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newsletter

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HUNGARY

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CIVIL LAW

NEW CIVIL CODE

After a lengthy legislative process, the Hungarian Parliament adopted Act V of 2013 on the New Civil Code on 11 February 2013. The New Civil Code replaces the former Civil Code adopted in 1959 that had been modified on several occasions.

The New Civil Code entered into force on 15 March 2014 and consists of the following books: General Provisions, The Human as an Entity, Legal Entities, Family Law, Property Law, Contractual Law, Inheritance Law and Closing Provisions. As opposed to the former Civil Code, the new version does not only regulate the traditional fields of civil law, but also family law and corporate law, which are currently regulated separately.

As a large piece of legislative work, the New Civil Code provides the regulatory framework for a large number of legal relations ranging from family law, to contract law and company law. It is therefore difficult to summarise all the changes in a single article. We have decided to highlight some changes introduced by the New Civil Code from company law (general rules and liability of executive officers) and contract law (trusts).

Overview of the rules on legal entities

The rules concerning legal entities are set out at different levels. Firstly, they include general provisions concerning all legal entities, then specific rules applicable to different types of legal entities. Secondly, among the different types of legal entities, the law regulates the establishment and operation of companies (profit- oriented business associations), for which it sets out general rules that are applicable to all companies and special rules for each company type. Compared with the current corporate regulations, founders and shareholders of legal entities will generally enjoy a greater contractual freedom under the New Civil Code. This implies that founders and shareholders of legal entities may for the most part deviate from the legal provisions when drafting or amending the deed of foundation, or laying down the rules concerning their relations, the relations between themselves and the legal entities, and the legal entities' organisation and operation.

This broader principle of contractual freedom will not apply in cases where a deviation is expressly prohibited by the New Civil Code, or where it clearly infringes the interests of the legal entity's creditors, employees or minority shareholders, or where it hinders the supervision of the legal entity's lawful operation. The range of these exceptions, however, is not clearly determined. Although the New Civil Code expressly prohibits deviation from certain provisions, it remains uncertain whether it is possible to deviate from other important provisions - from which a deviation is not expressly prohibited. It currently seems ambiguous whether the deviation from a certain provision infringes the above-mentioned interests or hinders the supervision of the legal entity's operation. Future case-law will possibly help to clarify the limits of founders' and shareholders' freedom of action. In the meantime, however, it will most probably cause difficulties for legal professionals to establish whether a deviation from the statutory provisions is lawful or not.

Despite the principle of contractual freedom, founders and shareholders will only be allowed to establish those types of legal entities which are regulated by law. Under the New Civil Code, these are: cooperatives, associations, professional associations, foundations as well as business associations (companies) such as unlimited partnerships (in Hungarian: közkereseti társaság or kkt.), limited partnerships (in Hungarian: betéti társaság or bt.), limited liability companies (in Hungarian: korlátolt felelősségű társaság or kft.) and public/private limited

companies (in Hungarian: zártkörűen/nyilvánosan működő részvénytársaság or zrt./nyrt.). The New Civil Code does not introduce any changes to company forms that can be established. Non-profit organisations are not mentioned in the New Civil Code; this does not mean however, that companies may no longer operate on a non-profit basis. Finally, the New Civil Code abolished the distinction between companies with and without a legal personality, i.e. unlimited partnerships and limited partnerships will have a legal personality under the New Civil Code. It is rather a theoretical change as previously the lack of legal personality for unlimited and limited partnerships did not have any practical relevance.

The liability of executive officers in light of the new Civil Code

One of the mostly debated aspects of the changes introduced by the New Civil Code was the liability of the executive officers of business associations.

It shall first be noted that executive officers' liability may be examined on two separate counts. On the one hand, the "internal" liability refers to the executive officer's liability towards the company, its shareholders, management, etc., while on the other hand, "external" liability refers to liability towards third persons. With regard to the internal relationship between the company and its executive officer, one can differentiate between the contractual liabilities based on an employment contract or a service agreement, depending on the type of contract concluded between the company and the executive officer. The difference between contractual and non-contractual liability must be taken into account for the external aspect as well.

The fundamental change in the New Civil Code concerns the non-contractual external liability of executive officers. Under the general rule of the former civil code, the company was liable for the actions of its executive officers. Therefore third parties who suffered damage due to the actions of an executive officer could only sue the company. Nevertheless, if the company was required to compensate the third party, it could claim damages from its executive officer. The new Civil Code introduces the joint and severable liability of the corporate entity and its executive officer towards third parties for damages caused by the executive officer. In other words, third parties will be able to sue the corporate entity and its executive office at the same time.

In light of the above, insurance companies may develop specific products for executive officers, to cover their liability. This type of insurance could be an integrated part of the executives' compensation packages.

In addition, the company's supreme body may discharge the executive officer from its liability along with the approval of the annual financial statements or at the end of the relationship between the company and the executive officer. This may be revoked if circumstances change or if the decision was made on the basis of false or incomplete evidence. Nonetheless, this discharge only protects the executive officers from "internal liability" (towards shareholders, etc.).

Trusts will be introduced into Hungarian civil law

The New Civil Code introduces the trust as one of the nominate contracts of Hungarian civil law. A trust is established by a contract (or by will) in which the settlor transfers the ownership of goods, rights or claims ("trust res") to the trustee who will hold those for the benefit of a third-party beneficiary.

The concept is based on the notion of trust developed in common law, and is a significant novelty introduced by the New Civil Code. Although the concept of contractual freedom allows the parties to determine the terms and conditions of their contractual relationship, the new legislation contains some mandatory elements for trusts, as briefly presented below.

A trust may be created for a definite or indefinite term but the New Civil Code provides that it ceases to exist after 50 years (i.e. the maximum term of the trust is 50 years). The beneficiary is named by the settlor. The beneficiary can be a third person, the settlor himself or the trustee but the latter may not be the sole beneficiary.

Act XV of 2014 on trusts and the regulation of trust activities governs related taxation issues. The same Act sets out the regulatory requirements pertaining to trustees.

Those trustees who carry out their activity as a business ("Professional Trustees") are subject to the licence of the Hungarian National Bank (the "HNB") and they must comply with several requirements. It should be noted that trustees conducting their activity without business purposes ("Non-professional Trustees") may easily fall into the category of Professional Trustees. The minimum criteria for qualifying as a Professional Trustee are the following: if the trustee concludes agreements on trusts at least twice a year, or if the asset management fee exceeds 1% of the handled property's value at the time of the conclusion of the contract, or the trustee carries out its activity for the purpose of realising economic benefit.

Non-professional Trustees must also report in writing to the HNB all information related to the trust managed by them, and the HNB keeps a register of those trusts and the Non-professional Trustees.

LAND LAW

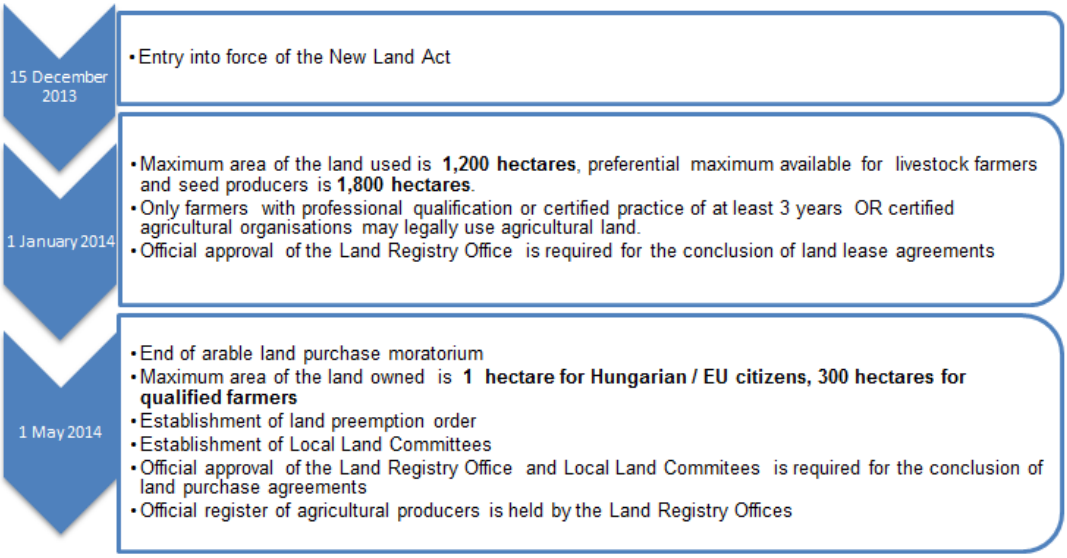
HUNGARIAN LAND PURCHASE MORATORIUM ENDED ON 30 APRIL 2014

In 2004, the EU introduced transitional measures to exempt the Hungarian market from the principle of free movement of capital and to prohibit land purchases by EU and third country nationals until 2011. These measures were put in place in an effort to prevent foreign investors from a massive takeover of arable lands in Hungary, available for a significantly lower price than in western European countries. Based on a government initiative, the transitional period was extended to 30 April 2014.

With the land transfer moratorium's end, an EU market opening is the next step with all EU citizens being able to purchase agricultural lands in Hungary up to a limit of one hectare, without any further conditions required. In the meantime, new land acquisition rules were introduced by legislative measures for those natural persons who wish to acquire land of between one hectare and the legal maximum of three hundred hectares.

In general, the concept of Act CXXII of 2013 on agricultural land ("New Land Act") is that only those natural persons who are committed to agricultural production are entitled to possess agricultural land. It means that only "farmers" with professional qualification or certified practice of at least three years are allowed to purchase agricultural lands. The specific qualifications required for becoming a farmer are now listed by separate government decrees completing the New Land Act. It is important to note that legal entities and non-EU nationals remain excluded from the opportunity to purchase arable lands in Hungary.

The New Land Act entered into force in multiple steps. The below timeline summarizes the most important elements of the three-step entry into force:



COMPETITION LAW

IMPORTANT CHANGES TO THE COMPETITION ACT

A recently adopted bill will bring significant changes to Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (the "Competition Act"). The most important modifications among the large number of amendments introduced are briefly presented below.

Merger control

Several amendments were made to the provisions on merger control. From a practical point of view, the most significant change concerns the control exercised by the buyer over the merging party prior to the clearance of the merger by the Hungarian Competition Office ("HCO").

Pursuant to the provisions currently in force, the buyer may exercise its controlling rights over the merging party to the extent necessary to ensure the normal course of business prior to the merger clearance. With the entry into force of the amendment, however, no control shall be exercised over the merging company during this period, unless the HCO gives its approval. The HCO shall give its consent upon request of the buyer, after having examined the circumstances of the case.

The procedural deadline open for the HCO to decide upon the merger clearance shall be reduced to 30 days from 45 days concerning Phase 1 procedures. The full Phase 2 review period remains unchanged at 4 months.

However according to a new provision, if a merger is qualified by the Government as being of strategic importance for the national economy, such transaction will be exempted from the merger clearance procedure.

Besides the above, a number of other issues were also amended, such as the definitions of direct control and of the participants to the merger, as well as the method for calculating the fine in case of failure to notify the merger.

Advertisement law

Provisions on unfair and comparative advertising shall be transferred from Act XLVIII of 2008 on advertising to the Competition Act. This modification aims at simplifying the use of the legislation relating to the competition law issues of advertisements.

Protection of business secret and consultation of documents

Handling of business secrets shall change fundamentally. Pursuant to the new rules, the holder shall now qualify information as a business secret and provide reasons and the data subject. The HCO shall verify whether the conditions of confidential treatment are fulfilled upon receiving requests for document consultation.

The Competition Act shall also be complemented with further rules regarding the consultation of documents. The main principle remains unchanged, meaning that documents pertaining to a case can be consulted following the issuance of the HCO's preliminary opinion. However, upon request of a concerned party, the HCO may authorise it to consult the documents at an earlier stage of the procedure, provided that this does not jeopardize the result of the procedure.

Client-attorney privilege

Documents and letters exchanged between a client and its attorney shall continue to be protected. The protected nature of the document must still be apparent in the document itself. The new terminology of such documents shall be "documents prepared for the purpose of defence".

Market analysis

A new amendment empowers the HCO to carry out market analysis in order to investigate the functioning of markets and to demonstrate market trends. Based on the publicly available information and data gathered by way of questionnaires and consultancies, the HCO shall prepare and publish studies presenting the main findings.

Use of foreign languages during the procedure

Documents drafted in English, French or German may be submitted without their Hungarian translation. This amendment shall significantly reduce the burden to parties engaged in a procedure before the HCO. If, however, several parties are concerned in an on-going case, they must give their consent to the absence of translation of the documents into Hungarian. In any case, the HCO may at any time order the preparation of a full translation or of an executive summary of a document in Hungarian.

Settlement

The settlement process is a new way to bring antitrust cases to a swift close. Parties involved in cartel and dominant position cases may conclude a settlement with the HCO by declaring having committed the infringement and accepting its legal qualification as determined by the HCO. In return, the HCO shall reduce the amount of the fine by 10%.

It is however to be emphasised that in such case the party shall waive its right of appeal and must not disclose any detail on the settlement process. The declaration can be withdrawn if the preliminary opinion of the HCO differs from the content of the party's declaration (e.g. if the HCO imposes a higher fine).

Commitments

Provisions on commitments remain unchanged; however, a new amendment empowers the HCO to modify the commitments offered by a party.

By means of a commitment, the party agrees to put its behaviour in line with the laws in a way that is beneficial for society as a whole. If the HCO accepts the commitment, there are no longer grounds for action, thus, the HCO shall close the proceeding without establishing infringement. In its decision, however, the HCO makes the commitment binding on the party concerned, meaning that breach of the offered remedy may lead to a fine.

Following the entry into force of the modifications, it will be possible to modify the content of the commitment if, for example, the performance of the commitment originally offered becomes impossible or if its performance is no longer useful for society.

Entry into force of amendments

The new provisions entered partly into force on 1 January 2014 and others will enter into force on 1 July 2014.

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BANKING & FINANCE

EMIR REGULATION

Companies that enter into transactions involving derivatives should immediately implement procedures necessary for the correct performance of the EMIR Regulation.

Who is subject to the EMIR Regulation?

Regulation No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties (CCPs) and trade repositories (TRs) (known as the "EMIR Regulation") is applicable to **all companies** trading in derivatives indicated in Appendix I, section C item 4-10 of the MiFID Directive. The scope of the obligations depends on the **volume of open positions** in such contracts within the entire capital group of such companies.

The EMIR Regulation, as an act of direct application, does not have to be transposed to the Polish legal system and has direct effects. However, its respective parts enter into force in gradual steps, in line with the necessary technical standards adopted and published by the European Commission, which specify the practical aspects of performing the EMIR Regulation.

The obligations imposed by the EMIR Regulation

Depending on the status of the company within the meaning of the EMIR Regulation, various obligations are imposed, out of which the most important include: (i) the obligation to report the concluded derivatives' contracts to transaction repositories (such as KDPW_TR), (ii) the obligation to use the methods of risk mitigation such as timely transaction confirmation), portfolio reconciliation, portfolio compression and the introduction of the proper dispute resolution procedures, as well as (iii) clearing derivative contracts through central counterparties (CCP) holding the required authorisation.

The first two of these obligations have already entered into force (and should be performed), whereas the clearing obligations will become binding towards the end of 2014 or at the beginning of 2015.

Potential sanctions are imminent

The amendment to the Polish Act on Financial Instruments Trading of 29 July 2005, which will introduce sanctions for a failure to implement or for the improper implementation of the EMIR Regulation, is subject to time-consuming arrangements between the respective public authorities. It seems, however, that it will be adopted shortly after the draft is referred to the Parliament in the relatively near future.

What are the obligations of companies that are subject to EMIR?

Such companies should, as soon as possible:

- conclude the relevant contracts allowing them to perform the obligation to report derivatives' transactions to trade repositories (for instance, KDPW_TR) - this obligation should be observed from 12 February 2014,

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- implement the procedures and launch systems allowing them to calculate (and monitor on an on-going basis) the company's status within the meaning of the EMIR Regulation (financial, non-financial and non-financial plus counterparties), which will determine the scope of the obligations imposed on the specific party, and
- commence preparations for transaction clearing through the intermediary of central counterparties, applicable to transactions in derivatives performed outside of regulated markets (i.e. in Poland, outside of the Warsaw Stock Exchange and the Off- Exchange Market organised by Bond Spot S.A.).

Sanctions for a failure to meet the obligations imposed by the EMIR Regulation

The ultimate sanctions will be severe. In accordance with the amendment, the Financial Supervision Commission may impose financial penalties for breaching the provisions of the EMIR Regulation - up to 10% of the revenues indicated in the last audited financial statements up to PLN 10 million (in the case of financial counterparties) or up to PLN 1 million in the case of non-financial counterparties, and up to PLN 500,000 in the case of non-financial counterparties that are not obliged to prepare financial statements.

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CURRENCY

KEY CHANGES TO THE CURRENCY LEGISLATION

Federal Law No. 79-FZ of 7 May 2013, Federal Law No. 155-FZ of 2 July 2013, Directive of the Central Bank of the Russian Federation (the "CBR") No. 3016-U dated 14 June 2013, Order of the Ministry of Finance of the Russian Federation No. 48n dated 24 April 2013 have introduced numerous amendments to the currency legislation of the RF.

The main changes are as follows:

- prohibition to open bank accounts and hold cash and valuables in foreign banks situated outside of the Russian Federation, to possess and (or) use foreign financial instruments has been established for certain categories of persons, in particular, for persons who hold a position in a state corporation (provision applicable with effect from 19 May 2013);
- the residents (except the residents for whom it is prohibited to open bank accounts and hold cash and valuables in banks outside of the Russian Federation) have the right to open bank accounts (deposits) in the currency of the RF as well as in a foreign currency in banks located in any foreign state (before 14 July 2013 the residents could open bank accounts outside of Russia only in a foreign currency and only in banks located in foreign states which are members of OECD and FATF);
- the residents must inform respective Russian tax authorities about opening/closing bank accounts mentioned in the previous bullet point in the currency of the RF as well as in a foreign currency within 1 month after opening/closing respective bank accounts (before 14 July 2013 the residents informed tax authorities about opening/closing bank accounts outside of Russia only in foreign currency and only in banks located in foreign states which are members of OECD and FATF);
- a passport of transaction is required for the rent/lease of movable property between residents and non - residents (provision applicable with effect from 1 October 2013);
- a passport of transaction is required for contracts (facility agreements) between residents and non - residents for amounts equal to or exceeding 50,000 USD (instead of only exceeding 50,000 USD) (provision applicable with effect from 1 October 2013).

TAX

PROTOCOL TO THE DOUBLE TAX TREATY SIGNED BETWEEN RUSSIA AND LUXEMBOURG

Amendments to the Double Tax Treaty signed between Russia and Luxembourg, introduced by the Protocol to the treaty dated 21 November 2011, came into force on 1 January 2014 (see our Flash Report dated March 2013 and February 2012, as well as our Monthly Tax Update of December 2012-February 2013 for more details).

DOUBLE TAX TREATY BETWEEN RUSSIA AND MALTA

The Double Tax Treaty between Russia and Malta was signed on 24 April 2013. It will come into force as of 1 January 2015 (see our Monthly Tax Update of May 2013 for more details).

KEY CHANGES TO THE TAX CODE OF THE RUSSIAN FEDERATION

Federal Law No. 39-FZ dated 5 April 2013, Federal Law No. 134-FZ dated 28 June 2013, Federal Law No. 267-FZ dated 30 September 2013, Federal Law No. 269-FZ dated 30 September 2013, Federal Law of the RF No. 307−FZ dated 2 November 2013, Federal law of the RF No. 420-FZ dated 28 December 2013, Decree of the Government of the RF No. 761 dated 31 August 2013 have introduced numerous amendments to the Tax Code of the RF (the "TC RF") which come into force from 1 January 2014 subject to certain exemptions.

The main changes are as follows:

Profit tax

- amendments are introduced in respect of calculation, withholding and reporting rules related to income on securities paid to foreign entities acting on behalf of third parties, in particular:
  - changes of the rules related to determining withholding tax agents, in particular, a depositary is a withholding tax agent in respect of certain securities;
  - adoption of a 30% profit tax rate on certain types of income on certain securities, if required information has not been provided at all or not fully provided to a tax agent within deadlines established in the TC RF;
  - application of a reduced profit tax rate under the applicable double tax treaty is allowed only in the form of tax refunds in respect of dividends on the shares issued by Russian legal entities, if such shares are held by foreign entities acting in favour of third parties.
- the rules for determining sale price and purchase price of listed securities for tax purposes have been amended;
- the rules for determining limits for deductibility of interest expenses under Article 269.1 of the TC RF have been changed. According to the new rules transfer pricing rules established in the first part of the TC RF are applicable to interest expenses. It means that, in particular, the tax authorities can control the level of interest expenses only in respect of controlled transactions for transfer pricing purposes and only within transfer pricing rules (subject to certain exceptions, in particular, related to certain loans in which a bank is a party to the debt obligation). Provisions included in this item are applicable with effect from 1 January 2015.

VAT

- the bonuses paid by a seller to the buyer of goods (works, services) for fulfilment of certain terms of the contract do not reduce the tax base for VAT purposes (i.e. the value of dispatched goods, works, services) except that the decrease of value of dispatched goods (works, services) is covered by a contract (provision applicable with effect from 1 July 2013);
- all taxpayers and tax agents should submit VAT declarations in electronic form;
- VAT invoices should not be issued in respect of transactions which are non VATable according to Article 149 of the TC RF;
- a list of auxiliary VAT exempted services to the list of certain licensed activities on security, commodity and currency markets included into sub point 12.2 of point 2 of Article 149 of the TC RF has been established by the Government of the RF (applies to legal relations starting from 1 January 2013).

Property tax

- the property tax base for the below listed objects is cadastral value from 1 January 2014 after the adoption of respective regional laws (regions can establish particularities for the definition of a taxable base based on cadastral value):
  - administrative, business centres and shopping centres and premises within them;
  - office premises, premises for retail, public catering and premises for consumer services;
  - immovable property owned by foreign legal entities which do not have a permanent establishment in the Russian Federation and immovable property of foreign legal entities which does not relate to permanent establishments in the Russian Federation of such foreign entities.
- the maximum property tax rates have been established for immovable property in respect of which the tax should be calculated based on cadastral value (i) for Moscow and (ii) for other subjects of the Russian Federation (in particular, for Moscow 1.5% for the year 2014, 1.7% for the year 2015 and 2% starting from the year 2016). The regions shall establish the property tax rate for immovable property in respect of which the tax should be calculated based on cadastral value within the maximum property tax rates (for example, the Law of Moscow No.63 dated 20 November 2013 established the following property tax rates in Moscow: 0.9 % for the year 2014, 1.2% for the year 2015, 1.5% for the year 2016, 1.8% for the year 2017 and 2% for the year 2018).

Personal Income tax

- investment tax deduction has been introduced within certain established limits per calendar year in respect of sale of listed securities which have been owned by a taxpayer for more than 3 years (applies to securities purchased after 1 January 2014).

Tax Concessions for Far East

- tax concessions for investment projects related to the production of goods (subject to certain exemptions) are provided in 13 Far Eastern and Siberian regions, in particular Kamchatka, Khabarovsk, Amur, Irkutsk, Magadan Sakhalin regions, etc., in particular, investors in the 13 regions in question will use a lower rate for Profit tax (the rates of profit tax payable to the regional budget will be adopted by the respective Russian regions), i.e. 0% profit tax rate is payable to the Federal budget during the first ten years from the tax period in which the first income from sales under the investment project is accounted for tax purposes and regional profit tax rate cannot exceed 10% in the first five years in question and cannot be less than 10% in the following five years in question, provided certain requirements are met.

TURKEY

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TECHNOLOGY

RECENT AMENDMENTS TO INTERNET LAW No. 5651

"Omnibus Law" no. 6518, adopted on 6 February 2014, contains numerous and significant amendments to various laws. In particular, it modifies Law no. 5651 on the Regulation pertaining to online disclosure and the fight against offences committed via Internet disclosure (the "Internet Law").

Pursuant to these amendments, content providers must send all the information they have to the Telecommunications and Communication Supervisory Authority (the TIB), upon request. They must also take all the precautions ordered by the TIB, such as removing illegal content, and archive web user connection data for one to two years. Such provisions should facilitate the solving of disputes, in particular as regards criminal procedures. However, Turkish media are drawing attention to the fact that storing web users' connection data may be in breach of personal data protection provisions.

Additionally, changes to the Internet Law offer all persons the possibility of requesting from a content provider or a hosting provider that they remove illegal content from a website. The local criminal court can also decide to block access to illegal data. Content and hosting providers must act on the removal or blocking request within twenty-four hours. Unless otherwise provided, the blocking of access should only apply to the data in question, not the entire site. Should a person contact a judge to obtain the blocking of access, said judge must decide the matter within twenty-four hours, without holding a hearing.

The decision to block access must be applied within twenty-four hours by the Association of Internet access providers. Rules of procedure and the rules applicable to this new private legal body must be approved by the TIB. Additionally, all Internet access providers must be members of this association to be able to practice their activity.

In the event that rights to privacy are not respected, both individuals and companies will be able to institute proceedings before the TIB to obtain the blocking of access to problematic content. The TIB will then send the Association of Internet access providers the blocking request so that it may enforce such request within four hours of notification. The blocking request will then be taken to the local criminal court, which will render its judgment within forty-eight hours.

Proceedings were brought before the Turkish Supreme Court concerning the significant powers granted to the TIB. Although the Court has not yet rendered its decision as regards the adoption of the Omnibus Law, the question remains of deciding whether this law is not in breach of personal rights and of the respect of Internet users' privacy. Finally, in its current version, this new regulation offers no change to the protection of intellectual property rights.

CORPORATE LAW

INDEPENDENT AUDI T OF COMPANIES

With the entry into force of the new Turkish Commercial Code No. 6102 on 1 July 2012, one of the major impacts on Turkish corporate life relates to the auditing of certain types of commercial companies, which shall now be carried out by independent auditors (Articles 397 et seq. of the Turkish Commercial Code).

Article 397/4 provides that companies affected by such an independent audit requirement shall be determined by the Council of Ministers. In this respect, in early 2013 the Council of Ministers set forth the criteria applicable to determine which companies shall be subject to such a mandatory independent audit.

In a decision published in the Turkish Official Gazette on 13 March 2014, the Council of Ministers amended the thresholds of the above-mentioned criteria with retroactive effect as from 1 January 2014. Accordingly, companies which fulfil at least two of the following criteria during two consecutive financial years shall be subject to mandatory independent audit:

- companies whose assets value amounts to TRY 75 million (previously TRY 150 million);
- companies whose net sales proceeds reach TRY 150 million (previously TRY 200 million); and
- companies which employ at least 250 employees (previously 500 employees).

To determine whether the above thresholds have been reached, the financial statements of the relevant companies as well as their average number of employees within the past two years shall be taken into account.

As regards companies which hold subsidiaries and affiliates, the above-mentioned thresholds shall be assessed in light of the sum of (i) all relevant financial figures (i.e. assets value and net sales) of such group companies and of (ii) the average number of all their employees.

It should be noted that other specific companies (e.g. listed companies, newspaper companies, companies regulated by the Information and Communication Technologies Authority or by the Energy Market Regulatory Authority, etc.) shall also be subject to a mandatory independent audit upon fulfilment of slightly lower thresholds relating to the same criteria.

In addition to the above, and regardless of any of the aforementioned criteria, the following companies shall in any case be subject to a compulsory independent audit: (i) companies subject to the supervision and control of the Capital Markets Board or of the Banking Regulation and Supervision Agency, (ii) insurance, reinsurance and pension companies, (iii) companies allowed to perform their activities within Borsa Istanbul (the recently unified Turkish stock exchange); (iv) licensed and general warehouses subject to the Agricultural Products Licensed Warehousing Law and General Warehousing Law and (v) press companies holding television channels.

As regards companies that do not fulfil the criteria for mandatory independent audit, the Turkish Commercial Code provides for the principle of an alternative audit obligation.

The terms of such an audit are expected to be determined in a secondary legislation, still to be issued. Accordingly, the exact scope of such an audit, the qualifications, duties and authorities of the relevant auditors, the procedure to be applied for their appointment and dismissal, the contents of the audit reports as well as the procedure for submission of the audit reports to the general assembly still remain unclear at this stage.

HARDSHIP OR EXCESSIVE DIFFICULTY IN PERFORMANCE

The Turkish Code of Obligations (TCO) No. 6098, which entered into force in July 2012, introduced major changes and novelties to the Turkish legal system.

One such innovation is the adaptation or rescission of contracts due to excessive difficulty in performance (Hardship), which was given legal basis in the new Turkish Code of Obligations. While the concept of excessive difficulty in performance was mostly recognised as a legal doctrine by scholars, and some Appeal Court decisions indicate different views as to its scope, Article 138 of the TCO gives Hardship a legal basis in general contract law.

The article in question reads as follows:

"Excessive difficulty in performance

Article 138- When an unexpected event that is not foreseen and not expected to be foreseen by the parties during conclusion of the contract arises not resulting from negligence on the obligor's part, and if the conditions present during the conclusion of the contract are modified to the detriment of the obligor to such an extent that demanding performance from the obligor would violate the principle of good faith, and if the obligor has not yet discharged his/her debt or has discharged his/her debt by reserving the right of hardship, the obligor shall be entitled to demand from the judge the adaptation of the contract to new circumstances, or to rescind the contract where such adaptation is not possible. In continuous contracts, as a rule, the obligor shall use the right to termination instead of the right to rescind.

This provision shall also apply to debts in foreign currencies."

As described in the above article, the obligor may demand adaptation of the contract from the judge or rescind and/or terminate the contract when all four conditions below are met:

- An unexpected event, which was unforeseen and not expected to be foreseen by the obligor, must occur after the contract was entered into,
- There must be no negligence on the obligor's side in the occurrence of such unexpected event,
- Performance must have become excessively burdensome for the obligor because of the unexpected event in light of the principle of good faith,
- The obligor must perform his obligation by reserving the right of hardship or the obligor must not yet perform the contract.

If all of the above conditions are met, the obligor may demand from the judge that the contract be adapted in accordance with the changed circumstances. If this is not possible, the obligor may rescind the contract or terminate the contract in the event of a continuous contract.

The concept of adaptation of the contract introduced by Article 138 is an important exception to the basic principle of contract law, *Pacta sunt servanda* (Agreements must be kept) and is likely to have important consequences. The last paragraph stating that this provision shall also apply to debts denominated in foreign currencies is also of significance given the recent fluctuations of the Turkish lira.

However, as the wording of the Article consists of general expressions, its scope remains yet to be defined. Precedents set by the Turkish Court of Cassation shall therefore play a key role in laying out the guidelines and criteria for implementation of the Article's provisions.

In this context, in line with the precedents of the Court of Cassation, carefully drafted adaptation clauses inserted in contracts remain of paramount importance in determining the good faith of parties' obligations in the event of hardship.

UKRAINE

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BUSINESS LAW

SIGNING OF THE ASSOCIATION AGREEMENT WITH THE EUROPEAN UNION

On 27 June 2014, Ukraine and the European Union signed a third, final part of the Association Agreement (the Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part). This third element deals with the core economic issues such as free trade between EU and Ukraine. Pursuant to the Association Agreement, Ukraine commits itself to implementing a number of measures, including changes in laws, regulations and administrative practices.

The Association Agreement, which must be ratified by all signatories (27 EU Member States, the EU as well as Ukraine) to become effective, will enter into force one (1) month after the filing of the last approval. However, Ukraine will be able to implement the treaty unilaterally upon its ratification by the Ukrainian Parliament, and some parts of the Association Agreement will apply provisionally, even without being ratified by all EU members. At the same time, the EU urged Ukraine to ratify the Association Agreement as soon as possible, before September 2014, particularly in view of the expiry on 1 November 2014 of a unilateral preferential regime which was temporarily granted by the EU to Ukraine in March 2014, upon signing of the political chapter of the Association Agreement.

The Association Agreement, once entered into force, will replace the 1994 Partnership and Cooperation Agreement between the European Communities and Ukraine.

DOING BUSINESS IN UKRAINE

Almost 100 permits cancelled

On 9 April 2014, the Parliament of Ukraine adopted the Law No. 2436a (the "Law"), which cancels almost 100 permits and approvals, simplifies respective permitting procedures and shifts the current approach from state- to business-oriented.

The Law is a very important step towards simplification of permitting procedures and creation of credibility in permits issued by the respective state authorities.

According to the Law, any permit is to be received by a legal entity only if such permit is included in the List of Permits. Exception has been made only for permits in the areas of export control, financial services, state secret, economic competition protection, and nuclear energy use, which are set forth by the respective laws and not included in the List of Permits.

Any approval, opinion or other document necessary to be obtained in the permitting procedure shall be collected directly by the permit-issuing authority. Prior to such amendments, legal entities often had to obtain necessary approvals and opinions on their own, which made the permitting procedure complicated and time-consuming.

The Law prohibits the cancellation of permits by the issuing authority when the legal entity has provided inadequate information or is carrying out its business violating the law subject to prior receipt of an improvement notice from an issuing authority. In such cases the competent authority may file a claim to the administrative court for cancellation of the permit, which will then take a decision on the cancellation of the permit.

Permits for emission of contaminants into the air

The Law provides for an extension of the validity term of permits for emission of contaminants into the air by facilities of all three groups of environmental danger. In particular, in case of operation

of facilities of the second group (registered facilities which are not engaged in manufacturing and have no manufacturing equipment) the permit remains valid for 10 years, permits for the facilities of the third group (the less dangerous) will be valid for an indefinite period of time while permits for the most dangerous facilities (i.e. of the first group) will be valid for 7 years.

Permits for waste disposal

According to the Law, the permit for waste disposal will be compulsory from now on only for legal entities generating over 1,000 tons of waste which activity is not limited to waste generation but also covers other operations with waste. Legal entities which generate less and which activity leads only to waste generation will only have to submit the annual waste declaration.

The Law also proposes to cancel the requirement of limits on generation and disposal of waste from the list of documents necessary for the receipt of permits for waste disposal. Up to now, the validity of such permits is linked to the approval of the limits by local administrations and prior agreement with environmental authorities. Such procedure usually takes several months and failure to agree the limits with the environmental authorities, or non-approval by local administrations, will make the permits invalid. Thus, the proposed amendments will significantly speed up and simplify the permitting procedure for applicants.

Permits for special water usage

Prior approval of applications for receipt of the permit for special water usage will be replaced with opinions of the relevant state authorities which will be required only for special water usage of underwater and healing waters, while the permit for special usage of surface waters will be issued by the local authorities without any additional opinion to be issued.

Permits for generation, transmission and supply of electric, thermal, mechanical power generated from renewable sources

The Law annuls permits for generation, transmission and supply of electric, thermal, mechanical power generated from renewable sources as well as permits for: geothermal energy generation; allocation of equipment which uses solar radiation, wind, tidal waves for energy facilities construction; grid connection; network creation for transportation of electric power generated from renewable sources to consumers which may encourage construction of energy facilities and generation of electric power from renewable sources.

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Temporary prohibition (suspension) of business activity

The Law annuls Resolution of the Parliament of Ukraine dated 29 October 1992, which proves to be the main legal basis for a temporary prohibition (suspension) of business activity of legal entities by environmental authorities. If the Law is signed by the acting President, the environmental authorities will no longer be authorised to take decisions on temporary prohibition (suspension) of business activity in case of failure by the legal entity to receive ecological permits.

Grain quality certificates and compliance certificates

The grain quality certificates and compliance certificates for grain storage services will not be required anymore. Moreover, the Register of Grain Quality Certificates and Derived Products

as well as the Register of Compliance Certificates for Grain and Derived Products Storage Services will be abolished.

According to the current version of the Law of Ukraine "On Grain and Grain Market", the grain quality certificates are deemed to be a pre-requisite for the transportation of grain and derived products and grain export-import operations, while certification of the grain storage services is required for commencing grain warehousing activities. Hence, such amendments will significantly simplify the transportation of grain and derived products within the territory of Ukraine and grain export-import operations and considerably facilitate grain warehousing.

The Law was signed by the Chairman of the Parliament who at the same time is the acting President of Ukraine and published on 25 April 2014. The Law became effective on the day following its publication.

PUBLIC PROCUREMENT

On April 10, 2014 the Parliament of Ukraine voted for the new version of the Law of Ukraine on Public Procurements (the “Law”). The main purpose of the Law is to facilitate and streamline the public procurements process in Ukraine. The most essential novelties of the Law compared to its current version can be summarized as follows.

Scope of application

The Law applies to all public employers including companies controlled by the government, save for a few exceptional cases. Small scale procurements of approx. EUR 80,000 (for goods) or EUR 400,000 (for works) may be carried out by certain groups of public employers (e.g. employers empowered with special or exclusive rights) without an obligatory public tender, unless such procurements are funded by public budget means.

The list of exceptional cases requiring no public tender was significantly reduced (from more 30 to only 11 positions).

Procedure

The one-bidder tender was replaced by the negotiated procedure, which may be used by the public employer in a number of exceptions cases and includes negotiations with several (not necessarily one) predefined bidders.

The requirement on availability of production facilitates and/or a service centre on the territory of Ukraine was removed.

The Law provides for the possibility of procurements with the use of electronically singed documents; it also envisages a possibility of completely electronic tenders.

Besides, the Law contains a number of new procedural details, which needs to be taken into account before participation in a tender, including, without being limited to:

- the new extended definition of affiliation between tender participants and/or public employer;
- the new rule to prevent participation in public tenders of off-shore companies (the list of the relevant jurisdictions is to be defined by the government);
- the new thresholds for subcontracting and additional works not envisaged by the initial tender offer.

Long-term contracts

The possibility of signing of long-term ("framework") agreements was preserved. However it still requires an additional regulation by the government.

Free movement of goods and services

We would like to emphasize, that the Law introduces a new principle of free movement of goods and services (in addition to the non-discrimination principle). The way of its application is yet to be proven in practice.

The Law was signed by the acting President of Ukraine and entered into force on 20 April 2014.

DISPUTE RESOLUTION

IMPROVEMENT OF THE COURTS SYSTEM

On 8 April 2014 the Parliament of Ukraine adopted the Law of Ukraine on Restoration of Confidence in the Judicial Authorities in Ukraine No. 1188-VII. The Law was signed, published and entered into force on 10 April 2014.

The Law aims at improving the judicial system of Ukraine and strengthening the confidence in Ukrainian courts. In order to achieve this goal, the Law provides for an assessment of judges to be performed within 1 year from the date of appointment of the Ad-hoc Commission charged with perming the task.

The Ad-hoc Commission will be comprised of members appointed by the Plenum of the Supreme Court of Ukraine, the Commissioner for Anticorruption Policy and the Parliament of Ukraine.

It is important to note that any legal entity or natural person may ask the Commission, following the prescribed procedure, to assess actions of a judge or judges.

Upon results of the assessments, the Commission will report its findings to the High Council of Justice or to the High Qualifications Commission of Judges of Ukraine, if disciplinary offences are found, or to the General Prosecutor's Office, if criminal offences are revealed.