

IFLR

INTERNATIONAL FINANCIAL LAW REVIEW

INTERNATIONAL BRIEFINGS 2013

Slovak Republic

Futej & Partners

Expropriation of health insurance companies in Slovakia

The Government of the Slovak Republic has decided to institute a unitary health insurance system; this comes in the wake of its approval on 31 October 2012 of the Project for Instituting a Unitary Health Insurance System (the Project). In Slovakia today, there are two private health insurance companies operating in the public health insurance system to be affected by the envisaged system change, along with one other state health insurance company.

The Project compares the various options for instituting a unitary health insurance system, and describes the procedure for the voluntary buyout of the shares of private health insurance companies, as well as procedures in the event of expropriation of those shares. These will be laid down in detail in the accompanying act, which is expected to come into force on May 1 2013.

The preferred method of instituting the unitary system of public health insurance is the voluntary buyout of the shares of private health insurance companies, but if this process fails, then the method will be by expropriation of these same shares.

Expropriation is understood to mean the forced transfer of ownership rights of the shares of the private insurance companies to the expropriator – a new specially established national Agency for Unitarianisation. Expropriation is generally viewed as a last resort for acquiring property rights. According to Article 20(4) of the Constitution of the Slovak Republic, expropriation or forced restriction of ownership rights is possible only to the extent necessary and in the public interest, and on the basis of laws for adequate compensation. Therefore, the conditions for

expropriation are (1) expropriation in accordance with law, (2) existence of public interest, (3) necessary extent and (4) adequate compensation.

The first requirement for expropriation is the approval of an act on expropriation that would designate the expropriation authority, which in this case would be the existing Health Care Surveillance Authority that under today's legislation supervises health insurance companies and provision of medical care.

The next requirement for expropriation is the existence of public interest. The term public interest is not defined in the Constitution or in other legal regulations, so it is evaluated on a case by case basis. The public interest in this situation is debatable and the interests of the private insurance companies are impinged upon. So if there is an expropriation process, the manner in which public interest is defined will be crucial, since expropriation may be contested before the Constitutional Court precisely on the grounds that it is not in the public interest.

Necessary extent of expropriation may be assessed from the aspect of scope and purpose. As far as scope is concerned, expropriation should be limited to that which is unavoidable in order to fulfil the purpose of the expropriation. As for purpose, necessary extent of expropriation is fulfilled when the purpose of the expropriation cannot be achieved by any other means. Under the project the expropriation, like the phase of voluntary buyout of the shares, shall affect all shares of the private health insurance companies rather than acquiring of selected individual assets of the latter.

Adequate compensation must be provided for expropriated property. As a rule, the amount of compensation should be determined in relation to market price in such a way as to take into account the degree of adverse effects on property rights. The value of the shares of the private health insurance companies will be determined by an expert advisor on the basis of audits of



Daniel Futej

Tel: + 421 2 5263 3161

Email: futej@futej.sk

[Linked in.](#)


Daniel Grigel

Tel: + 421 2 5263 3161

Email: futej@futej.sk

[Linked in.](#)

Radlinského 2
811 07 Bratislava
Web: www.futej.sk

International Financial Law Review

For 30 years IFLR magazine has covered significant developments in the law of international finance. It is essential reading for banking, corporate and private practice lawyers. IFLR partners with local experts to provide its international readers with concise briefings on the latest developments in the jurisdictions they operate in.

Click to access the latest issue.



the private insurance companies. If a private insurance company does not permit a qualified audit to be conducted, the advisor will be able to value that insurance company without an audit on the basis of available (possibly incomplete) information.

According to various unofficial statements, the cumulative value of both private health insurance companies could be in the neighborhood of €400 (\$533 million) to €500 million. But this is just a rough estimate, since neither government officials nor officials from the insurance companies have commented on the matter. It is expected that proceeds from the sale of government property will be used to purchase or expropriate the private health insurance companies, but for now it is unclear what government assets are being considered.

In the process of unitarianisation, the state will be represented by the Agency for Unitarianisation, a joint-stock company wholly owned by the Ministry of Health, which was created on January 29 2013. The transformation process will culminate with the organisational and economic merger of all the health insurance companies into one body. The preliminary date for instituting the unitary system through voluntary buyout of shares is set as January 1 2014; in the event expropriation is involved a date of July 1 2014 has been set.

Daniel Futej and Daniel Grigel