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GIDE LOYRETTE NOUEL

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newsletter

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EDITORIAL

The Polish dynamic shows no signs of slowing down

The appointment of Donald Tusk to the Presidency of the European Council, at the end of 2014, was confirmation of Poland's leading role within the European Union. A member of the Union since 2004, Poland is the first country of Eastern Europe to reach such a high level of political representation, a recognition of the country's economic successes. One of the few countries not to have been affected by the recession in 2009, Poland posted average annual growth figures of around 4.4% over the 2004-2014 period. As another indicator of the country's stability, its volatility in terms of growth and inflation is among the lowest in Central and Western Europe. Poland's dynamic economy is also boosting employment in the country: although unemployment rates reached 11.4% in October 2014 (8.4% according to the EU's definition), it is nonetheless 1.8 points lower than in 2013.

An essential player in European growth, Poland is highly attractive to foreign investors. This situation can be explained in part by its ambitious, enterprising and well-trained population, the diversity of its economic activities (industrial and agricultural production, services and distribution), the macroeconomic stability of the country which enables long-term investments, and the importance of ongoing and future structural investments.

This last aspect is strongly supported by the EU's cohesion policy, which will spend up to EUR 82.5 billion of structural funds on Poland in the 2014-2020 period, i.e. the largest allowance of all the 28 member states.

Such dynamism shines through in the uninterrupted modernisation of the Polish legal and taxation system, as illustrated by the regulatory and legislative reforms set out below.

Hugues Moreau, partner

HUNGARY

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BANKING & FINANCE

NEW LEGISLATION FRAMEWORK IN THE HUNGARIAN FINANCIAL SECTOR

On 1 January 2014, Act CCXXXVII of 2013 on Credit Institutions and Financial Undertakings (the "New Banking Act") entered into force replacing the previous legislation. The reasons behind adopting this New Banking Act were that certain EU directives had to be implemented and the structure of the previous act was already too complicated as it had been amended several times.

While many core provisions of the previous act dated 1996 remained the same, such as the initial capital requirements for banks (HUF 2 billion) and financial undertakings (HUF 50 million), the New Banking Act introduced various changes, in particular in the rules of activity and operation, confidentiality, supervision, accounting and consumer protection.

The New Banking Act prescribes clear competences for corporate governance management teams, as well as obligations for financial institutions to comply with banking, technical and IT requirements.

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The New Banking Act sets new capital requirements laid down in European Capital Requirements Regulations. Those changes were primarily due to the necessity to transpose the EU requirements of the global banking system set in Basel III.

LEGISLATION AS TO FOREIGN EXCHANGE LOANS

In Hungary, a large number of defaults occurred in foreign currency loan agreements concluded with consumers due to the significant fluctuations in foreign exchange rates. This resulted in a substantial number of litigations where the majority of claims questioned the validity of the agreement in whole or in part.

The Curia Decision Act

In November 2013 and June 2014, after contradictory judgments were adopted by different courts, the Hungarian Supreme Court (the “Curia”) adopted two important legal uniformity decisions in order to ensure case-law consistency. Most importantly, it specified the conditions under which the exchange risk borne exclusively by the consumer is unfair. The Hungarian Parliament therefore adopted Act XXXVIII of 2014 on the settlement of certain issues in relation to the legal uniformity decision of the Curia on consumer loan agreements of financial institutions (the “Curia Decision Act”), which came into force in its entirety on 26 July 2014.

The Curia Decision Act sets out the nullity of certain provisions of foreign exchange, foreign exchange-based and Hungarian Forint-based credit, loan agreements and financial lease agreements (together “Consumer Loan Agreements”) concluded with consumers between 1 May 2004 and the entry into force of the Curia Decision Act.

Firstly, the Curia Decision Act renders invalid those provisions of the general terms and conditions (or any provision not negotiated individually) that are part of Consumer Loan Agreements and that state that different exchange rates apply to disbursements and repayments, i.e. there is an “exchange rate gap”. These exchange rates are automatically replaced by the prevailing official exchange rate of the National Bank of Hungary (the “NBH”).

Secondly, the unilateral amendment option clauses of the general terms and conditions (or any provision not negotiated individually) that are part of Consumer Loan Agreements and that allow the financial institution to unilaterally increase interest rates, costs or fees shall be deemed unfair and therefore invalid unless the financial institution successfully proves the contrary in a lawsuit brought against the Hungarian State.

The Curia Decision Act does not apply to agreements concluded after 1 May 2004, (i) that were terminated and the statute of limitations of five years elapsed before the entry into force of the Act, or (ii) ceased to exist due to either their full early repayment at fixed rates or the purchase of the real property serving as collateral for the loan by the Hungarian State, before 19 July 2014. It is important to note that according to the specific rules set out by the Curia Decision Act on the statute of limitations, the five-year period commences in relation to claims arising from Consumer Loan Agreements when the agreement concerned is terminated.

The Curia Decision Act prescribes special rules to the court actions to be initiated by financial institutions. Relatively short deadlines are set for filing and appeals, and courts must also deliver their decisions within 30 days. In addition, there is no room for counter-suits or additional submissions. The lawsuits concerning foreign exchange-based agreements could only to be initiated until the 30th day before the entry into force of the Curia Decision Act, while actions regarding Hungarian Forint-based and foreign exchange agreements were to be initiated between 5 and 12 January 2015.

According to media reports, many financial institutions submitted their complaints in relation to foreign exchange-based agreements. Most of them lost in first and second instance, and so far only three achieved partial victory against the Hungarian State in first instance although one lost in second instance. Some procedures are still on-going. Many financial institutions argued in their submissions that the Curia Decision Act is anti-constitutional and contradicts EU law

and, therefore, requested that the court turn to the Constitutional Court and the European Court of Justice.

The court has partly accepted such arguments on certain occasions and requested the Constitutional Court to annul the Curia Decision Act or certain provisions thereof. In the court's opinion, the Curia Decision Act violates not only the Hungarian Constitution but also the Rome Convention. The reasoning of the court includes the following arguments, among others: (i) as the Curia Decision Act must be applied to agreements concluded prior to its entry into force, it goes against the prohibition of retroactive effect; (ii) the Curia Decision Act does not give either financial institutions or courts enough time to prepare; (iii) due to the short deadlines, only limited evidence can be examined, which hinders the thorough analysis of the cases.

In its decision rendered on 11 November 2014, the Constitutional Court ruled that the respective provisions of the Curia Decision Act were in compliance with the Constitution and dismissed the motions.

Firstly, the Constitutional Court stated that the prohibition of retroactive effect was not violated, since the principle that unilateral amendment option clauses must be fair and in accordance with good faith must always be respected. The court considered that the relevant criteria set out in detail by the Curia Decision Act - the fulfilment of which had to be proven by the financial institutions in lawsuits in order to defend their contractual clauses - could also have been deducted previously from legal principles and case-law.

Secondly, with regard to the right to fair procedure, the Constitutional Court declared that the 30-day time limit prescribed for financial institutions to file a claim was enough to take a realistic decision on whether to commence a suit and to prepare the trial.

Nevertheless, during some second instance procedures, the courts turned to the Constitutional Court again but no decision has yet been published.

The Settlement Act

Act XL of 2014 on the rules of settlement set out in the Curia Decision Act (the "Settlement Act") which came fully into force on 1 November 2014 sets out the main rules concerning the settlement of claims with consumers, while the relevant detailed rules are determined in NBH decrees.

Where different exchange rates are applied to disbursements and repayments (i.e. there was an exchange rate gap), the following had to be repaid to consumers: (i) the difference between the loan disbursed under the original exchange rate set out in the agreement and its value calculated on the basis of the official foreign exchange rate of the NBH; (ii) the difference between the repayment made under the original exchange rate set out in the agreement and its value calculated on the basis of the official foreign exchange rate of the NBH.

In cases of invalid unilateral amendment option clauses that allowed the financial institution to unilaterally increase interest rates, costs or fees, the difference between the repayments made in accordance with the increases and the repayments where such increases are disregarded has to be reimbursed to consumers.

Financial institutions must settle with their consumers according to strictly prescribed dates between 15 January 2015 and 30 November 2015 and send the settlement agreements by letter to the consumers concerned. A detailed complaint-handling procedure is available to consumers who wish to contest the content of the settlement.

The HUF Conversion Act

The next step in the legislative process was the adoption of Act LXXVII of 2014 on the resolution of the issues related to the amendment of the currency of certain consumer loan agreements and interest rules (the "HUF Conversion Act") which fully entered into force on 1 February 2015.

The scope of the HUF Conversion Act covers all foreign exchange based, Hungarian Forint based and foreign exchange credit and loan agreements and financial lease agreements which were concluded between 1 May 2004 and 19 July 2014, are still existing on 1 February 2015 and in relation to which financial institutions have to settle with consumers pursuant to the Settlement Act. However, not all types of agreements are treated in the same way.

Consumers' debts under foreign exchange and foreign exchange based agreements secured by real property mortgages must be converted to HUF in accordance with the exchange rate set out in the HUF Conversion Act. In this case, the financial institution may only apply an interest rate on the basis of the three-month BUBOR reference rate and a margin limited by the HUF Conversion Act.

Nevertheless, consumers are entitled to opt out and remain in the foreign exchange or foreign exchange based structures if certain criteria are met. In this case, as of 1 February 2015, repayments, costs and fees are to be determined on the basis of the official exchange rate of the NBH or the average exchange rate set by the financial institution concerned.

In case of Hungarian Forint-based agreements as of 30 June 2015 and such foreign exchange or foreign exchange-based agreements which are not secured by real property mortgages as of 1 February 2015, the interest/margin may not exceed the smaller amount from the following: (i) the original interest/margin of the agreement (if an interest discount was provided to the consumer, the interest/margin following the discount period); (ii) or the interest/margin applied to the loan on 19 July 2014.

These limits also apply to those loans which are to be converted to HUF.

The Fair Bank Act

Act LXXVIII of 2014 on the amendment of Act CLXII of 2009 on providing loans for consumers and other related acts (the “Fair Bank Act”) entering into force on 1 February 2015 was adopted in order to introduce certain rules which give consumers a higher level of protection.

Detailed provisions regulate the obligations of creditors as to the information of consumers prior to the conclusion of loan agreements. Creditors will be obliged to show consumers, by way of representative examples, the weight of the repayment as compared with the consumer's income and the additional risks such as possible changes in interest and exchange rates. Furthermore, the most commonly used loan agreement templates must be published on the creditor’s website.

In addition, the creditor's right to unilaterally amend the loan agreement to the detriment of the consumer will be limited as it may only happen in connection with interests, margins, costs and fees if it is allowed by law and the parties expressly stated this right in the agreement. Moreover, if the conditions (serving as a basis to the unilateral amendment of the agreement) make it possible to reduce interests, margins, costs or fees, creditors are obliged to implement their reduction.

Certain limits were set out as regards the amounts of disbursement fees and interests for late payment. Costs set out in the agreement, which are defined by the Fair Bank Act as expenses arising in connection with services of third parties, may be modified when they are incurred and proportionately to their actual increase. Fees, on the other hand, may be used to cover the creditor's expenses and may only be increased once per year and by a maximum amount equal to the official consumer price index of the previous year.

Loans with a maximum term of three-years may only be provided either with fixed interests or with a fixed margin added to the NBH's reference rate. For this type of loan, the conditions pertaining to interest cannot be modified to the detriment of the consumer. For loans granted for a period exceeding three years, creditors may raise the interest or margins a maximum of five times during the loan's term, only after the expiry of each interest period, and by a

maximum amount of the interest/margin change indicator published by the NBH on its website or proposed by the creditor and officially accepted by the NBH.

Furthermore, consumers may terminate the loan agreement without having to pay any costs or fees if the interest or the margin is changed to their detriment in a new interest period.

The new rules introduced by the Fair Bank Act must be duly incorporated into the creditors' general terms and conditions by 1 February 2015, and most have to be applied to existing agreements concluded since 1 May 2004. In this latter case, the fees and costs already incorporated in these agreements remain valid.

POLAND

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RECENT LEGISLATIVE REFORMS

REAL ESTATE / BANKING

REVERSE MORTGAGE LAW - THE INTRODUCTION OF THIS NEW FINANCIAL INSTRUMENT TO POLISH LAW

Following in the footsteps of the United States, the United Kingdom and the Netherlands, Poland has introduced a reverse mortgage law, a new credit instrument. In force since 15 December 2014, the law on reverse mortgage should enable property owners to draw on a new source of income.

Individuals who are owners or co-owners of property, or who hold the right of perpetual usufruct to property, may benefit from a reverse mortgage.

As well as receiving a sum equal to the value of the property, either through a single lump sum payment or through regular annuity payments, it is interesting to note that, unlike life-contingent annuities, reverse mortgage does not lead to the borrower’s loss of property rights, with property transfer only taking place upon the owner’s death. Thus, inheritors will have the choice of either retaining the property / usufruct of the property in their estate (subject to repaying the loan within 12 months of the death), or receiving the sum that corresponds to the value of the property less the sums (with interest) already paid to the deceased.

The Polish legislator provides for increased protection of borrowers and their heirs. The pre-contractual information obligation borne by the financial body has been heightened, and a 30-day period from signing the contract, enabling borrowers to go back on their decision, without cause, has been added.

Those financial institutions present on the Polish market seem to have welcomed this new instrument with certain reservations and, as of the date of this newsletter, we are not aware of any structured products being offered with this financial instrument. However, as the reverse mortgage has only recently come into force, a further analysis of the initial implementations of this new instrument should be conducted within the next few months.

CONSUMER LAW

INCREASED CONSUMER PROTECTION

New significant measures introduced by the Consumer Law, applicable as of 25 December 2014, include extending the legal withdrawal period for online purchases, improving rights as regards faulty products, and providing a legal framework for cold-calling.

Over two years behind schedule, Poland transposed Directive 2011/83/EU on consumer law, which aims to improve consumer protection within the European Union. Among the new provisions applicable to contracts entered into as of 25 December 2014, the following are of particular note: heightened obligation for professionals to offer pre-contractual information (legal guarantees, withdrawal terms and conditions, etc.); withdrawal period extended to 14 days (as opposed to 10 days under former legislation) for distance or off-premises sale contracts; providing a legal framework to the practice of cold-calling whose contracts must now receive written consent from the consumer; lastly, the duration of the compliance legal guarantee has been increased to 24 months.

The clear objective of this reform is to harmonise consumer law rules throughout Europe so that consumers, be they German, French or Polish, enjoy identical protection regimes.

TAX LAW

MODIFICATION OF THE TAX HANDLING OF INTRA-GROUP BORROWING INTERESTS (UNDER-CAPITALISATION) AND IMPLEMENTATION OF THE CFC RULES

Intensification of under-capitalisation rules

As of 1 January 2015, rules applicable to under-capitalisation will be stepped up in Poland. The debt/own funds ratio (i.e. level of indebtedness in relation to own capital) is reduced from 3 : 1 to 1 : 1.

The scope of application of these rules is increased, both with regard to eligible lenders and admissible debts. The rules of under-capitalisation now apply to loans agreed by a shareholder/partner of the borrowing company, directly or indirectly holding at least 25% of its shares, and to loans agreed by several direct and indirect shareholders/partners, together holding at least 25% of the borrower’s shares.

The debt in question will cover not only loans agreed by lenders as such, but also all other existing debts (such as, for instance, commercial debt) of the shareholder/partner. This means that a significant portion of intra-group lending will be subject to restrictions relating to the tax deductibility of their interests.

The new provisions provide for the possibility of circumventing under-capitalisation restrictions, by choosing a “tax costs” alternative interest deduction method. This method can be applied to the interest paid by the indebted party on all loans (including those received from non-related companies). The annual interest deductibility restriction is contingent on two criteria: (i) the tax value of the assets, and (ii) the operating profit. The alternative method must be applied over at least three years and be notified to the tax services.

Implementation of CFC (Controlled Foreign Company) provisions

The new provisions came into force on 1 January 2015 and are applicable to CFCs’ tax year beginning after 31 December 2014.

Controlled Foreign Companies are defined as bodies whose:

- Headquarters are located in a country listed as a tax haven or in a country that has not signed a treaty for the avoidance of double-taxation with Poland;
- Headquarters are located abroad (including in a European Union member state or in a country having signed a treaty for the avoidance of double-taxation with Poland) so long as, firstly, at least 50% of its income is passive income subject to a tax rate lower than 14.25% and, secondly, the Polish entity holds 25% of shares, voting rights or rights to the CFC's profits for at least 30 consecutive days within the year.

The new provisions indicate a 19% tax rate for CFC income, to be paid by the CFC's Polish shareholder/partner.

Tax breaks are applicable for CFCs whose income does not exceed a certain amount (EUR 250 K) or when the CFC carries out a "*real business activity*" (a concept that is nonetheless not defined in the texts).

Additionally, it is possible in Poland to deduct tax paid by the CFC in the country in which its headquarters are located.

BANKING LAW

NEW LAW ON THE ISSUANCE OF CORPORATE BONDS

The new legislation relating to the issuance of bonds aims at facilitating companies' access to funding and resolving certain interpretation issues. On the one hand, it introduces new negotiable debt securities ("papiery dłużne"), and on the other, it improves the protection of bondholders' interests. The new provisions are to enter into force on 1 July 2015.

The reform will facilitate bond emissions for companies that do not have access to financial markets. It introduces mandatory bond emission conditions and the legal bases for making changes thereto, as well as providing the grounds for setting up and running, at the issuer's discretion, bondholders' meetings. Furthermore, for the purpose of more effectively enforcing the rights of bondholders, it introduces a security agent performing all the rights and obligations of the creditor, in its own name but to the benefit of the secured bondholders. This reform is aimed at diversifying companies' sources of funding, which in Poland are often restricted to bank credit.

The law also introduces new categories of negotiable debt securities: (i) subordinated securities ("obligacje podporządkowane") with priority ranking in the event of the issuer's bankruptcy, and (ii) perpetual bonds ("obligacje wieczyste"), which are not subject to acquisition but which guarantee the payment of interest as a perpetual annuity.

PROCEDURE

As of 10 January 2015, the following are now fully enforceable in Poland: court rulings, settlement agreements and administrative documents on civil and commercial matters, handed down or established in other EU member states. The same applies to Polish court decisions, settlement agreements and administrative documents, which will now also be fully enforceable within the EU, without requiring an enforcement order.

This legislation aims to facilitate and shorten lead-times for the enforcement of convictions and payment obligations, and thus reduce procedural costs.

LABOUR LAW

SOCIAL SECURITY CONTRIBUTIONS

Attendance fees

From 1 January 2015, attendance fees received by members of Polish supervisory boards are subject to social security contributions, even when such members are already covered by pension benefits or health insurance through their other activities. The amount of social contributions to be paid is calculated in relation to the remuneration received by the supervisory board member. The body in charge of paying these contributions is the company within which the supervisory board member is active.

Service provision contract

Additionally, as of 1 January 2016, service provision contracts will be subject to the same social security contributions as work contracts.

COURTS SERVICE

MODIFICATIONS REGARDING THE REGISTRATION OF COMPANIES' ECONOMIC ACTIVITY

On 1 December 2014, Poland reviewed and improved its single-window approach, put in place in 2009, and whose success was not as great as expected. Intended to accelerate and increase the number of companies set up, the new reform enables company registration in the Trade and Companies Register using a single form. Additionally, procedures with social security bodies and national statistics can be implemented at a later date, within 21 days (7 days where an employee is recruited). Entrepreneurs can begin their activity once the registration of the newly created company is complete.

ENVIRONMENTAL LAW

LIABILITY AND SOIL POLLUTION

The law of 11 July 2014 modifying in particular the provisions of Polish environment law came into force on 5 September 2014. Among other things, this reform transposes into Polish legislation the directive on industrial emissions (known as the IED for Industrial Emissions Directive), bringing with it a number of changes, in particular as regards soil pollution liability.

Although the legislator upholds the concept of "polluter-pays", it also introduces significant and novel changes. Thus, the idea of "historical soil pollution" makes its appearance, defined as pollution that occured before 30 April 2007 or deriving from an activity that stopped before that date. Additionally, this notion includes environmental damage deriving from emissions or facts that took place over 30 years before.

The new provisions also broaden the definition of "ground area" to include groundwater, which also increases polluter liability.

Owners/holders are now bound to rehabilitate the polluted site, i.e. partially or fully clean up the earth and groundwater. They must also monitor the lands and ensure that the contaminated soil no longer constitutes a risk to human health or the environment.

RUSSIA

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TAX

FEDERAL LAW ON DE-OFFSHORISATION

Federal Law No. 376-FZ dated 24 November 2014 (the "Law") on de-offshorisation, including Controlled Foreign Company ("CFC") rules, tax residency rules for legal entities and beneficiary ownership concept came into force on 1 January 2015 (subject to certain exceptions).

The key provisions of the Law are set out below:

- The Law adopted the Controlled Foreign Company (the "CFC") rules, i.e. rules on the application of Russian profit tax to profits of foreign companies and non-corporate structures controlled by Russian tax residents who can be considered as controlling parties;
- CFC income is subject to a 20% rate if the CFC is controlled by a legal entity, and a rate of 13% if it is controlled by an individual;
- In general, there is no direct impact of Russian CFC rules on foreign groups;
- Several types of additional notifications should be filed to the tax authorities within the deadlines established by the Law, in particular:
  - Russian legal entities and individual entrepreneurs should submit notification on participation in Russian legal entities (subject to certain exemptions) if the share of direct participation exceeds 10%;
  - Russian taxpayers should submit notification on participation in foreign legal entities if participation exceeds 10%, as well as on the incorporation of foreign non-corporate structures or on control over such structures or actual right for income received by such structures;
  - Russian taxpayers should submit notification on CFC, including cases in which profits of a certain CFC will not be taxed in Russia;
  - Foreign companies and structures owning immovable property located in Russia should report on their participants (foreign structures not having established a legal entity should report on their shareholders, beneficiaries and managers).

Controlled Foreign Company Rules

- The CFC is defined as a foreign legal entity which (i) is not tax resident of the Russian Federation and (ii) is controlled by Russian tax residents (legal entities and/or individuals) who can be considered as a controlling party (the "Controlling party");
- The Controlling party is defined as a Russian tax resident (individual or legal entity) who owns directly or indirectly (for individuals - jointly with spouses and minor children):
  - More than 25% (more than 50% before 1 January 2016);
  - More than 10% (more than 50% before 1 January 2016) if total participatory interest of all Russian tax residents in the CFC is more than 50%.

  In addition, a Russian tax resident can be considered as the Controlling party in spite of the share of participation if such Russian tax resident controls (i.e. influences the decisions of such a foreign legal entity related to the distribution of profits, etc.) such a foreign legal entity in its own interest or in the interest of its spouse or minor children.

- The profit of the CFC is exempt from Russian profit tax if at least one of the conditions listed in the Law is met;
- The Law defines the rules for calculation of CFC profits;
- The CFC's profit is taxed in Russia only if it exceeds RUB 10 million (RUB 50 million in 2015 and RUB 30 million in 2016);
- If the CFC does not distribute profit due to an increase of the CFC's charter capital, such profit is not subject to profit tax in Russia;
- The CFC's profit may be reduced by the dividends paid from such profits;
- The Law establishes tax liability for violation of CFC rules, including penalties for not submitting certain required financial documentation, required notification, required information on shareholders, penalties for non-inclusion of shares of the CFC's income into the tax base (if applicable), penalty for provision of a notification containing non-reliable information, etc. At the same time, penalties established by the Law for not including CFC profits should not be charged in respect of profit tax periods 2015 - 2017;
- The Law adopts certain tax concessions within the transitional period, for example, a tax concession for Russian tax residents (controlling parties) which will decide to liquidate foreign structures falling under the CFC rules provided the liquidation procedure is finalized by 1 January 2017;
- Russian profit tax will apply only to the profits of CFCs for the periods starting in 2015. Such profits should be declared by Russian legal entities for the first time in the profit tax declaration for 2016 which should be submitted before the established deadline in 2017 (individuals should declare such profits for the first time in the personal income tax declaration for 2016 before the established deadline in 2017).

Tax residency

- The law defines the following legal entities as tax residents of the Russian Federation:
  - Russian legal entities;
  - Foreign legal entities which are treated as Russian tax residents in accordance with international tax treaties for the purpose of the application of such treaties;
  - Foreign legal entities managed from Russia. Basic and additional criteria for determining the place of management of a foreign legal entity are adopted by the Law. The Law also adopts a list of activities which by themselves cannot be treated as actual management in the Russian Federation of the foreign company, i.e. carrying out such activity in the Russian Federation by itself would not lead to the tax residency in Russia;
- *A Foreign legal entity has a right to obtain the status of a Russian tax resident on a voluntary basis* when a company is domiciled in a country with which a tax treaty is in force and has a separate subdivision in Russia, provided it meets one of the conditions listed in the Law, for example: a company is domiciled in a tax treaty country and is a tax resident of such a country under the international tax treaty, etc. *In such cases, a foreign legal entity must inform the respective tax authority* at the place of registration of its separate subdivision in the Russian Federation *and such a company will not be treated as a CFC;*
- The Law adopts a list of foreign legal entities which cannot be treated as Russian tax residents, for example: issuers of tradable bonds, etc.

Beneficial ownership concept

- According to the Law, a beneficial owner of income is a person having a right to independently use and/or dispose of such income, taking into account its functions and the risks it takes;
- If a Russian tax agent (a Russian legal entity which pays income to a foreign beneficiary of the income not tax registered in Russia and, according to the Russian Tax code, as a tax agent, must calculate, withhold and transfer respective Russian tax to the Russian budget) is aware of the actual beneficial owner of income originating from the Russian Federation:
  - if the actual beneficial owner is a Russian tax resident, the agent should inform the respective Russian tax authority about such a payment, however, the tax agent should not withhold tax;
  - if the actual beneficial owner is a non-resident in Russia, the agent may apply provisions of a respective double tax treaty signed by the Russian Federation with the respective state;
- The Russian tax agent has a right (not an obligation) to request a document from a foreign legal entity which confirms that such a foreign legal entity is a beneficial owner of income to apply lower tax rates under the applicable double tax treaty.

LABOUR LAW

KEY CHANGES TO RUSSIAN LABOUR LEGISLATION

The Russian Labour Code is supplemented with a chapter regulating the specifics of employment of foreign citizens in Russia.

The most significant changes pertain to the following:

- the amendments provide additional reasons to terminate a foreign employee at the sole decision of the employer. Such reasons relate to
  - suspension, expiry or any other termination of the validity of the employer's permit to engage foreign employees, the employee's work permit or residence permit;
  - expiry or termination of the validity of the employee's health insurance policy in Russia; and
  - adjusting the number of foreign employees in Russia in compliance with the limitations set by the applicable regulations as may be approved by the Russian Government;
- the employer is also entitled to suspend the employee from work in the above cases at its discretion;
- the employer is entitled to perform a temporary (up to 1 month) transfer of foreign employees to other job positions in cases of emergency disregarding the job position indicated in the employee's work permit. If such transfer is not possible or in the event following the termination of relevant emergency obstacles the employee cannot be provided with his/her previous job, the employment agreement is terminated.

The amendments require the employees to provide their employer with a health insurance policy being valid on Russian territory at the time of execution of an employment contract. Previously, the obligation to ensure such insurance coverage was borne by the employer.

These amendments became enforceable in December 2014.

KEY CHANGES TO RUSSIAN MIGRATION LEGISLATION

Federal Law No. 357-FZ dated 24 November 2014 "On amendments to the Federal Law "On status of foreign citizens in Russia" and other laws" entered into force on 1 January 2015. The law introduces a new mechanism for engaging foreign citizens who are not required to obtain visas to come to Russia:

- such citizens are no longer subject to quota requirements;
- in order to be employed such citizens have to indicate "work" as a purpose of their travel to Russia in their migration card and apply for a work licence no later than 30 days following their arrival to Russia;
- work licences are issued within 10 business days following the application date and are valid for a period of up to 12 months. The work licence may be renewed;
- validity of the work licences is limited to the territory of one region in Russia in which it is applied for;
- the Russian government and Russian migration authorities are entitled to temporarily suspend the issuance of work licences. Moreover, governors of Russian regions are entitled to prohibit the hiring of foreign employees in specific economic sectors within their respective territories.

The procedure of obtaining work permits for foreign employees coming to Russia on the basis of visas remain unaltered.

TURKEY

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E-COMMERCE

TURKEY’S LAW ON E-COMMERCE

Published in the Official Gazette dated 5 November 2014, Turkey’s Law No. 6563 on the Regulation of Electronic Commerce (the "Law") introduces key principles specific to commercial activities online which cover among others the definition of service providers and intermediary service providers' obligations, the transmission of commercial electronic messages, the protection of consumer data and the duty to inform consumers regarding e-commerce and contracts made via electronic devices. This Law will be effective starting from 1 May 2015.

In accordance with this new piece of legislation, service providers shall be required to inform consumers on their privacy policies, as well as on the period of time during which a contract shall be stored by the service provider, whether the consumer will have access to this stored contract and any alternative dispute resolution methods available.

As far as commercial electronic messages are concerned, the following key principles have been set:

- The senders of such messages shall be easily and clearly identifiable;
- Consumers shall be enabled to access any terms and conditions of sales and promotions;
- Commercial electronic messages may only be sent to consumers with their prior consent, which can be delivered in writing or through any kind of electronic communication device;

- Content of the messages must be in line with the scope of the consent obtained from the relevant consumer;
- Consumers may choose at any time to stop receiving any such commercial communications.

The Law also modifies the relevant provisions of the Law No. 5809 on Electronic Communication to ensure consistency and reflect the changes brought by this new piece of legislation.

The Law provides for a limitation of liability applicable to intermediary service providers, specifying that such intermediaries are not required to verify the content or to investigate further on the compliance with law of any content, goods or services provided by real person or commercial entities which use the electronic medium made available by said intermediaries.

In the absence of a dedicated law governing the protection of personal data in Turkey (the draft law in this respect is indeed still pending at parliamentary stage), the Law provides for key principles whereby service providers shall be responsible for the storage and protection of any personal data they obtain. Furthermore, such personal data shall not be transferred to third parties or used for any other purposes without the consent of the relevant person.

The Law imposes monetary sanctions varying between TRY 1,000 and 15,000 depending on the nature of the breach of legal obligations. Particularly in case electronic commercial communication are being sent without the receiver's consent, the Law provides for sanctions varying between TRY 1,000 and 5,000, specifying that in case messages are being sent to more than one receivers, sanctions may reach up to 10 times the above-mentioned amounts.

PROJECTS / ENVIRONMENTAL LAW

NEW ENVIRONMENTAL IMPACT ASSESSMENT REGULATION: ESSENTIAL INFORMATION FOR ALL NEW PROJECTS

The Environmental Impact Assessment Regulation (the "Regulation") was published in the Official Gazette No. 29186 dated 25 November 2014, abolishing the former regulation. Even though the Regulation entered into force immediately on its publication date, already-submitted project files will benefit from a transition period and accordingly remain subject to the provisions of the former regulation.

The newly adopted provisions of the Regulation have not considerably impacted the stages of the application process for environmental assessment reports and project presentations. Nonetheless, significant changes have been made to the scope of projects subject to the Regulation.

Filing for environmental impact assessment and project presentation

As the application scope has been narrowed by providing for higher thresholds with respect to the capacity and the size of the projects, the Regulation’s amended provisions have accordingly put in place exemptions for certain projects in terms of environmental impact assessment.

Following the respective changes under the Regulation, certain projects now only require to be presented to the Ministry of Environment and Urbanisation (the "Ministry") or governorships (if authorised by the Ministry), as opposed to the usually applicable time-consuming process requiring delivery of an assessment report to the Ministry. In this respect, such an assessment report is no longer mandatory for projects such as:

- Railway projects not exceeding 100 kilometres,
- Airport projects comprising runway(s) shorter than 2,100 metres,

- Wind farm projects having a 1 to 50 MWm installed capacity (under the previous regulation, exemptions were applicable for projects with a maximum of 20 turbines),
- Solar power plant projects having an installed capacity between 1 to 10 MWm (under the previous regulation, exemptions were applicable for projects with a maximum of 20 hectares of solar field),
- 5 to 15 kilometre power transmission line projects with a minimum potential of 154 kV,
- Housing estate projects with a minimum capacity of 500 residences (200 under the previous regulation),
- Tourist facility projects with a minimum capacity of 100 rooms.

Please note that the above list is not exhaustive and that the aforementioned projects are only mentioned by way of example.

Contrasting with the general process simplifications brought by the Regulation as mentioned above, other projects such as hydroelectric power plant projects may be considered as having been negatively impacted by such regulatory changes. Indeed, the former regulation provided that any such projects would be subject to obtaining an environmental impact assessment report if their minimum installed capacity was of 25 MWm, whereas the Regulation has brought this threshold down to 10MWm.

Exemptions available under the regulation

It should also be noted that the environmental impact assessment exemption, which was already granted under the Environment Law and which had been subject to a cancellation procedure before the Constitutional Court, has been reinstated under the Regulation. Accordingly, projects that are registered with the Government Investment Programme before 23 June 1997, or that already completed the planning process, or that are at the tendering, production or operation stage, shall also be exempt from the Regulation’s scope of application.

UKRAINE

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INTERNATIONAL TRADE

Introduction of extra customs duties: the WTO-consistency issue

On 30 December 2014, the President signed the Law of Ukraine No. 73-VIII on Measures for Stabilisation of the Balance of Payments of Ukraine (the "Law”) under Article XII of GATT 1994 dated 28 December 2014, which was officially published on the same day.

The Law is designed to introduce, on a one-year temporary basis, extra customs duties applicable to virtually all goods imported into Ukraine:

- 10% on food and agricultural products, alcoholic and non-alcoholic beverages and tobacco products as well as goods brought into Ukraine by individuals in excess of the maximum permitted value (EUR 1,000 for goods brought in personally as luggage by air and EUR 500 for goods brought in by other transport means);
- 5% on all other goods, such as consumer goods, motor vehicles, home appliances and equipment, textiles and footwear.

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The exception is made for "vitally important goods" exhaustively listed in the Law, including primarily oil, natural gas, electricity, coal, petrol, diesel fuel, mazut, medical devices for haemodialysis and cancer treatments. Also, the extra customs duties will not apply to goods which are already exempt from customs duties (e.g., international technical assistance, imported goods which are brought back to Ukraine after repair abroad; state security related equipment, humanitarian aid; goods imported by the Red Cross, etc.).

The Law is declared to be based on Article XII of the GATT 1994 and on the Understanding on the Balance-of-Payments Provisions of GATT 1994, which allow contracting parties, notwithstanding their obligation to generally remove quantitative restrictions, to restrict the quantity or value of merchandise permitted to be imported in order to safeguard its external financial position and its balance of payments. In doing so, the contracting party, however, must comply with the consultations procedure and prefer price-based measures which have the least disruptive effect on trade, including, *inter alia*, import surcharges applied in excess of the duties inscribed in the Schedule of that Member.

One of the earlier drafts of this Law, which was intended to implement extra duties immediately upon its adoption, attracted considerable criticism as potentially inconsistent with WTO policies (in particular, disregarding the consultations procedures) and likely to trigger suspension by the European Union of its trade preferences unilaterally granted to Ukraine under the Ukraine-EU Association Agreement. However, the final text of the Law introduces the duties only upon publication of a resolution by the Cabinet of Ministers following a consultation with international financial organizations (including, primarily, the IMF, the international body with a mandate to identify balance of payment issues).

So far, the EU has not officially announced its position as regards the possible suspension of trade preferences.

TAX

TAX REFORM

On 28 December 2014, the Parliament approved a set of laws to implement the tax reform, which aims to reduce the number of taxes, simplify the tax system, and legalise ‘cash-in-hand’ salaries. After signing by the President of Ukraine and official publication on 31 December 2014, the laws came into effect on 1 January 2015.

Value-Added Tax (“VAT”)

VAT Accounts

- All VAT payers in Ukraine will be required to use special VAT accounts for VAT payment purposes.
- Any transfers from VAT accounts will be carried out by the State Treasury Service of Ukraine (“STS”) according to instructions from the Fiscal Service of Ukraine (“FS”).
- Tax payers will be allowed to make deposits into their VAT accounts and receive funds exceeding the amount of the declared VAT to be paid.
- Information about the net balance of the VAT account of each tax payer will be regularly transmitted by the STS to the FS.

VAT Invoices

- Any VAT invoice must be registered by the tax payer in the Unified Register of Tax Invoices.
- Registration of VAT invoices can be completed if the amount of the VAT invoice does not exceed the net VAT balance of the VAT account. This rule will apply from 1 July 2015.
- Net balance is calculated as the total sum of the input and import VAT, as well as funds credited to the VAT account less the sum of the output VAT, VAT refund and VAT liability.
- Fines will be payable by the tax payer in the event of late registration of the VAT invoice.

VAT Refund

- The new law provides for automatic and non-automatic VAT refunds. The criteria for automatic VAT refund have been slightly changed.
- After 1 July 2015, VAT refunds will no longer require any tax audit or inspection.
- The new VAT refund rules will apply to VAT credit accumulated after 1 February 2015.

Miscellaneous

- VAT reporting will be made only in electronic form.
- On 1 July 2015, the net balance of the VAT account will be increased by the average amount of VAT declared and paid in the preceding 12 months. The amount of such increase will be recalculated on a quarterly basis and adjusted accordingly.
- As of 1 January 2015, the VAT tax base cannot be lower than purchase price, production costs, residual value (for non-current assets).
- Export of commodities is not subject to VAT. Unlike the previous year, VAT exemption for grains and some other agricultural goods will not apply to export by their producers.

Corporate Profit Tax (“CPT”)

Calculation of corporate profit tax in Ukraine has undergone significant changes in its basic principle: whereas previously the tax code provided a complete set of accounting rules for tax purposes, it now establishes the dominance of the commercial accounts, whether under Ukrainian or international accounting standards, subject to a limited number of tax adjustments as specified in the Ukrainian Tax Code.

Tax adjustments cover the following areas:

- Depreciation and Amortisation;
- Bad Debts; and
- Financial Operations (including trade with receivables; loan interest, investments, royalties).

Tax payers with total annual turnover of up to UAH 20 million may refuse to apply tax adjustments (save for loss carryforward).

Transfer Pricing

Along with other changes, the parliament amended the transfer pricing rules that came into effect on 1 January 2015. The new law introduced the arm's length principle for all controlled transactions and extended the scope of transfer pricing rules as well as increased penalties for their violation.

The following transactions are deemed as controlled:

- transactions with related non-residents;
- sale of goods through non-resident intermediaries;
- transactions with non-residents registered in low-tax jurisdictions.

Transactions made between related parties through non-related parties are subject to transfer pricing control, if such non-related party involved does not fulfil any substantial functions on sale of goods, does not use any significant assets and/or does not assume any significant risks in the transaction.

Such transactions are subject to transfer pricing control if the annual volume of the controlled transactions with one contracting party exceeds UAH 1 million (excl. VAT) or 3 per cent of its total annual turnover, and the total annual turnover of the tax payer and/or its related parties exceeds UAH 20 million.

The effective law provides for the following penalties for violation of transfer pricing rules:

- non-submission of a report on controlled transactions: 100 minimum salaries (current equivalent of approx. EUR 6,000);
- non-reporting of a controlled transaction: 5 per cent of the volume of the undisclosed transactions;
- non-submission of the transfer pricing documentation upon request of the tax authorities: 3 per cent of the volume of the transactions concerned, but not more than 200 minimum salaries (current equivalent of approx. EUR 12,000).

The maximum period for liability for breach of transfer pricing rules is 2,555 calendar days (i.e. seven years).

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