, then the document is deemed delivered the day after this period.

Delivery via e-mail

For email delivery, the situation is a bit more complicated. The obligation to send an e-mail containing these documents with a certified electronic signature has been retained. In addition, the employee must consent to this method of delivery in a separate written statement that also includes an e-mail for delivery that is not controlled by the employer, i.e. a private e-mail address. The employee may withdraw this consent at any time. Before giving the above consent, the employer is obliged to inform the employee in writing of the conditions for the delivery of documents.

A document regarded as delivered when the employee confirms its delivery to the employer by e-mail (now it is no longer necessary for the employee to sign the message with a certified electronic signature) or within 15 days from the date of delivery.

Here, however, we see a certain risk in proving whether and exactly at what time the electronic message containing the document was actually delivered to the employee. The employee may argue that the message ended up in his spam folder or was not delivered at all. Employers should remain very cautious when it comes to this method of delivery.

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How to Protect Whistle-Blowers

by Jan Valíček

Finally, the Act on the Protection of Whistle-blowers has been adopted in the Czech Republic. All companies meeting certain thresholds have to provide internal reporting channels and designate persons responsible for whistle-blowing.

The new whistle-blowers' protection has led to many interpretation questions. Especially international companies ask: "May we share the internal reporting channel with our parent company?" and "May we outsource the whistle-blowing protection system including the internal reporting channel as the whole group?" Simple questions at first sight. However, the answers to these questions are unfortunately not so obvious, as there is a fine line between sharing and outsourcing.

Sharing: The basic rules for the sharing of one internal reporting channel by several companies seem to be quite simple. Each of the sharing companies must have a maximum of 249 employees. This limitation relates to each of the sharing companies separately, i.e. the number of employees in the sharing companies shall not be counted together. If only one company in a larger business group (no matter if national or international) exceeds this threshold, the respective company requires establishment of a separate reporting channel and it is not allowed to share the reporting channel with the remaining group members. Such separate solution might cause significant additional costs on the group level and it seems that the legislator (even on the EU level) did not properly consider such situations and the potential adverse effects connected therewith, in particular significant administrative costs.

Outsourcing: The new law generally approves outsourcing of the operation of internal reporting channels. No threshold with respect to the number of employees has been set. Companies are entitled to outsource the complete whistle-blower protection solution, including the person responsible for the fulfilment of the statutory duties. It is also admissible to outsource the internal reporting channel from the parent company regardless of the number of the employees in any of the participating companies. However, it is important that the outsourced reporting channel is separate from the reporting channel of the providing company. This approach of the legislator appears to be difficult to understand. While, sharing is (after exceeding a threshold of 249 employees) prohibited, outsourcing shall be possible.

Nevertheless, outsourcing of reporting channels could be the choice for larger business groups that prefer a unified solution. Key factors are sufficient separation of reporting channels, independence of the designated responsible persons and security of the channels. In case of international groups, the designated person should be able to secure proper communication on the national level as well as the proper assessment of the case with respect to the particular national legislation.

Are you not sure which solution might be the best for your company? Just let us discuss the appropriate ways for the introduction, operation and setting of internal reporting channel in your firm. Together, we will create a tailor-made solution suitable for your business model.

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Full House

Constitutional Court finally complete

by Ondřej Rathouský

Constitutional Court, the highest instance for the protection of constitutionality and fundamental human rights, is composed of 15 judges. According to the Czech constitution, these judges are appointed for a term of 10 years by the President of the Republic with the consent of the Senate, the upper chamber of Parliament. In practice, the President submits to the Senate his proposals for judges, and the Senate votes on these candidates. So the selection of candidates for judges of the Constitutional Court depends on both the person of the President of the Republic and the current composition of the Senate and the judges of the Constitutional Court reflect to some extent certain political positions of those involved in their appointment. The current President of the Republic, Petr Pavel, after taking office in March 2023, has already appointed eight new judges, including the President of the Constitutional Court. He had a significant influence on the composition of the court.

At the moment, the Constitutional Court is complete. Nevertheless, in the course of 2024, the terms of office of three more judges will expire and

need to be replaced. In 2025, two more Constitutional Court judges will have to be appointed. In order to select individual candidates, President Petr Pavel has set up an advisory team to help him nominate suitable candidates.

Not all of the candidates selected by the President are subsequently approved by the Senate, or their approval is hotly debated. The Senate, for example, agreed about a candidate who, before the 1989 revolution, was a member of the Communist Party and, as a judge of a general court, was involved in one of the cases manipulated by the state security service. This candidate, although approved by the Senate, decided to withdraw his candidacy. The Senate did not approve the appointment of a candidate who, among other things, in addition to his activities as a judge of the general court, was conducting healing activities according to Chinese methods. Senators found that this activity is a business that is incompatible with the performance of the function of a judge of the Constitutional Court.

President Pavel undoubtedly has and will have a major influence on the current composition of the Constitutional Court and it will be interesting to see what direction his decision-making will take.

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Real Estate Tax Changes

What do they mean for you?

by Karolína Szturc

If you own real estate, you will certainly be affected by the recent increase in the real estate tax rate, but there are many other changes to the Real Estate Tax Act. Will this also have impact on you and will you have to file a new tax return? Below you will find a general summary of the most important changes.

1. INCREASES

The **tax rate** increases by approximately 80 %. If you did not buy real estate in 2023, you do not have to bother with the calculation or file a new tax return. You will receive information about the new tax liability (now also by e-mail upon request) by the tax due date, i.e. by May 31, 2024.

Even with the newly introduced **inflation coefficient**, which will increase the tax by inflation, you will not have to file a new tax return. It was set at 1 for 2024 and will not affect your tax liability this year. The relevant inflation coefficient will be announced by the Ministry of Finance each year with a maximum increase by 20% year-on-year. Agricultural land has been protected from inflationary increases and its inflation coefficient will always remain at 1.

Further increases concern the **minimum tax for a co-ownership share** in real estate, from CZK 50 to CZK 90.

Another increase, this time for the benefit of the taxpayer, concerns the threshold for the **minimum payment to a single tax office**. If the tax is less than CZK 50 (previously CZK 30), the tax office will not demand payment.

2. TAX EXEMPTIONS

On the one hand, the amendment abolishes tax exemptions for certain land, taxable buildings and waste-related units; on the other hand, it introduces new tax exemptions (e.g. for real estate property used by child care service, facilities for a child group or social cooperatives and for certain land located in a national park).

Furthermore, municipalities have the authority to exempt certain types of land from tax (newly, e.g. gardens), or to reduce the local coefficient for defined groups of real estate.

You will be required to file a tax return in this group of changes if you want to claim tax exemption, which you can do as early as 2024. The deadline for filing the tax return is the end of January.

3. NEW DEFINITIONS

New definitions of the terms "land type", "land use" or "use of a building" are introduced. In addition, the floor area of a unit should now be recorded in the Real Estate Register. The tax liability will then be calculated based on this number. If it is not listed in the Real Estate Register, it will be based on the owner's declaration or the actual state.

There are many more changes; garage owners, for example, should be alert, as they may have a new obligation to file a tax return. The tax authorities have set up consultation hotlines and will extend office hours. They estimate that about 100,000 people will have to file a new tax return.

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Slovak Legal News

Business Transformation Made Easier

by Valter Pieger

The new Act on Conversions of Commercial Companies and Cooperatives shall become effective in Slovakia. The Act shall make national and cross-border mergers and divisions of companies much easier. It shall create a unified and coherent legal framework to mergers and divisions of companies and cooperatives.

Instead of a merger agreement a so-called conversion project *(„projekt premeny“)* shall govern mergers. Foundation of new companies and the dissolution of existing ones, as well as the transformation of the company's registered capital, have a significant impact on shareholders. The Act shall determine the rights and the position of the shareholders within the whole process more precisely. In case of a limited liability company (s.r.o.), a joint stock company (a.s.) or a simple company for shares (j.s.a.), the conversion project requires approval by at least two-thirds of the shareholders' votes.

The Act comes with several changes required by the application practice and introduces into the Slovak legal system spin-offs, i.e. a demerger *(„odštiepenie“)*. The consequence of this will not be the dissolution of the company being divided. This allows the company being demerged to continue to exist and, at the same time, to transfer part of its capital defined in the conversion project to another company. Either to one or more existing companies, called a demerger by merger *(„odštiepenie zlúčením“)*, or to a newly created company, called a demerger by amalgamation *(„odštiepenie splynutím“)*.

The Act also enables cross-border conversions and is intended to promote cross-border mobility of companies in the EU. For example a demerger where the successor company is a newly established company and there is a cross-border element in the form of at least one participating or successor company incorporated in another EU Member State is now possible.

Furthermore, the Act regulates when national and cross-border conversions are permissible. In general, a conversion (e.g. merger, demerger) is only possible if both companies involved have the same legal form, whereby the Act regulates certain exceptions, e.g. a merger of a limited liability company and a joint stock company shall also be possible if the registered capital is fully transferred to the joint stock company.

It is also now possible to cancel an approved conversion project, i.e. to cancel the implementation of the conversion. The shareholders may revoke the decision to approve the conversion project until the application is filed with the Commercial Register.

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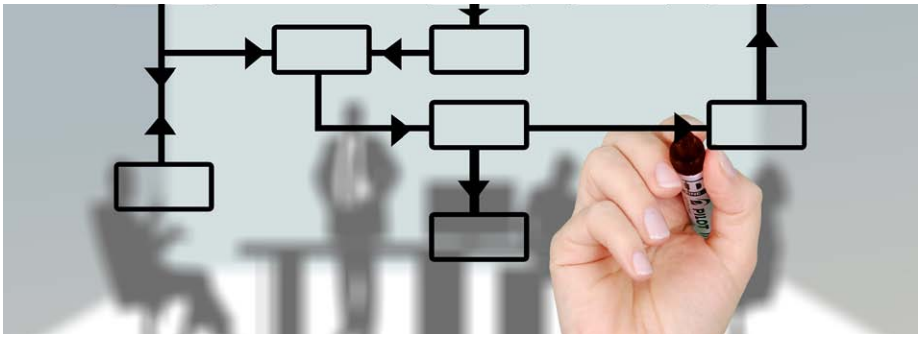

Financial Assistance is Now Legal

by Renáta Konštiaková

Financial assistance, i.e. the provision of a loan, credit or security by a joint stock company for the purpose of acquisition of its own shares was not possible in the Slovak Republic. Experience has shown however that this strict attitude to financial assistance was extremely limiting. Therefore, financial assistance is allowed in the Slovak Republic as of 1 March 2024.

Prior to the provision of financial assistance, the company shall consider its own financial situation, as the provision of financial assistance shall not jeopardize its financial stability and liquidity. Financial assistance may not result in decrease of the company's equity, under the subscribed registered capital plus reserve fund and other compulsory funds. Furthermore, financial assistance may only be provided under fair market terms. The company is required to create a specific reserve fund in the amount of the financial assistance.

The board of directors of a joint stock company plays a key role in the provision of financial assistance. It shall (i) verify the financial capability of a third party to which (or through which) financial assistance shall be provided and (ii) submit to the general meeting a report containing, inter alia, the reasons for the provision of financial assistance and the assessment of the risks associated with

this. The general meeting subsequently passes a final resolution on (non) approval of the financial assistance.

A specific scenario occurs in case of the provision of financial assistance to a member of the board of directors or a person controlling the company. In this situation, the supervisory board is involved in the process. It assesses whether the provision of financial assistance is contrary to the best interests of the company.

Financial assistance is a crucial step to the company. It is therefore inevitable to duly consider all the aspects. Provision of financial assistance shall be allowed in the articles of association, while the company may establish additional (stricter) conditions for its provision beyond those provided by law.

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Further activities of Giese & Partner lawyers

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Giese & Partner News

UIA Seminar in Prague

Dr. Ernst Giese as Member of the Organizing Committee and Martin Holler as Speaker

"Drafting Effective International Contracts: How to Tailor Liability and Ringfence Risks in International Sales and Distribution Contracts" is the official topic of a seminar organized by the UIA (International Association of Lawyers) in Prague on 18-19 April 2024.

Ernst Giese is co-organizing the seminar and will be hosting a welcome cocktail reception. Martin Holler will participate as speaker in a session together with Sébastien Goulet (Favarel & Associés, France) and Anna Montesano (President of the UIA Transport Law Commission, Italy). They will discuss the damages related to transportation, care and custody of the goods.

UIA International Association of Lawyers

Download the full seminar schedule here >>

IBA Conference in Lisbon

Martin Holler as Co-Moderator

"Real estate economics and finance: what really is driving the real estate market."

Martin Holler will co-chair this session at the International Bar Association's 14th Annual Real Estate Investments Conference in Lisbon on 10–12 April 2024. Together with Ricardo Guimarães (Confidencial Imobiliário, Lisboa) he will interview a forethinking expert speaker in the real estate market and its financing.

Download the full conference schedule here >>

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