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AUSTRIA | The amended Act on Limited Liability Companies (*GmbH-Gesetz*) is expected to enter into force on 1 July 2013, introducing many simplifications

At present, anyone wishing to set up a limited liability company in Austria is faced with relatively high financial hurdles because both the minimum share capital required and the start-up costs are **very high compared with the rest of Europe**. The aim therefore is to make the Austrian limited liability company more attractive as a legal form by **reducing** both the minimum share capital required and the start-up costs. The amended act is expected to enter into force on **1 July 2013**.

In short, the key changes are as follows:

Reduction of the minimum share capital to EUR 10,000, half of which in cash

Reduction of start-up costs

Notary costs will be reduced by lowering the tariff tied to capital to approximately half of the current amount. In addition, a new heavily reduced tariff will be introduced for the foundation of certain one-person companies which will make use of "model articles of association"; that is, a standardised declaration regarding the foundation of the company. Therefore, it will reduce the costs both in terms of the notarial deed and the necessary certification at the time of the foundation. The cost of increasing the capital of a company with share capital below EUR 35,000 will also be reduced.

In future, notifications regarding the foundation of a new company need only be made via the Edicts Archive (www.edikte.justiz.gv.at), not in the *Wiener Zeitung*, which will mean a significant reduction of costs.

Other key changes

Under Section 36 para. 2 of the Act on Limited Liability Companies, the **managing director** of a company will now be under an obligation to **convene a general meeting** not only in the event of the loss of half of the share capital, as is currently the case, but also where the company achieves the figures specified in Section 22 para. 1 no. 1 of the Company Reorganization Act [*URG*] and Section 2 para. 1 no. 3 of the Equity Replacement Act [*EKEG*] (e.g. an own funds ratio of less than 8% and a notional debt repayment period of more than 15 years).

If a corporation **does not have a managing director**, a **shareholder** with in excess of 50% of the share capital in the company will be entitled and indeed **obliged** to file an **application** for the opening of **insolvency proceedings**.

The statutory link to the minimum size of the share capital of a limited liability company will bring about a **reduction in the minimum amount of corporation tax payable** (from 2014 onwards).

Other proposed amendments for the law on limited liability companies are to be **postponed** until a **later date when a more comprehensive review** of this legal field is conducted.

The consultation draft is currently available for review on the website of the Austrian Federal Ministry of Justice (www.bmj.gv.at). Click on "Das Ministerium" and then go to "Gesetzesentwürfe".

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BELARUS | Registration and liquidation of companies

Introduction

Decree No. 2 "On Amendments to Decree No. 1 dated 16 January 2009" was adopted by the President of the Republic of Belarus on 24 January 2013 and entered into force on 1 May 2013. The principal amendments are aimed at simplifying the procedure for registering a company and increasing the responsibility of shareholders and/or CEOs for ensuring that the insolvency of a company is not concealed.

The most important new provisions

New procedure for formation of charter capital

The requirement that charter capital be paid up in full prior to the registration of a new company has been revoked. Since 1 May 2013, charter capital can be paid up within twelve months of the date of the registration of a company.

This amendment to the procedure for payment of charter capital means there are now fewer preliminary steps for registration of a company as there is no longer any need for an investor to open a temporary bank account for payment of a contribution to the charter capital.

Protection of creditors of a liquidating company

Currently, there are no obstacles preventing a shareholder and/or a CEO of a liquidating company from holding the position of chairman of a liquidation committee (or the position of sole liquidator). This could potentially lead to a situation where the interests of creditors are abused by a liquidation committee (or a sole liquidator) especially if a liquidating company is trying to conceal its insolvency.

In this regard, the amendments provide that in case of any unsettled creditors' claims, a shareholder and/or a CEO holding the position of chairman of a liquidation committee (or the position of sole liquidator) should be dismissed and an independent person appointed instead. Furthermore, to prevent a liquidating company from concealing its insolvency, shareholders and/or the CEO of a liquidating company, which is attempting to conceal its insolvency, can be made subject to subsidiary liability for the debts of the company. The amount of subsidiary liability is limited by the total amount of creditors' claims outstanding.

Moreover, to prevent a company from prolonging its own liquidation, time limits for the liquidation procedure have been introduced. As a rule, the liquidation procedure may not exceed nine months from the day on which the decision is taken to liquidate the company, but it can be extended if required. However, the total duration of the liquidation procedure may not exceed twelve months.

These new provisions are aimed at providing better protection for the interests of the creditors of a liquidating company as liquidation has frequently been used as a means of avoiding settlement of a company's liabilities. Under the amendments, creditors are now entitled to prevent shareholders and/or a CEO from concealing a company's insolvency during the process of its liquidation and to make them subject to subsidiary liability. Furthermore, the legislator established a maximum time frame for a company's liquidation to prevent undue prolongation of this process.

Summary

On the one hand, the amendments make it simpler for both domestic and foreign investors to start a business in Belarus by minimizing the number of steps to be taken prior to registration of a company. On the other hand, the amendments also give creditors an effective tool for preventing the concealment of the insolvency of liquidating companies, as well as the possibility to make shareholders and/or CEOs of such companies liable for their illegal actions.

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BULGARIA | New developments in the renewable energy sector

Introduction

Last year saw a number of significant developments in the renewable energy sector in Bulgaria. In September 2012, the State Energy and Water Regulation Commission adopted Resolution No. C-33/14.09.2012 (the "**Resolution**") which imposed new temporary fees on the producers of energy from renewable energy sources for accessing the electrical grid. This has resulted in a large number of court cases relating to the Resolution. The Supreme Administrative Court ("**SAC**") has just issued its first decisions on the issue. Proceedings are ongoing.

Background and recent developments

Background

The fees for accessing the electrical grid introduced by the Resolution are payable on a monthly basis and vary depending on the renewable energy source in question. The size of the fee also depends on when the renewable energy project was connected to the electrical grid. These fees vary from 10% to 40% of the electricity price paid by the distribution companies to the producers under the established feed-in tariffs, thereby significantly reducing the profits generated by producers. Considering that most of the projects are financed with bank loans, these fees endanger the continuity of the projects and jeopardise the ability of investors to repay their loans. The Resolution is highly controversial and has come in for criticism from members of the business community, the associations of producers and foreign investors. Over 200 producers appealed against the Resolution before SAC. Despite the fact that the cases are to all intents and purposes identical, SAC decided against merging the cases and thus there are separate proceedings for each party appealing against the fees introduced.

Recent developments

As of today, SAC has ruled in favour of producers in a significant number of cases and has revoked individual points (fees) under the Resolution. The decisions reiterate the same grounds for revocation of the specific points. Such grounds mainly include: non-compliance with the administrative procedure, unfoundedness, discriminatory and unclear procedure for determination of different fees for different electricity producers, etc. Since these arguments are generally valid for the Resolution as a whole, it is expected that SAC will take the same approach and revoke other points of the Resolution as well. However, unless a court decision is issued declaring the entire Resolution null and void, the court would have to issue separate decisions for each point of the Resolution which sets a specific fee in order to effectively repeal all fees. The two possible approaches would also affect potential future claims for damages (subsequent to revocation of the Resolution) which would be significantly easier if the Resolution is declared null and void (instead of just revoked). The decisions thus far issued by SAC are not yet final and are subject to appeal before another panel of the same court (five member panel).

Developments at the EU level

The Resolution also triggered proceedings at the EU level. The European Commission initiated proceedings under the EU Pilot program, which includes investigations as to whether the measure adopted by the State Energy and Water Regulation Commission is in conformity with EU law. EU Pilot is the first step before infringement proceedings are initiated by the Commission under Article 258 of the TFEU.

Summary

The Resolution created considerable difficulty for investors and arguably made the investment climate worse. The approach taken by the court in the first cases heard so far has given hope to investors that the whole Resolution (all points/fees) will be revoked. The outcome of the court proceedings, along with the expected determination of final access fees, will to a great extent outline the business perspectives for this industry.

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CZECH REPUBLIC | Amendments to Czech Tax Law

Introduction

In mid-April, the Government of the Czech Republic adopted a proposal to amend tax law with effect from 1 January 2014 in connection with the recodification of private law (the "**Tax Package**").

Even though this Tax Package amending tax and related laws is only due to enter into force on 1 January 2014, it is important for businesses to understand what effect it will have before it takes effect because it will have a significant impact on businesses operating in the Czech Republic. According to the statement issued by the Czech Minister of Finance, the changes are aimed in particular at harmonization of the laws with the recodification of private law. Particular measures of the Tax Package are intended to promote exports, the countryside and growth in the area of research and science.

Moreover, the proposal is very comprehensive. The text has 230 pages and relates to a total of 43 different laws. It will amend not only tax law, but also the Accounting Act and the Reserve Act among others. Almost 1000 amendments are to be made to the Income Tax Act alone.

The most important new provisions

Changes related to securities

Exemption from income tax: The exemption from income tax will be applied to securities held for more than three years. Under current legislation, securities only have to be held for more than six months. In addition, the sale of securities which are not included in the business property will be exempt from income tax up to a maximum amount of CZK 100,000 per annum.

Tax on dividends: Dividends and all profit shares of natural and legal persons distributed to domestic taxpayers and taxpayers in the EU, Switzerland, Norway and Iceland will no longer be taxed at 15%.

Investment funds: No tax will be payable on selected investment funds. The new Investment Company Act will introduce many changes in terminology, tighten up the tax system and establish rules for the consistent taxation of payments from collective investment systems, including profit shares.

Real estate transfer tax

The Tax Package will also abolish the Act on Inheritance Tax, Gift Tax and Real Estate Transfer Tax. Inheritance tax and gift tax will be included under income tax and the existing tax exemptions will remain unchanged. Real estate transfer tax will be replaced by a tax on the acquisition of immovable property. According to the Tax Package, the tax on the acquisition of immovable property will be paid by buyers only. To date, real estate transfer tax has been paid by sellers.

The amendments included in the Tax Package are intended primarily to reduce the administrative burden on taxpayers and the state. The proposal also abolishes the obligation to prepare an expert's report on the price of residential property. The tax payable on the acquisition of immovable property will be charged on the basis of the usual price in the particular area, with the tax base being 75 percent of that amount.

The range of other mandatory documents accompanying a tax declaration will be limited as well. At the same time, the duty requiring the mandatory certification of documents will be abolished and the Tax Package allows other documents to be attached only in the form of non-certified copies.

Summary

Even though the Tax Package has not yet been adopted by Parliament, it is highly likely it will be passed and will take effect in 2014. However, it is necessary that businesses understand the effects this Tax Package will have because the text includes a number of uncertainties. Therefore, it is worthwhile preparing for these changes as this can help businesses avoid incurring significant losses.

It seems the Czech government has decided to stop raising taxes prior to the general election. The proposed taxation of securities is reasonable and is intended to punish speculative practices and encourage long-term investment. Moreover, the abolition of the tax on dividends will probably encourage many conservative investors to invest in the Czech Republic.

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HUNGARY | New Rules for Construction Contracts

Introduction

In April 2013, a new law was introduced in Hungary in an attempt to prevent the causes of certain typical disputes in the construction industry, such as late payments, non-contractual performance and chain indebtedness.

The most important innovation in Act XXXIV of 2013 is the creation of a new government board known as the "Performance Certification Board" that can carry out reviews and issue expert opinions in disputes involving various types of construction contracts (design, build and implementation). The new Act has also amended certain provisions in the Civil Procedures Act ("**CPA**") and the Civil Code.

Key rules

Tasks and procedures of the new board

The rules governing the procedures of the new board will take effect on 1 July 2013. The board will be responsible primarily for providing expert opinions on construction projects in Hungary, regardless of whether any of the contracting parties is a government entity or state-owned company. A procedure will be launched at the request of a party to a construction contract (investor, designer, contractor or subcontractor). The board will review how the contract was performed, and its personnel will be authorised to enter the property where the construction project has taken place to carry out an on-site inspection. If the owner denies entry to the property, the board's personnel may rely on the police to gain entry. On the basis of the inspection, the board will prepare an expert opinion that can serve as a basis for dispute resolution between the parties.

Decisions and consequences

On the basis of its review procedure, the board will determine whether the contract was performed and whether said performance was in compliance with the terms of the contract. The board will also determine a reasonable level for the contractor's fees and for the ancillary collaterals that secure the performance of the contract. The parties cannot sign a contract that excludes or restricts the board's ability to conduct a review; such a contractual provision will be deemed null and void.

The board's review does not qualify as a regulatory procedure, and therefore it does not impose immediate obligations on the parties. On the other hand, its expert opinion will have a significant impact on the enforcement of ancillary collaterals that, under the Act, include bank guarantees, pledges and suretyships.

The party that requests the board's procedure must inform the provider of the collateral of the start of the procedure, which in turn must extend the validity of the collateral. Once the procedure has been concluded, the board informs the provider of the collateral of the outcome of the procedure by sending an extract of the expert opinion to it. The provider of the collateral can rightfully refuse payment to the beneficiary during the board's procedure.

On the other hand, if the board finds that the grounds for the enforcement of the collateral do not exist, the provider of the collateral may not perform its obligations under the contract, as this is prohibited by the Act. In such cases, the civil law rules that normally govern the refusal to perform an obligation do not apply.

Litigation on the basis of an expert opinion

As discussed above, the board's expert opinion is not binding on the parties. Therefore, if the parties disagree with the expert opinion or cannot settle their dispute amicably despite the opinion, they can take the matter to court. Additionally, if an expert opinion finds that the collateral cannot be enforced, the only way to obtain performance from the provider of the collateral is by challenging the opinion in a lawsuit.

Under the Act, a new type of lawsuit, based on the board's opinions, will be added to the CPA from 1 September 2013. Such lawsuits will qualify as priority lawsuits which serve to expedite the procedure. Another important rule is that the board's opinion will qualify as fully admissible evidence in a lawsuit, although the parties may request the appointment of other experts as well.

If the expert opinion determines beyond any doubt that certain works were performed in accordance with the terms of the contract, the contractor or subcontractor may request that the court order payment of the relevant fees in an interim judgment, up to HUF 400 million. In such a case, the contractor or subcontractor must prove that it has insurance or a bank guarantee enabling it to repay the relevant amount if necessary; otherwise, it has to deposit the amount with the court. If these conditions are met, the court has no discretionary powers and must grant the motion for the interim judgment and order the relevant party to pay the amount in question.

A party may also request the court to order a so-called precautionary measure with respect to a claim for a fee that is based on the board's expert opinion. In contrast with an interim judgment, the contractor or subcontractor is not required to provide any form of collateral, but neither will the amount be paid to it; rather, it will be transferred to a deposit account until the lawsuit is concluded. The amount that can be awarded in a precautionary measure is also capped at HUF 400 million.

Under the new rules, a judgment adopted by a first instance court can be enforced regardless of a potential appeal if it pertains to the payment of a fee supported by the board's expert opinion and the amount awarded does not exceed HUF 400 million.

General amendments to the Civil Code

The same legislation will see new provisions added to the Hungarian Civil Code as of 1 July 2013. If the parties to a contract do not agree on a payment deadline, the relevant amount will fall due within 30 days under the general rule. Another rule that is designed to protect contractors states that legal entities may only agree on a payment deadline of more than 60 days in exceptional cases. Until proven otherwise, a payment deadline of more than 60 days will have to be treated as a condition that is unilaterally and unreasonably detrimental to the beneficiary, in violation of the requirements of good faith and fairness.

The rules applicable to the calculation of late payment interest have also been modified. The rate of late payment interest is equal to the base rate quoted by the National Bank of Hungary on the 1st of January or 1st of July that precedes the date on which the payment was due, plus eight percentage points. Late payment interest is charged from the date that follows the due date of the original payment (at present, this is the 30th day following the original due date). If, in violation of the requirements of good faith and fairness, late payment interest charged under an agreement is higher than the above official rate without good cause and without any form of consideration for the beneficiary, the beneficiary may challenge the validity of the agreement in court. Another new rule states that any contractual provision that excludes the application of late payment interest is null and void, except when the relevant entity is required to pay a contractual penalty if it performs an obligation late.

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ROMANIA | Implementation of the EU Payment Term Directive in Romania

The implementation process for the EU Payment Term Directive was completed at the beginning of April 2013 when the law on late payments entered into force in Romania.

Although the Directive had already been partially transposed into national law by Government Ordinance No. 13/2011 ("**GO 13/2011**"), the Romanian Civil Code ("**RCC**") and the Romanian Code of Civil Procedure ("**RCCP**"), the main regulations are included in Law No. 72/2013.

The law on late payments provides that the maximum payment term will be 30 calendar days if the parties have not agreed on payment terms (that is, the creditor is entitled to interest for late payment after 30 calendar days).

If the parties have agreed on the payment terms, such terms will be effective from the date agreed by the parties. As a rule, such terms may not exceed 60 calendar days. A written agreement signed by both parties is required. However, Romanian case law deems the following to constitute an agreement: a purchase order sent by the buyer, on which a reference is made to the applicable payment terms, which has been signed by the vendor; or a purchase order, not signed by the vendor, but followed by delivery of the products ordered.

Parties are however allowed to agree on payment terms exceeding 60 days provided such clauses are the result of negotiations conducted in good faith and provided they do not prove to be abusive clauses. The law gives a few examples of abusive situations, as well as several circumstances which should be taken into consideration by the Romanian courts of justice when determining the abusive character of a clause. If a court considers an expressly agreed payment term to be abusive, the court will declare the clause to be null and void and strike the entire payment term clause, which will be deemed not to have been agreed upon by the parties.

The late payment interest rate agreed by the parties in the agreement will apply to any late payment fee charged. The statutory late payment interest rate will apply where the parties have not specified in the agreement what the late payment interest rate will be. The statutory late payment fee will be set at the reference rate of the Romanian National Bank plus 8%.

In agreements with a foreign element which are subject to Romanian law and where the payment is performed in a foreign currency, the statutory interest rate is 6% p.a. Such an interest rate will apply in the event the parties do not agree on a different interest rate.

Similar to transactions in the private sector, the statutory payment term for goods or services acquired by the state from private entities may not exceed 30 calendar days. By way of exception, the parties may determine a payment term of no more than 60 calendar days if the public agreement and the acquisition documentation expressly provide for this and if such a payment term is reasonably justified, taking into account the nature or the specific characteristics of the agreement, provided however that the clause is not deemed to be abusive. However, the new regulations provide a derogatory legal payment term, not exceeding 60 calendar days, where the only beneficiary can be public health institutions and entities providing health services.

The provisions of the law on late payments will not apply to the payment obligations resulting from agreements concluded prior to the time at which the law entered into force, except for the provision enabling a creditor to obtain a title of execution through the special procedure governed by the RCCP.

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SLOVAKIA | Recent Developments in Slovak Commercial Law

Introduction

On 1 October 2012, Act No. 246/2012 entered into force amending Act No. 513/1991 Coll., the Commercial Code (the "**Commercial Code**") and on 1 February 2013, Act No. 9/2013 entered into force introducing yet more changes in the area of Slovak commercial law.

The amendments have two principal goals: firstly, to strengthen the legislative environment, with a particular focus on the prevention of fraudulent conduct in the commercial sector; and secondly, to bring several provisions of the Commercial Code into line with Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (the "**Directive 2011/7/EU**").

The most significant changes

Consent of tax authority

The amendment which entered into force on 1 October 2012 introduced an obligation requiring the party who is requesting that changes be made to the shareholders listed in the Commercial Register to submit authorization from the tax authority together with the application for an entry in the Commercial Register. The authorization from the tax authority must be submitted for both the seller and the purchaser.

This amendment mainly represents the legislator's reaction to negative feedback from the financial and tax authorities whilst performing financial audits of limited liability companies, such as conduct obstructing the performance and completion of tax audits. However, in order not to overburden the commercial sector, this obligation applies only when a majority share is being transferred and does not apply to a "foreign person" regardless of whether he/she is the shareholder or the purchaser.

Authenticity of signatures

The amendment which entered into force on 1 February 2013 requires that the signature of the chairman of the General Meeting or of the sole shareholder of a limited liability company be notarized if the agenda of the General Meeting or the sole shareholder's decision concerns issues under Article 125 Section 1 lit) e, f, i, or j and Section 2 of the Commercial Code.

Since the main purpose of this amendment is to enhance legal certainty for persons entering into legal relationships with limited liability companies, the notarization requirement does not apply to all decisions, but concerns only: (i) decisions on increasing or reducing the registered capital and decisions relating to non-monetary contributions, (ii) decisions on the appointment, dismissal and remuneration of company executives, (iii) decisions on winding-up the company or changing its legal form unless the Articles of Association stipulate otherwise, (iv) decisions on approving a contract on the sale of an enterprise or a part thereof, and (v) decisions on the appointment and dismissal of proxy holders.

Maturity periods

Consistent with Article 3(4) and (5) of Directive 2011/7/EU, the legislator has introduced two new provisions into the Commercial Code, namely Articles 340a and 340b. The new provisions reflect the legislator's intention for a complex, systematic, correct and consistent regulation of the time at which debtors must perform their monetary obligation(s).

More specifically, Article 340a introduces for certain cases longer maturity periods for invoices. In general, the maturity period for invoices agreed upon in a contract will now be 60 days at the most. However, the contractual parties may also agree on a longer maturity period, on condition it is not grossly disproportionate towards the creditor's rights and obligations arising from the contractual relationship.

On the other hand, as far as public law subjects, such as municipalities or state authorities, are concerned the legislator created an exception in Article 340b pursuant to which the debtor is obliged to pay the invoice within 30 days if it is a public law subject.

Summary

As already mentioned above, a considerable part of the amendment that entered into force on 1 February 2013 was concerned with the harmonization of the Slovak Commercial Code with Directive 2011/7/EU. Therefore, most of the new and/or amended provisions are based on the relevant EU legislation, the national legislator having only a certain margin of appreciation in this respect.

As for the amendment concerned with the prevention and combating of fraudulent activities in the commercial sector, at this point it may be regarded as questionable as to whether the amendment will achieve the purpose contemplated by the legislator as most of the changes are of an administrative rather than of a substantive nature. Therefore, in future they might prove ineffective and redundant as well as burdensome for conducting business activities.

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