



General Interest

2012 Regional and Senate Elections

2012 Regional and Senate Elections

The fate of the government-proposed tax hikes for 2013 remains uncertain.

Two years after the previous election, Czech citizens went to the polls and voted in the regional and Senate elections. This election cycle usually is viewed as an opportunity for the electorate to express their approval or disapproval with the current government. Given recent public dissatisfaction with the right-middle-wing coalition government and its related scandals, the results were predictable.

Voter turnout in the 2012 regional elections was 36.89 %, a slight decrease from the 40.30 % turnout in the 2008 elections. ČSSD (Czech Social Democratic Party) became the strongest participant winning in nine regions, followed by KSCM (Communist Party of Bohemia and Moravia) with two regions in the northern part of the country. The governing party ODS (Civic Democratic Party) defended one region and the regional party SLK (Association of Mayors of the Liberec Region) defended one region as well.

The first round Senate election turnout dropped 9.69% compared to the 2010 results. Out of the twenty-seven electoral districts, ČSSD obtained thirteen, ODS four, independent candidates two, KSCM one and the remaining were divided among candidates from other

non-dominant parties.

Traditionally the regional elections react less to the former regional governments than to the national government. In these circumstances voters increasingly elect alternative or more radical parties rather than right-middle-wing (ODS) or left-middle-wing (ČSSD) parties. The Communist Party reflected this trend and gained approximately one hundred thousand votes compared with the previous elections in 2008. Even the middle class, traditionally connected with ODS, largely refused to support the party because of proposed reforms in tax, social payments, pension reforms and other austerity measures.

The results may weaken the position of Petr Nečas (Prime Minister and chairman of ODS) and his supporters in government, but it will not change the balance of power as yet. The left wing majority in the Senate can currently only slow down the legislative process, but has not yet been able to stop the reforms.

The government survived a confidence vote linked to a controversial tax package raising VAT. The cabinet used its small majority in the Chamber of Deputies to also override President

General Interest

- 2012 Regional and Senate Elections

Czech Legal News

- Supreme Court's Decision Affecting Employee Internet Use
- Recodification of Private Law will be Launched 2014
- New Amendment to the Insolvency Act
 - ▶ Penalties for Vexatious Proposals

Slovak Legal News

- A Significant Amendment of Slovak Bankruptcy Law
- Approval of the Tax Administrator Required for the Transfer of Majority Ownership Interest

Giese & Partner News

- Recent Projects and Activity



Klaus's veto on a key pension reform bill and the Senate's veto on a bill returning confiscated property to churches. In the short to medium term, the pension reform will reduce revenues for the state as individuals can opt to divert part of their social security contributions to private funds.

As of this writing, the tax package now goes to the left-dominated Senate that is expected to turn it down. In that case the first possible date for the lower house to override the veto would be December 18th. If the president, who openly disagrees with raising taxes, would

then return the package to the Chamber of Deputies, the new law may not pass until the end of January. A 17.5 % unified VAT would then come into effect in the meantime.

The law dealing with church restitution was neither signed nor returned by President Klaus and therefore will become effective. The president's signature is not necessarily required; Klaus left the document unsigned as a token of disapproval. The ČSSD chairman stated that his party will appeal to the Constitutional Court regarding this law.

Please note that this story is developing

daily and obtaining professional advice regarding tax or other fiscal changes planned for 2013 is always advised.



For additional information, contact:
Mr. Martin Holler
E-mail: holler@giese.cz

Czech Legal News

Supreme Court's Decision Affecting Employee Internet Use
Recodification of Private Law will be Launched 2014
New Amendment to the Insolvency Act

Supreme Court's Decision Affecting Employee Internet Use

On August 16, 2012, the Czech Supreme Court issued an important decision that affects an employee's right to internet privacy at work. The Supreme Court considered whether statistical checks of visited websites could be considered an "appropriate way" to control the employee's compliance with his or her duties that arise from the labor relationship or whether such checks constitute an impermissible encroachment of the employee's privacy.

The conflicting issue of protection of an employer's property verses protection of the employee's privacy is regulated in Section 316 of the Labor Code. The relevant provision stipulates that employees may not use their employer's equipment and other means necessary for work performance for their personal use without the employer's consent. An employer's equipment includes, among other items, computers and telecommunication equipment. The section further states that the employer

is entitled to control the employee's compliance in "an appropriate way."

This general rule was further developed by the Court, which ruled that the scope of employee privacy rights is naturally limited by the nature of the labor relationship where employee's rights are subordinated to the employer's instructions, including instructions on prohibition of usage of the employer's equipment for personal use. According to the Court, possible personal use of the employer's equipment is allowed but only upon the employer's consent. The Court also confirmed that even though the employer may control the employee's compliance with its internal restrictions, it may not do so freely and without limits, but only to an "appropriate extent."

The Court provided an important clarification on the scope of control. It held that only such control that encompasses checks on an employee's violation of the rules laid down by the employer is legal. It further ruled that if personal use of an employer's property

is prohibited and the employer has a right to control compliance, then the employer must also be able to exercise such control by appropriate means to obtain proof of employee's compliance.

The Court explained that it would assess "appropriateness" of control in each case individually taking into account, inter alia, the length, duration and thoroughness of control and whether the control was continuous or subsequent. Accordingly, a prohibition may include, for example, "visiting of websites with potentially dangerous or doubtful content or streaming online." The control may not be targeted at the content of e-mails, text messages or MMS sent or received by the employee, but only the employee's compliance with a particular ban set out by the employer. In the case before the Court, the employee spent more than 50% of his working hours on banned activities unrelated to work. This constituted a valid reason for immediate termination of the employment relationship by the employer.

An employer's control in the form of

statistical checks of login activities even without the employee's consent was further considered appropriate because it did not amount to concealed surveillance or involve control of the content of email correspondence.

In summary, an employer may, in general, control an employee's compliance with its restrictions but only through such means that do not go beyond the very purpose of such control and do not constitute an unnecessary encroachment of the employee's privacy.



For additional information, contact:
Mrs. Lenka Velvarská
E-mail: velvarska@giese.cz

Recodification of Private Law will be Launched 2014

On January 1, 2014 a whole set of new legal acts in the private-law sphere will come into force. Among these, three main pillars being represented by the New Civil Code, the Act on Corporations and the Act on International Private Law will set the foundation and principles of the new Czech private law. The change of private law will be truly revolutionary. The New Civil Code contains more than 3,000 provisions and directly abolishes more than 200 legal regulations which are currently contained in the Civil Code, the Commercial Code, the Family Code or the Act on Securities. In this Newsletter issue we will focus on the underlying principles of the New Civil Code. In the following

issues we will review specific changes that may have a direct impact on our readers and their business interests.

The current Civil Code dates from 1964 and has been modified numerous times. The authors of the New Civil Code wished to disconnect the law from its past originating in the socialist era. Apart from several foreign legal codes, the New Civil Code has also been inspired by the ABGB (Civil Code of Austria dated 1811) which was effective in the area currently comprising the Czech Republic until 1950.

The above principle of discontinuity and relation to the ABGB will naturally cause numerous problems in practice, beginning with revived legal institutes, archaic terminology and language from the 1920's. This, as well as the lack of handbooks and judicial decisions will lead to legal uncertainty and considerable costs including preparation of new standard documents and internal procedures.

One of the underlying principles of the New Civil Code is the autonomy of will. Currently, if an agreement is not valid for any reason, the parties cannot simply conclude an amendment to cure the lack of its validity. The New Civil Code places more emphasis on the will of the parties and on the principle that acts should be regarded as valid rather than invalid. Furthermore, formal requirements for legal acts have been moderated and it will be possible to even remedy a defective form of a contract after it has been concluded. The parties will be free to deviate from the provisions of the New Civil Code; however, their arrangement must not conflict with good morals, public order and status rights of persons.

The wider autonomy of will is nevertheless tightly connected with the principle of *vigilantibus iura*, that is, the new Code requests a higher level of care in protecting one's own rights. Vigilance is necessary as certain expressions including silence or inactivity may have legal implications.

Hand in hand with the above principles will be a stronger protection of the so-called weaker party. Typically, a weaker party will be an entrepreneur but non-professional in the given area. In



particular, it will be forbidden to exclude or limit the right of the weaker party to damages. In addition to the weaker party's protection, consumers will enjoy greater protection of their rights as well.

The New Civil Code takes steps in the direction of the current Commercial Code which gives rise to the principle of commercialization. Currently, for example, if an agreement on future agreement is concluded under the Civil Code, the parties must specify all details. If a similar agreement is concluded under the Commercial Code, there is no need to fix all details of the agreement, only the method of how to specify how the details will be determined is required. The classic example is the determination of a future purchase price. Under the New Civil Code, the purchase price would not need to be exactly specified in an agreement on future agreement, only the method of determining the price must be included.

It should also be noted that the New Civil Code will cover the entire field of contract law for both natural persons and entrepreneurs. The latter is currently included in the Commercial Code. In this respect, dual regulation of obligations in the current Civil and Commercial Codes will finally be abolished. The New Act on Corporations will only deal with business corporations.

In summary, basic legal changes are on way and the practical effects remain uncertain. The new legislation brings more detailed rules and new principles into the Czech legal order, many of them being positive. However, the discontinuity with current legislation and jurisprudence and the overwhelming volume and excessive regulation of individual cases will surely make the recodification difficult to be accepted and put into practice by both the legal professionals and the general public. The first step is to understand the underlying principles of the New Civil Code and then become familiar with the new major Codes as well as related legislation (e.g. procedural and tax laws) which has not yet been fully finalized.



For additional information, contact:
Mrs. Dagmar Kubíčková
E-mail: kubickova@giese.cz

New Amendment to the Insolvency Act

Penalties for Vexatious Proposals

A new amendment to the Czech Insolvency Act came into effect on November 1, 2012. The changes are intended to improve protection for debtors and as well as for creditors against abusive proposals made without merit and intended to harass a party. Pursuant to the amendment, the insolvency court may impose sanctions including penalties against parties who bring vexatious proposals. In addition, the amendment allows for the deletion of the data in the Insolvency Register upon debtor's request. This request may be entered three months after the effectiveness of the court decision stating the refusal or dismissal of the petition or from the suspension of the proceedings.



For additional information, contact:
Mr. Jiří Voda
E-mail: voda@giese.cz

Slovak Legal News

A Significant Amendment of Slovak Bankruptcy Law

Approval of the Tax Administrator Required for the Transfer of Majority Ownership Interest

A Significant Amendment of Slovak Bankruptcy Law

The most recent amendment of Slovak bankruptcy law became effective on January 1, 2012. The most significant change, however, is a new definition of over-indebtedness which will enter into force on January 1, 2013. As stated in the parliamentary explanatory report to the amendment of the Act on Bankruptcy and Restructuring, a new definition of over-indebtedness was adopted with the aim to harmonize it with regulations common in countries like Germany. The new definition more closely reflects those used in large economies with strong and transparent traditions of insolvency regulatory

frameworks.

Under the old regulation entrepreneurs having two or more creditors and who were subject to mandatory book-keeping obligations were over-indebted when all their mature liabilities exceeded their property. In accordance with the amendment, all liabilities, thus total amounts of mature and non-mature liabilities are to be calculated against the value of the entire property for purposes of establishing whether a company is over-indebted.

The method of evaluating property shall also be modified. Evaluation will no longer be based solely on accounting



Insolvency Act differs slightly: a legal person is over-indebted if its property does not cover all its liabilities unless continuation of the business is highly probable. Claims of affiliated companies like shareholders' loans should not be counted among liabilities in regards to over-indebtedness in both countries.

Because Slovak over-indebtedness depends much more on actual and future property values and does not stipulate the going concern possibility, we can expect a significant wave of loan-to-equity swaps or intra-group loan capitalizations through which companies will attempt to eliminate a bankruptcy threat. At this time, there is no practical experience calculating property values under the new rules; therefore, we assume that increasing the registered capital or equity by actual cash or non-monetary contributions will be the only safe solution in many cases.

The above "transactional movement" in the Slovak corporate world might meet the legislature's ambition to promote an increase of shareholders' capital contributions via (i) registered capital or (ii)

actual equity and not via a chain of intra-group borrowings. Markets experts remain watchful whether this will prove to be the best instrument for improving the Slovak business environment.

Other significant changes like simplification of the creditor's application for commencement of bankruptcy proceedings and extended liability of the debtor's statutory representatives for damages caused by late filing or an omission to file a bankruptcy application are already in force for nearly one year. These changes were introduced with good intentions, but the past eleven months indicate that intent alone might not suffice.

records, but also on an expert's report which should have preference over accounting records. Furthermore, the amendment explicitly states that not only the actual property, but also expected future income shall be taken into account. The property value should be calculated (i) as an aggregate value of a particular property's components (ii) increased by expected future income and (iii) decreased by external financial liabilities or sources.

The definition in the German



For additional information, contact:
Mrs. Zuzana Francúzová
E-mail: francuzova@giese.sk

Approval of the Tax Administrator Required for the Transfer of Majority Ownership Interest

The European Commission and the Slovak Ministry of Finance published information on the amount of estimated VAT revenue losses in the Slovak Republic. In 2006 the figure amounted to EUR 1.3 billion and by 2010 it had jumped to EUR 2.3 billion which constitutes 3.5 % of the entire Slovak GDP.

On October 1, 2012 a new act intended to eliminate tax evasion and improve tax collection came into force which significantly amended the Slovak Commercial Code, among other regulations. The amendment introduced a new obligation for Slovak limited liability companies when transferring a majority ownership interest. According to the amendment, prior to filing an application for the registration of the transfer into the Commercial Register, the company is newly required to seek an approval of the tax administrator. Such approval must be

attached to the application. Companies are obliged to request the approval from the tax administrator confirming that the parties to the transaction (i.e. both the seller and the purchaser) have no significant tax debts. Interestingly, no such confirmation is required of the company itself. There are several exceptions to the above obligation: foreign shareholders are always exempt as well as majority ownership interest transfers made within the framework of the company wind-up or the rare and under the law strictly regulated transfers of the shares to or from the company itself. Even in such cases, however, the company is still required to furnish a written declaration confirming its exemption from the obligation to obtain the approval from the tax administrator.

The amendment also extends the definition of the "majority ownership interest" being either (i) an ownership

interest which, with regard to the proportion of the value of the shareholder's contribution to the amount of registered capital of the company, gives right to the shareholder to exercise at least one half of all voting rights or (ii) an ownership interest based upon which, in accordance with the provisions of the articles of association, at least one half of all voting rights can be exercised.

The above definition casts doubts on how the term "majority" is to be construed, as it also seems to apply to a minority ownership interest to which 50 % and more voting rights are attached.

Another change is a shift in the legal effect of registration of a transfer of ownership interest in the Commercial Register. Previously, a registration of a transfer of ownership interest in the Commercial Register only had a declaratory effect (i.e. transfer became effective after

(i) the transfer contract had been signed, (ii) signatures of the parties on the transfer contract had been verified by a Notary Public and (iii) the contract had been duly delivered to the statutory representative of the company. The registration of a change in shareholding now has constitutive effects, i.e. the transfer can only become effective upon its registration into the Commercial Register.

According to the newly amended Slovak Tax Code, the tax administrator, being either a tax office or a customs office, is to issue its approval of a transfer of a majority ownership interest within three business days following the request of the company and shall do so only in the event that the aggregate amount of the tax arrears due by the parties does not exceed EUR 170. It remains ambiguous and open to further interpretation whether an approval of both the tax office and the customs office is required or whether, according to the aforesaid wording, an option to seek an approval from either of the above authorities is required. Two months of practical experience has shown that in most circumstances the Register requires approvals from both authorities.

Only time will prove whether these new requirements will “bear the wished-for-improved-tax-collection fruit” or only increase the administrative burden placed on entrepreneurs and further delay or complicate processing applications at the Registers in connection with any corporate changes in companies with their seat in Slovakia.



For additional information, contact:
Mrs. Gabriela Pavlíková
E-mail: pavlikova@giese.sk

Giese & Partner News

Recent Projects and Activity

Ernst Giese and Bill Finney have contributed a chapter covering the Czech Republic in the newly published book, *Cash Pooling and Insolvency: A Practical Global Handbook*, Global Business Publishing Ltd.

www.globelawandbusiness.com/PPP/

Publications by Giese & Partner lawyers and other activities

[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, v.o.s.
Palác Myslbek
Ovocný trh 8
CZ - 117 19 Praha
Tel.: +420 221 411 511 Fax: +420 222 244 469
E-mail: 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 A, Insert 41624

Slovak Republic

Giese & Partner, v.o.s.
- organizačná zložka
Lazaretská 12
SK - 811 08 Bratislava
Tel.: +421 220 510 110 Fax: +421 220 510 199
E-mail: 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