GIESE & PARTNER

CZECH REPUBLIC & SLOVAKIA

Newsletter

We're moving!

After more than 20 years at Palác Myslbek, our Prague team will move to a fantastic new location.

As of 12th December 2022 you will find us in Prague at

Sky Gallery, Bělehradská 132.

Designed for us by Drobný Architects, our new offices reflect the core values of our firm: sustainability, creativity and diligence.

Come and visit us there! We would be happy to show you around over a cup of coffee or tea.

Please note that all other contact details for the Prague office remain unchanged.

General Interest

Bankruptcy of Czech Sberbank:

Loan Portfolio for Sale

by Radek Werich

The Czech branch of Sberbank has been in liquidation since early May 2022. Its banking license was revoked by the Czech National Bank in April after the bank collapsed in the aftermath of the Russian invasion of Ukraine.

Sberbank's liquidator filed an insolvency petition against it on 29 July 2022.

According to the information provided in the insolvency petition, the bank's total liabilities exceeded the value of its assets by more than CZK 150 million in June alone and this disparity was expected to further escalate.

On 26 August the court declared Sberbank bankrupt and decided on its bankruptcy by liquidation. Ms. Jiřina Lužová has been appointed as its insolvency administrator.

In a nutshell, Czech Sberbank had over 43 thousand clients, CZK 27 billion in mortgage loans and tens of billions of CZK in loans for approx. 3,800 companies. The total credit exposure is about 58 billion, largely secured by real estate.

Against this stand tens of thousands of the bank's creditors, mostly its clients, with aggregate claims of nearly CZK 62 billion, including a number of public creditors such as regions and municipalities.

The largest creditor by far is the Guarantee System of the Financial Market (GSFM), which paid out clients whose deposits were covered by the statutory deposit insurance and has a claim of roughly CZK 25 billion as a result.

The insolvency administrator has been pushing for a quick sale of the bank loan portfolio since the beginning, and GSFM has been supporting her in this, despite of the disagreement of some other principal creditors.

In mid-September, the administrator sent an offer to sell Sberbank's loan portfolio to 44 banks licensed by the Czech National Bank.

In early October, the insolvency administrator received binding offers to buy the assets of the bankrupt Sberbank. She has not disclosed the identity of the bidders or details of the bids.

All of the rumored bidders (mostly the largest retail banks present on the Czech market) declined to comment.

After a few days of evaluating the bids, the administrator confirmed that Česká spořitelna (part of Erste Group) has been given exclusivity to carry on with the acquisition.

The winning bid should be approved by the creditors' committee and the court in early November.

Nevertheless, some large creditors are dissatisfied with the tender process as they face a significant haircut and consider further legal actions against the administrator. Sberbank's story is thus far from over.

For additional information contact Radek Werich at: werich@giese.cz

Energy Price Capping

by Lenka Charvátová

For the first time, the price of electricity on the energy exchange exceeded the record of 1,000 euros per megawatt-hour. Consequently, the Czech government decided to regulate the price of energy by introducing energy price capping.

The difference between the capped price and the actual market price will be compensated to the suppliers by the Czech state. Consumers are thus protected from possible fluctuations on the energy exchange. The capped price of electricity is estimated to be at six crowns and the price of gas at three crowns per kWh including tax. Capping will apply to households, as well as institutions such as schools and hospitals. The price for businesses is still to be resolved.

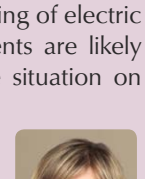
In Spain, energy price capping led to an estimated 18% reduction in electricity prices. The same effect is

expected to be reached in the Czech Republic.

On the other hand, price capping does not motivate consumers to save resources. Some are concerned about energy shortages on the market due to capping. Critics think that price capping insufficiently supports those most in need.

The cost of price capping to the state budget is expected to be covered by a planned windfall profits tax. Companies generating electricity from cheaper sources than gas would pay a special tax on their profits resulting from energy sources with production costs lower than gas-powered plants.

A law on the energy-saving tariff (zákon o úsporném tarifu) has already been passed. It represents a subsidy paid automatically to energy suppliers by the state. The suppliers consider the subsidy in their billing and reduce the gas and electricity bills for the consumers by this amount. The subsidy will not apply to weekend properties and the charging of electric cars. Further developments are likely to be influenced by the situation on the markets.



For additional information contact Lenka Charvátová at: charvatova@giese.cz

Another Tax Package for Smaller Businesses

by Jan Valíček

The Czech government has decided on the next tax package aimed at smaller enterprises. The respective government bill deals, inter alia, with the obligatory registration for VAT and the so-called lump-sum tax. The proposed changes shall lead to simplification of tax obligations and reduction of the volume of administrative obligations.

As regards the VAT registration limit, any person that exceeds the prescribed limit of the turnover becomes VAT payer and is obliged to register itself thereto. As of 1 January 2023, the limit shall be increased to CZK 2 M turnover within last 12 months instead of the current CZK 1 M. This limit shall be general and applies also to legal entities.

Further, self-employed entrepreneurs have the right to an easier way how to tax their incomes and pay health insurance and social security contributions. They may opt for the so called lump-sum tax regime in case that their income does not exceed CZK 1 M. The advantage is that the entrepreneur pays only regular monthly lump-sum payments and is not obliged to file a related tax return and insurance summaries. Due to the increase of the limit, the government expects a significant increase of registrations to the lump-sum tax regime. Based on the government bill, there shall be newly three zones connected with different amounts of the lump-sum taxes. The zones shall be structured with respect to the amount of income and type of business. The goal of this new structure is not to discriminate entrepreneurs with lower income. The new limit for the application for the lump-sum tax regime shall also be CZK 2 M.

The above government bill is still in the legislative process. Therefore, it is uncertain when it will become effective.

For additional information contact Jan Valíček at: valicek@giese.cz

Czech Legal News

Expected Changes to the Labour Code

by Dagmar Junková

Even though the Czech Republic's deadline for adopting two EU directives on labour law has expired, the Ministry of Labour and Social Affairs, it is still working on drafts of the necessary amendments to the Labour Code. But what changes can we actually expect?

One EU directive establishes workers' **rights to information on working conditions and new protections**, including the right to more predictable working hours. It sets two time limits within which workers must be informed of these rights. For the first category of information, there is a time limit of 7 days,

for the second one month from the first working day.

The other directive deals with **leave of absence for reasons of force majeure**, which is unknown in Czech labour law. Its goals is to ensure employees have the right to time off from work on grounds of force majeure for urgent family reasons in the case of illness or accident. Member States may limit the right to a certain amount of time each year, certain cases or both.

This directive also lays down minimum requirements related to flexible working arrangements for parents, i.e. the possibility to adjust working patterns, including the **use of remote working arrangements**, flexible working schedules, or r**educed working hours**.

Employees with children up to a specified age, which shall be at least eight years have the right to request flexible working arrangements. The duration may be subject to reasonable limitations. However, there is no general obligation on the employer to accommodate flexible working arrangements. Employers shall consider and respond to requests for flexible working arrangements within a reasonable period of time, taking into account the needs of both the employer and the employee. Reasons for refusal or postponement of such arrangements have to be provided. Employees shall also have the right to request to return to the original working pattern before the end of the agreed period where justified.

Dismissal of employees, on the grounds that they have applied for, or have taken, paternity, parental or carers´ leave or have exercised the right to request flexible working arrangements are to be banned. Employees may **request the employer to provide duly substantiated reasons for their dismissal and the employer shall provide reasons for the dismissal in writing**.

It is also expected that the forthcoming amendment will set rules for remote working.

All employers and their HR staff are advised to pay attention to the forthcoming amendment to the Labour Code, which will hopefully be known as in the nearest future.

For additional information contact Dagmar Junková at: junkova@giese.cz

Good News for Credit Card Holders: Stricter Rules for Dynamic Currency Conversion

by Denisa Molnár

An amendment to the Act on payment systems aims at clients' protection against unfavourable exchange rates through a significant increase in regulation of Dynamic Currency Conversion - DCC.

Consumers usually come across the DCC service when making payments with their credit card abroad. Dynamic Currency Conversion is a process within which the amount of a credit card transaction is converted into the currency in which the cardholder's bank account is held. This conversion is carried out by the operator of the payment terminal (or ATM) in case of use of the DCC service, while in case of refusal of the DCC service, the issuer of the credit card carries out such conversion.

While the DCC makes it easier to understand the price you are paying (and saves you from doing the calculation yourself) it very often comes with substantially less favourable exchange rates compared to the rates which would be used by the issuer of the credit card. This together with further fees make the transaction much more expensive. The legislation now tries to ensure greater protection for payers when using DCC. This should be achieved by imposing an obligation to inform about the consideration as well as the exchange rate to be used within the DCC. Otherwise neither the consideration nor the difference between the amount paid and the amount the payer would have paid using the reference exchange rate of the European Central Bank may be claimed.

The amendment further introduces licensing of operators of ATMs offering DCC. Previous legal regulation allowed such service without any special licence. Now operators need a licence to be granted by the Czech National Bank to this. Moreover, the Czech National Bank shall maintain a list of providers of Dynamic Currency Conversion.

The tightening of the rules for DCC services will definitely be positively perceived by the users of credit cards abroad, as they should be protected from poor exchange rates when making their payment transactions.

For additional information contact Denisa Molnár at: molnar@giese.cz

New Regulation of Beneficiary Owners

by Radek Werich

The new Czech law on the registration of beneficial owners had to be substantially amended just about a year after its adoption. This was due to pressure from the European Commission, which criticized some parts of the Czech legislation for being inconsistent with the regulation and objectives of the European Anti-money-Laundry (AML) Directive.

The Commission was particularly concerned about the definition of the beneficial owner and some exceptions to the obligation to register. The Czech side did not manage to convince the Commission of the functionality of its concept. Even after a year of negotiations it finally gave in to the Commission's opinion and amended the Czech law on the registration of beneficial owners.

The amendment abolishes the existing two-component definition of the beneficial owner based on the concepts of ultimate beneficiary and person with ultimate influence. In particular, the concept of ultimate beneficiary, which according to the Commission is not included in the definition of the AML Directive, is abolished. The existing definitions are therefore replaced by a very general definition taken from Article 3(6) of the AML Directive. The indication of the nature of the beneficial owner's position will be reduced to whether it is direct or indirect and whether it is a material or formal beneficial owner. Still, only a specific natural person can be a beneficial owner. Also, there may be more than one beneficial owner.

Under the new law, a beneficial owner is any physical person who ultimately owns or controls a legal entity or legal arrangement. Such ownership or control is based on either of the following: i) an interest in the corporation or an interest in voting rights greater than 25 %; ii) an interest in profits, other equity or liquidation proceeds greater than 25 %; iii) exercising a controlling influence in the corporation or in corporations that individually or collectively have an interest in the corporation greater than 25 %; or iv) exercising a controlling influence in the corporation by other means.

Controlling influence in a corporation is exercised under the law by a person who, in his/her own discretion can directly or indirectly bring about a decision by the supreme body of the corporation that conforms to his will.

The terminology will be automatically updated in accordance with the new legislation for the data already entered in the register of beneficial owners. However, it will not be technically possible to make new entries in the register during the automatic update.

Entities that have not yet been obliged to register the beneficial owner, or have duly fulfilled the registration duty and only need to update certain data in accordance with the new legislation (e.g. to register additional persons who are also considered beneficial owners under the new law), are exempt from the relevant court registration fee until 30 April 2023.

For additional information contact Radek Werich at: werich@giese.cz

Judicial Protection and Fair Trial

by Jana Rechcíglová

An appeal is considered to be timely if it was filed after the expiry of the 15-day period if the appellant followed the incorrect instructions of the court on the appeal. if the decision does not contain any indication of the appeal, the time-limit for appeal, or the court before which the appeal is to be lodged, or if it contains an incorrect indication that the appeal is not admissible, an appeal may be lodged within three months of service.

The Constitutional Court recently addressed on incorrect instruction. By the Regional Court in Brno, the Regional Court admitted the modification of the application for a preliminary injunction and at the same time instructed the complainant that no appeal against that point was admissible. Although the applicant appealed against

the decision of the Regional Court only for other reasons she also submitted that the Court of First Instance had allowed the modification of the original application for the preliminary injunction in breach of the Code of Civil Procedure.

The Constitutional Court found in the past that it is the task of the Court of Appeal to fully review the decision.

In the present case, the modification of the application was however decided only in the context of the decision on preliminary injunction. The Constitutional Court took the position that even in the case of preliminary injunctions it is desirable that the subject matter of the proceedings should be made clear before the decision itself is handed down, even though in this case it is a decision of a preliminary nature.

According to the Constitutional Court, an appeal was ex lege admissible thus, the petition had to fully examined, even though, the complainant did not file this due to incorrect instructions.

The Constitutional Court emphasized the case law of the European Court of Human Rights, according to which the complainant cannot be blamed for the court's failure to instruct on the appeal, if the complainant relied on it.

Further, the Constitutional Court found that by incorrectly instructing the complainant on the appeal, the Regional Court had denied her access to the Court of Appeal and violated her right to judicial protection.

Therefore, the Constitutional Court concluded that if the complainant had followed the incorrect instruction of the Regional Court on the inadmissibility of the appeal, which was not corrected even by the subsequent decision of the High Court, the remedy must first be found in the form of opening the possibility of an appeal to the High Court in relation to the review of the first point of the Regional Court's decision allowing the modification of the application for a preliminary injunction.

For additional information contact Jana Rechcíglová at: rechciglova@giese.cz

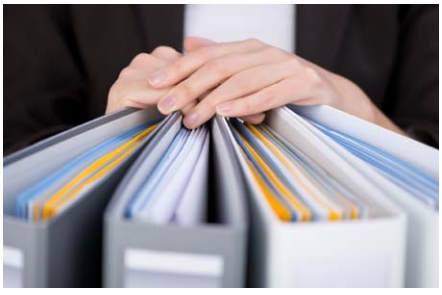
Slovak Legal News

Debtors in Default, Be Aware to File a Petition for Bankruptcy

by Veronika Kvašňovská and Valter Pieger

In general, debtors are obliged to prevent bankruptcy at all times. Unfortunately, this is not always the case. The Slovak parliament has therefore recently adopted a new legislation, which has extended the obligations of a debtor in financial default.

The previous wording of the Act on Bankruptcy and Restructuring obliged the debtor to file a petition for bankruptcy if it found that it was in a state of **over-indebtedness** ***(predlženie)***. However, according to the new legislation, a debtor is obliged to file a bankruptcy petition if it found out it was in **default** ***(úpadok)***. Default is a wider term that includes not only over-indebtedness but also **insolvency** ***(platobná neschopnosť)***. The debtor is obliged to do so within 30 days since becoming aware of or, with the exercise of due diligence, could have become aware of its default.



There is a significant difference between insolvency and over-indebtedness. Insolvency affects a wider range of debtors, because it occurs when a legal person is unable to fulfil at least two monetary obligations to more than one creditor 90 days past their due date. In other words, a legal entity is insolvent, if it has more than one unsatisfied creditor and more than one monetary obligation 90 days past its due date. On the other hand, a person in over-indebtedness is one that is required to keep accounts, has more than one creditor and the value of its liabilities exceeds the value of its assets.

The threshold for examining a debtors default and the obligation to file a petition for bankruptcy has thus been shifted to an earlier point, which puts debtors under pressure to address their unstable financial situation at an earlier stage and to resolve it before it is too late.

Be aware of the sanctions in the event of failure to file a petition for bankruptcy. This does not concern only the debtors in particular, but also everyone obliged to file a petition for bankruptcy on the company's behalf. This concerns the statutory body of the company, most often the managing director of the company. In the event of a breach of the obligation to file a petition for bankruptcy on time, a contractual penalty in the amount of EUR 12,500 has been agreed. This forces everyone acting on behalf of the company to take due care of the company's financial obligations, as the consequences will be borne directly by them. Any agreement, which excludes or restricts entitlement to contractual penalties, is prohibited.

The new legislation is in general widely welcomed as it should lead to greater financial responsibility of debtors and better recovery capacity for creditors.

For additional information contact
Veronika Kvašňovská at: kvasnovska@giese.sk
or Valter Pieger at: pieger@giese.sk

Recent activities of Giese & Partner lawyers

Read more >>

General statement regarding this publication:

The content of this Newsletter is provided for information purposes only and does not constitute or substitute legal advice provided by Giese & Partner.

Czech Republic

Giese & Partner, s.r.o.
Palác Myslbek, Ovocný trh 8, CZ - 117 19 Praha
As of 12th December 2022: Sky Gallery, Bělehradská 132, CZ-120 00 Praha
+420 221 411 511 . office@giese.cz . www.giese.cz
Identification No.: 26156920 VAT No.: CZ26156920
registered with the Commercial Register held by the Municipal Court in Prague, Section C, Insert 212170

Slovak Republic

Giese & Partner, s.r.o. - organizačná zložka
Lazaretská 8, SK - 811 08 Bratislava
+421 220 510 110 . office@giese.sk . www.giese.sk
Identification No.: 36863238 VAT Identification No.: SK4020249761
registered with the Commercial Register held by the District Court in Bratislava I, Section Po, Insert 1713/B

Graphic design by Kateřina Nováková, Giese & Partner, November 2022 / Sources of images: Giese & Partner, Fotolia, Pixabay