

# PETERKA & PARTNERS

The CEE Law Firm

CEE Newsletter, August 2013



Countries covered

Czech Republic | Slovakia | Poland | Hungary | Romania | Bulgaria | Serbia | Belarus | Ukraine | Russia |

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### **Increase in the Minimum Wage**

Government Decree No. 210/2013 Coll. took effect on 1 August 2013. The regulation increases the minimum wage as the lowest allowable reward for work. The minimum wage is regulated by the Labour Code, and its amount and the conditions for paying it are set in Government Decree No. 567/2006 Coll., on the minimum wage, the minimum level of guaranteed wage, and the definition of hazardous work environments and wage supplements for work in hazardous work environments. The minimum wage has been increased from CZK 8,000 (approx. €310) to CZK 8,500 (approx. €330) for a 40 hours working week. A higher minimum wage may be agreed in collective agreements.

### **Amendment to the Commercial Code**

Act No. 179/2013 Sb., amending Act 513/1991 Sb., Commercial Code, as amended, took effect on 1 July 2013. The major goal of the amendment was to implement Directive 2011/7/EC of the European Parliament and of the Council on combating late payment in commercial transactions and to improve the position of creditors. The legislation was passed despite the fact that with effect from 1 January 2014 the Commercial Code will be substituted by a new Act on Business Corporations as part of the large private law recodification.

Under the amendment payment for supplies of goods and services falls due 30 days of the receipt of the respective invoice or similar invitation by the debtor or the delivery of goods or the rendition of services to the debtor or the take-over of supplies by the debtor, when no invitation to pay is necessary. The payment period longer than 60 days may be agreed unless it is grossly unfair to the creditor. If the debtor is a contracting authority, the payment period may not exceed 60 days and the payment period exceeding 30 days may be agreed only if the nature of the liability requires so.

Under the amendment agreements under which late interest and compensation for costs connected with debt recovery are excluded are invalid.

### **Amendment to the Act on Certain Measures related to the Preparation of Major Investments**

The amendment to the Act broadens the category of major investments to all types of buildings. At the same time, the standards which must be met for a certain investment to be regarded as a major will be tightened (the amount of expenses must be at least €100 million and a minimum of 300 new jobs must be created). The amendment also speeds up the process for implementing a major investment, and the local planning authority will no longer be required to issue an opinion. The amendment took effect on 1 August 2013.

### **Regulation of Electric Power Prices**

The Slovak Regulatory Office has issued a decree introducing the G-Component, which is a special fee for access to the grid. The amount of the fee depends on the price of reserved capacity at the source. Many domestic providers (mainly investors in renewable energy sources) consider the decree unconstitutional and retroactive. Opponents argue that the fee discriminates against domestic providers in favour of foreign providers from countries which have no G-component. The decree took effect on 30 July 2013.

### **Amendment to the Act on Collective Investments**

This amendment implements the EU Directive on Alternative Investment Fund Managers. To ensure that Investment Fund Managers in the EU are subject to effective supervision, the directive establishes a legally binding regime of permission and supervision. This regime is applied irrespective of the legal residence of the alternative investment fund. The amendment specifies that all alternative investment fund managers who want to provide services in the EU will have to obtain authorisation from its home member state and comply with the minimum standards of capital sufficiency. The amendment took effect on 22 July 2013.

### **New Legislation on Restructuring**

The Ministry of Justice is to overhaul Polish restructuring and insolvency law. The Insolvency and Rehabilitation Act will be supplemented by a new Restructuring Act. The new legislation will focus on allowing businessmen a fresh start following insolvency and providing them with real possibilities to restructure their companies. The new provisions will also accelerate and alleviate proceedings and give creditors new methods for recovering debts. Correspondence between the parties in restructuring and insolvency proceedings and the court will be easier thanks to the digital platform of the Central Register of Insolvency.

### **New Legislation to Increase Regulation of Loan Companies**

The Polish Parliament is currently working on regulations to strengthen supervision of loan companies which provide quasi-banking services. The new provisions will establish a maximum total rate of interest on short-term loans to protect borrowers. Loan companies will also be required to have minimum share capital of PLN 1 million before they can provide loans. The Financial Supervision Authority will have the right to publish warnings about loan companies' activities.

### **Polish Financial System may get a New Regulatory Body, the System Risk Council**

The Financial Supervision Authority does not have sufficient powers to keep the Polish financial system stable. Consequently, the Polish Government intends to create a new authority to supervise the financial system, to be known as the System Risk Council. The Council will identify, monitor and limit risks in the system. If the financial system is in danger of collapse, the Council will be able to issue warnings and recommendations. The warnings and recommendations will not be legally binding but their recipients will be obliged to inform the Council of any action taken. The Council will have seven members, chaired by the President of the National Bank of Poland.

### **Changes related to Trademarks**

On 1 April 2013 an amendment to the Act on the Protection of Trade Marks and Geographical Indications took effect. Hungary has separate legislation for certain types of intellectual property, including inventions, utility models, designs, trademarks and geographical indications, and copyright.

The amendment regulates the legal protection of trademarks and takes into consideration EU law and international agreements.

The main amendments are:

- clearing the way for retroactive trademark protection (trademark protection can be withdrawn retrospectively to the date when for example an application for withdrawal was submitted; additionally, claims for trademark infringement may also be restricted from this date);
- prohibition on geographical indications in registered trademarks (except it allowed under EU law);
- allowing the registration of state emblems as trademarks (still generally prohibited but in some cases the authorities can approve the registration of a trademark which includes a state emblem in whole or in part);
- requirement to obtain prior consent for the disclosure of personal data;
- requests and applications regarding international trademarks can be sent electronically from January 2014;
- reduction in the deadline for paying the fees for trademark registration applications.

### **New Regulation on Authorisations and Licenses in the Electricity Sector**

The new regulation has been approved by Order of the National Energy Regulator no. 48/2013 and states:

- The conditions for issuing permits and licenses in the electricity sector;
- The conditions under which the authorities can refuse to issue permits or licenses;
- The conditions under which licenses can be amended, suspended or revoked.

### **Amendments to Environmental Protection Law**

The environmental protection act no. 195/2005 has been amended. The most significant amendment reduces the validity of environmental authorisation from 10 years to 5 years.

### **Energy Performance Certificate for Buildings becomes mandatory**

Act no. 372/2005 on the energy performance of buildings has been amended by Act 159/2013. Owners of buildings are now obliged to obtain an energy performance certificate when selling or leasing property.

### **New Regulation on Organising and Operating the Green Certificate Market**

The National Energy Regulator has adopted a new order, no. 57/2013, on organising and operating the green certificates market. The main provisions of the new regulation are:

- Rules on organising and operating the green certificates market;
- Players on the green certificates market and their responsibilities;
- Rules on the registration and management of the green certificates market;
- Rules on the registration and management of information regarding transactions on the green certificate market;
- Information on monitoring the green certificates market.

### **Amendments to the Public Procurement Act**

In July the new Bulgarian Government made several proposals to amend the Public Procurement Act. The proposals aim to reduce bureaucracy, make procurement procedures more transparent, and encourage new, small and medium enterprises to submit bids.

As part of the measures to restrict the administrative burdens on businesses the draft contains measures that bidders in tenders will no longer need to present official documents certifying information contained in public registers. Further, bidders will not need to buy tender documents from the tendering authority, but instead will be able to download them from a website. There is also a facilitated procedure for making offers by submitting an electronic catalogue of standard supplies.

To encourage bids from new, small and medium enterprises, the law prohibits tendering authorities from including conditions that do not comply with the subject of the tender. For example, the requirement for a bidder to submit information on its financial status should only reflect the resources necessary for fulfilling the particular tender and not any abstract criteria.

As one of the aims is to make public procurement procedures more transparent, all documents on opening bids, selecting bidders, and concluding and performing contracts must be published on the contractor's website as well as in a local or national media. In all cases the estimated value of the tender is to be published.

Other measures regulate the monitoring of tenders by external authorities. Unlike under the present system, the Agency for Public Tenders will monitor all tenders and not only those exceeding certain thresholds.

### **New Transfer Pricing Rules**

Following recent tax reforms in Serbia, a new Rulebook on Transfer Pricing was adopted and came into force. As of the beginning of this year, all tax payers must submit together with their annual tax declarations relevant documentation on transfer pricing; such transfer pricing documentation must among others demonstrate that the taxable transactions undertaken with related persons were conducted at arm's length.

The Rulebook on Transfer Pricing provides among others for definitions of the required form and content of the transfer pricing documentation (thus, the submitted documentation in relation to the calculation of transfer prices must be prepared as a report including an analysis of the taxpayer's group of related persons, description of business activities, description of relationships of affiliation and control between the related persons, description of functions of key persons, selection of transfer pricing method, conclusion as to compliance with transfer prices with arm's length prices) and the application of different transfer pricing methods.

The Rulebook on Transfer Pricing does not impose an obligation to file separate transfer pricing documentation for specific transactions between related persons; upon review of the submitted transfer pricing documentation jointly with the annual tax declaration, the Tax Administration may however request additional documents and may request specific explanations and supporting transfer pricing documents in connection with specific transactions. When soliciting from the taxpayer additional documents related to specific transactions, the Tax Administration must take into consideration the costs for the taxpayer related to the preparation of additional transfer pricing documents, the capacity of the taxpayer to provide such additional documents; an appropriate deadline for the submittal of additional documents must be granted.

### **Amendments to Investment Legislation**

The adoption of the Investment Act on 12 July 2013, No 53-3, was intended to repeal the existing Investment Code. The new act provides a framework, with details given in specific tax, banking and civil legislation. The definition of investments is clarified. Investments are any real or personal property and other objects of civil rights which have a financial value.

The new law establishes the right of investors to employee foreign citizens under an employment contract, including those who do not have permanent residence.

Dispute resolution between investors and the Belarusian state is also clarified. Disputes should preferably be resolved through negotiations. If this is not possible, then litigation can be commenced. If Belarusian courts do not have jurisdiction, then arbitration proceedings can be commenced under the UNCITRAL Model Law or at the ICSID (International Centre for Settlement of Investment Disputes).

The law guarantees compensation if an industry is nationalised or property is requisitioned. The new law abolishes the status of companies with foreign investments and the requirements to set up a statutory fund.

The Act on Concessions of 12 July 2013, No 63-3, replaces other provisions of the Investment code. The new act introduces a detailed procedure for tenders, and deadlines for concluding concession contracts. The law grants the same guarantees to bidders as for investors.

The above legislation establishes new framework regulations and repeals the Investment Code. The Acts come into force on 24 January 2014.

**Ratification of Convention with Cyprus**

On 7 August 2013 New DTT with Cyprus was ratified by Ukraine (takes effect on 1 January 2014) providing for new increased rates: dividends 5/15%; interest rate 2%; royalties 5/10%. Income from the sale of shares (including shares which value relates to real estate) is tax exempt.

**New Transfer Pricing Rules**

The Act On Amendments to the Tax Code Concerning Transfer Pricing No.2515, has been officially published and takes effect on 1 September 2013. The new rules will apply to business transactions for the acquisition (sale) of goods (works, services) with related parties both non-residents and residents (under certain conditions); and to transactions where one party is resident or registered in the state where the income tax or corporate tax rate is 5 or more percentage points lower than it is in Ukraine and in some other cases.

**RES: New Rules on LCR Calculation in force**

According to the new Rules in order to determine whether the amount of the local component of Ukrainian origin corresponds to the amount established by the Act On Electricity, a licensee must submit an application and the required documents to NERC. NERC's subsequent decision serves as a basis for whether a "green" tariff for electricity will be set.

To enhance the reliability of the elements of the local components of Ukrainian origin's accountability for energy facilities, NERC will maintain lists of elements of local content of Ukrainian origin for each renewable energy source. The lists will be published on the NERC website (<http://www.nerc.gov.ua>).

**Risk of Discrepancy between a Company's Legal and Actual Address**

In a ruling of 30 July 2013, No. 61, the High Commercial Court held that a company bears all risks of its legal address not corresponding to its actual address. A company is deemed to have received all correspondence sent to its legal address even if the correspondence is returned as undelivered. When incorporating a company the founders should also confirm that the company will be based at its legal address.

**Central Bank of Russia to regulate Financial Market**

Following the closure of the Federal Service on Financial Markets and the transfer of its powers to the Central Bank of Russia, Federal Act of 23 July 2013 No. 251-Ф3 states that from 1 September 2013 joint stock companies will have to submit all corporate reports on their activity to the Central Bank of Russia. The Bank will also monitor joint stock companies' regulatory compliance.

**Russia extends Grounds banning Foreigners Entry**

Federal Act of 23 July 2013 No. 224-Ф3 amends immigration law. Foreigners who have committed two or more administrative offences within a three year period can be banned from entering Russia.

**Jurisdiction of Russian Courts in Disputes with Foreign Companies**

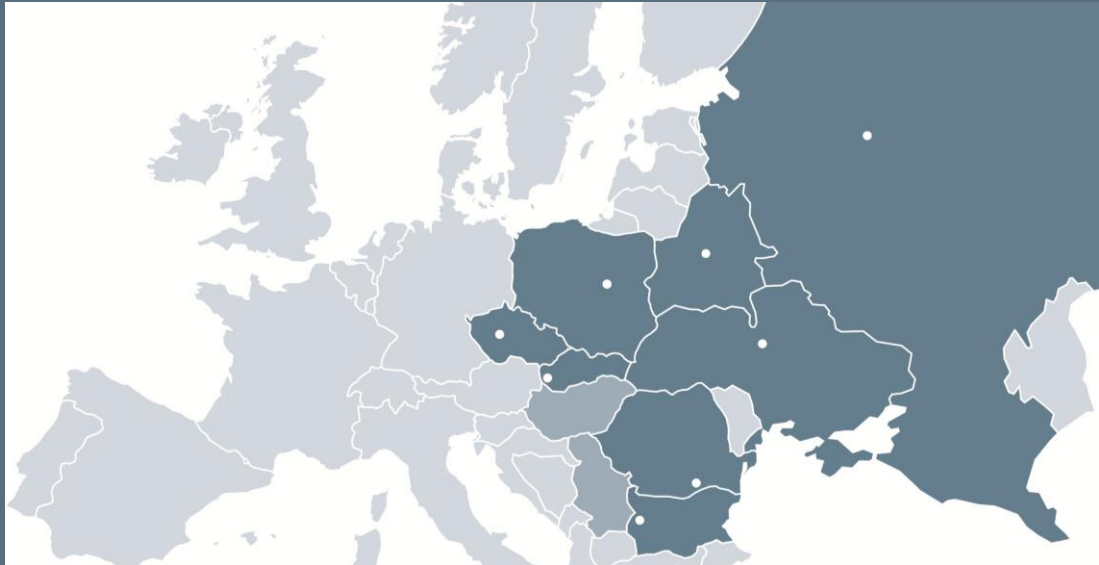
The High Commercial Court has issued Informative letter of 29 July 2013 No. 158, on the jurisdiction over disputes where at least one party is a foreign company. The Court clarified under which conditions a dispute can be transferred to the Russian courts.

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