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AUSTRIA | Advisory boards that resemble supervisory boards

In a recent decision (issued on 9 September 2013, in case 6 Ob 139/13d), the Austrian Supreme Court once again ruled on the competence of a private foundation's advisory board that resembles a supervisory board. In the aforementioned case, the deed of foundation of an Austrian private foundation stipulated that (a) the foundation's advisory board had the right to dismiss members of the management board for the reasons specified in Section 27 of the Private Foundations Act (*Privatstiftungsgesetz*) subject to attaining the majority required under Section 14 para. 3 of the Act, (b) the advisory board was entitled to set the amount of remuneration paid to members of the management board, and (c) certain transactions, such as determining beneficiaries and making payments to beneficiaries, may only be carried out with the consent of the advisory board.

Referring to its previous decisions (in cases 6 Ob 49/07k, 6 Ob 50/07g, and 6 Ob 42/09h), the Austrian Supreme Court deemed an advisory board in the present case to be similar to a supervisory board as the deed of foundation essentially confers those powers on the advisory board which are granted to the supervisory board of a private foundation under Section 25 of the Private Foundations Act.

The general right enshrined in the deed of foundation entitling the advisory board to dismiss members of the management board for the reasons laid down in Section 27 of the Private Foundations Act is too far-reaching. If the right of dismissal of the advisory board – which is only comprised of beneficiaries or the majority of its members are beneficiaries – is not restricted to the grounds for dismissal set out in Section 27 para. 2 nos. 1 to 3 of the Private Foundations Act, the right of dismissal will be inconsistent with Section 14 para. 4 of the Private Foundations Act and the corresponding provision in the deed of foundation will be invalid.

The provision in the deed of foundation which requires the approval of the advisory board solely comprised of beneficiaries for the determination of beneficiaries and for the making of payments to beneficiaries is invalid. Were this to be allowed, beneficiaries would be able to reach decisions relating to their status as beneficiaries and the size of benefits paid to them. This provision therefore constitutes an obstacle to the "Impartiality of the management board of the foundation when implementing rules pertaining to beneficiaries" and runs counter to the principle of conflict avoidance, both of which are specified by the legislative materials as reasons why such provisions are incompatible with Section 15 para. 2 of the Private Foundations Act.

Altogether, the ability of the advisory board to exert an influence thus far exceeds a merely supervisory and advisory function and enables the advisory board to influence the management activities of the foundation's management board significantly because by being able to veto certain legal transactions, the advisory board is able to guide the foundation's management board in its decision-making process. However, the Austrian Supreme Court has ruled that this is not legally permissible.

For more information

Dr. Albert Birkner, LL.M.
Managing Partner
Austria
albert.birkner@chsh.com
Tel: +43 1 514 35 431

BELARUS | Toughening state control over privatized companies

The Belarusian Parliament is currently considering introducing amendments to the Law of the Republic of Belarus No. 2103-XII dated 19 January 1993 "On the Privatization of State Property and the Reorganization of State-Owned Unitary Enterprises into Joint Stock

Companies". These amendments are expected to be adopted by the end of 2013.

The principal amendments are aimed at introducing extremely harsh state control of joint stock companies which were formerly state-owned enterprises, i.e. state-owned unitary enterprises reorganized into joint stock companies which are now fully or partially owned by private shareholders (the "**privatized companies**").

The most important new provisions

Firstly, the amendments would limit the ability of privatized companies to establish a supervisory board (a board of directors). Thus, privatized companies in which more than 50% of the shares are owned by the state would not be entitled to establish a supervisory board. The functions normally reserved for a supervisory board would instead be performed by an executive body and a shareholders' meeting. In turn, privatized companies in which the state owns 50% or less of the shares would be able to establish a supervisory board.

Secondly, the state would be entitled to appoint representatives to sit on any management bodies of the privatized companies. Such state representatives would be able to exert a significant influence on the decisions of the management bodies, including the decisions of a shareholders' meeting. In particular:

- in the case of privatized companies in which the state owns 50% or less of the shares, a state representative would be entitled to vote on behalf of any shareholder (an individual) holding less than 2% of the shares who has been duly notified of but has failed to attend the shareholders' meeting in question, without requiring the consent of such shareholder;

- in the case of privatized companies in which the state does not hold any shares, a state representative would be entitled to attend the shareholders' meeting and to suspend execution of shareholders' resolutions relating to (i) liquidation, (ii) reorganization, (iii) a change of charter capital, (iv) any amendment of a charter, (v) the distribution of profits and the payment of dividends, (vi) share issuances, and (vii) the establishment of a subsidiary or the acquisition of shares in other companies if such resolutions are not deemed to be in the public interest, would have a harmful impact on the environment or would violate human rights. The wording used is quite vague. A state representative will therefore have a certain degree of discretion, meaning that there is the risk that a shareholders' resolution relating to one of the above-mentioned issues could be blocked. However, within one month of a state representative suspending the shareholders' resolution, a local authority in the region where the company is located should file an application with a local court requesting that the suspended shareholders' resolution be revoked. Otherwise, the suspended shareholders' resolution would come into effect upon expiration of the suspension period.

Summary

If the above-mentioned amendments are adopted, the new rules on the state control of privatized companies would enable the state to intervene in the decision-making process of privatized companies. This would restrict the rights of private investors and it would be a step in the wrong direction for the business environment in Belarus.

For more information

Sergei Makarchuk, LL.M.
Managing Partner, Advocate
Belarus
sergei.makarchuk@chsh.com
Tel: +375 17 266 34 17

BULGARIA | Developments in the energy sector

The Bulgarian Commission for the Protection of Competition (CPC) has conducted a market study of the production, trade, transmission and supply of electricity. In its decision of 3 July 2013 (the "**Decision**"), the CPC analysed the competitive environment of the above markets focussing in particular on the problems which impede the development of a free and competitive electricity market. The CPC has studied the national regulation with respect to the EU requirements which aim to achieve full liberalization of the markets.

According to the Decision, the main obstacles to effective competition on the electricity markets are:

– The so-called quota principle for purchasing electricity. According to this principle, the State Commission for Energy and Water Regulation (the "**Regulator**") sets the amounts of energy (quotas) which certain producers must produce for the regulated market. The Regulator also sets the prices of energy on the regulated market. This model guarantees continuity of the energy supplied by the producers and therefore guarantees them a certain profit margin. This practice, according to the CPC, is in direct contravention of the EU requirements for real competition based on the principle of supply and demand;

– Existing long-term contracts for purchasing electricity. Under these contracts, the state purchases certain amounts of energy at fixed prices. The CPC is of the view that these long-term guaranteed purchases significantly impede liberalization of the market;

– The high market concentration of Bulgarian Energy Holding. This state-owned holding company controls a major part of the state energy business.

Other obstacles affecting competition on the markets include the lack of a functioning stock market for the trade in electricity, the absence of guaranteed, unobstructed and equal access to the distribution grid, the need for an effective division of the related activities on the energy markets (production, supply, transmission and distribution), and problems with the free segments of the market (trading at freely negotiated prices) and with the right of consumers to choose energy suppliers.

In light of the recent controversial decision of the Regulator to impose significant access fees on producers of renewable energy, which has been revoked by the Supreme Administrative Court, the actions and conclusions of the CPC seem to be a further indication that significant changes and restructuring in the energy sector are yet to come.

New data protection rules

A new regulation which lays down the minimum requirements for personal data protection (the "**Regulation**") has been adopted by the Commission for Personal Data Protection. It entered into force in early 2013. The Regulation provides that each personal data administrator must determine a level of protection applicable to the personal data registers for which it is responsible. Within the specified deadlines, the administrators must perform an assessment of its data registers, define a level of impact (classified as low, medium, high and extremely high), and determine the corresponding level of protection required. Along with the criteria for assessment, the Regulation provides the following deadlines for compliance with the new requirements by implementing the necessary measures and adopting the respective data protection policies:

– By 15 August 2013, the personal data administrators must have determined the level of impact of the maintained data registers;

– Within 6 months of setting the level of impact, the administrators must implement the measures with respect to low level protection;

- Within 9 months of setting the level of impact, the administrators must implement the measures with respect to medium level protection;

- Within 1 year of setting the level of impact, the administrators must implement the measures with respect to high and extremely high level protection.

Real estate – Expiration of transitional periods laid down in the EU Accession Act

Upon its accession to the EU on 1 January 2007, Bulgaria negotiated transitional periods within which it could maintain the restrictions placed on the direct acquisition of land in Bulgaria by EU legal entities and individuals. Depending on the type of land, different transitional periods were imposed, all of which have already expired, except the seven-year transitional period for the acquisition of agricultural and forest land, which will expire at the end of 2013.

For more information

Boyko Guerginov
Managing Partner
Bulgaria
boyko.guerginov@chsh.com
Tel: +359 2 401 09 99

CZECH REPUBLIC | Changes in corporate law introduced by the new Czech Civil Code and the Business Corporations Act

Czech law is facing significant changes. The new Czech Civil Code and the Business Corporations Act will enter into force on 1 January 2014. Therefore, it is important for individuals and companies to become sufficiently familiar with the new regulations before they come into effect. Here we look at the changes to be introduced by the new regulations which will affect the shareholders of private limited companies and those of public limited companies.

Private limited company

The changes that will affect the shareholders of private limited companies are the ones that have received the most attention as most businesses in the Czech Republic take the form of a private limited company. Moreover, it is to be expected that the private limited company will become even more popular due to the possibility of making a capital contribution of just one crown. In fact, this is one of the biggest changes to be made to Czech company law. Under the current Commercial Code, the mandatory registered capital for a private limited company is CZK 200,000. In 2014, this will fall to just CZK 1.

The next important change affecting private limited companies concerns shares. In future, it will be possible for a private limited company to issue different types of shares and each person will be able to hold more than one share, even of a different type. Moreover, private limited companies will be able to issue shares in the form of securities. This will obviously mean that this type of company will more closely resemble a public limited company. However, the difference between securities issued by a private limited company and those issued by a public limited company will be that securities issued by a public limited company will be tradable on a regulated market. Thus, this shows the influence British company law has had on the drafting of this legislation.

The limit for contributions over and above the registered capital (that is, extra contributions) will be dropped. The only way for the shareholder to avoid paying this will be to use the time-limited right and leave the company within one month of the resolution being adopted by the shareholders' meeting. Thus, it is important that shareholders remain vigilant.

The shareholders' meeting will also be affected by a number of significant changes. Not even half of all shareholders will have to be present for there to be a quorum. Further, it will be possible for shareholders to vote outside of the shareholders' meeting within 7 days of the shareholders' meeting being held. This is a significant change because at present shareholders may only give their consent to the adoption of resolutions at the shareholders' meeting. However, under the Business Corporations Act, shareholders will in future be able to exercise full voting rights outside of the shareholders' meeting. Furthermore, the Business Corporations Act also introduces the possibility of cumulative voting. This rule, which also applies to public limited companies, represents an important step forward for minority shareholders as it allows them to act in concert.

One of the most important changes to be introduced is that the chaining of companies is not prohibited under the Business Corporations Act. There is no rule that states that a one-member company cannot be a single member in another one-member company. Thus, entrepreneurs will have much greater freedom, especially in the case of the foundation of SPVs.

Finally, shareholders will be able to withdraw from the company. The rules as they presently stand prohibit shareholders from leaving the company voluntarily. They must either be excluded by a resolution adopted by the other shareholders or they can ask the commercial court to cancel their participation in the company.

Public limited company

The public limited company is the second type of limited liability company under Czech law. A significant part of the Business Corporations Act is dedicated to rules governing this type of company.

Here we focus primarily on shares as they are the core instrument for shareholders. The Business Corporations Act brings visible changes to the way they are regulated. Firstly, it will be possible for a public limited company to issue different types of shares. This it can specify in greater detail in its articles of association. Each company will have the option of issuing exactly the number of shares that completely meets its specific needs.

Further, public limited companies will have the possibility to issue shares without a nominal value, literally translated – "piece shares". These could become very useful in the future if the Czech Republic decides to adopt the euro.
One of the most important changes is the abolition of bearer shares. Under the Business Corporations Act, the name of the owner will have to be specified on paper shares.

Finally, the content of the infamous Article 196a of the Czech Commercial Code is not reproduced in the Business Corporations Act. Therefore, to a certain extent, there will be no major restrictions imposed on property transfers. The only limitation that is set to remain is the ban which prohibits a company from acquiring property from the shareholders or promoters within two years of the incorporation of the company.

Summary

The Business Corporations Act will introduce significant changes. Some of the issues that have previously been resolved by case-law will now be regulated directly by the act. All possible consequences of changing civil law in the Czech Republic will only become fully apparent after the Business Corporations Act starts being used by practicing lawyers and ordinary people. However, there is an immediately visible increase in preclusive periods for the use of some rights. Therefore, the general suggestion for shareholders is to pay closer attention to their rights.

For more information

JUDr. Petr Kališ, Ph.D.
Managing Partner
Czech Republic
petr.kalis@chsh.cz
Tel: +420 221 111 711

HUNGARY | Changes in company law to be introduced by Hungary's new Civil Code

In February 2013, the Hungarian Parliament passed a law adopting a new Hungarian Civil Code ("**HCC**") that will take effect on 15 March 2014 and will supersede a number of existing statutes. The adoption of the HCC was preceded by a ten-year codification process conducted by the Civil Law Codification Committee, a body consisting mainly of highly-respected professors of law. The aim of the Committee was to ensure that the HCC covers as many areas of civil law as possible. In comparison to the current Civil Code, the new HCC will also include rules on corporate law, which are currently regulated in a separate act. Although the transitional provisions of the HCC have yet to be adopted, the key changes are already clear at this stage.

Optional rules

Whereas the rules of the current Company Act are mainly of a mandatory nature, the HCC states that the new provisions are generally optional rules that can be overridden by the parties. This means that from 15 March 2014, the shareholders of a company will have greater freedom when drawing up the company's articles of association. For example, the current Company Act states that the shareholders have to provide half of their cash contribution at the time of the company's formation, while the other half has to be paid within one year of the formation. By contrast, the HCC does not make these deadlines mandatory, which means that the shareholders can agree on a deferred payment more favourable for them. By the same token, a company limited by shares is not required to apply the HCC's rules on the types of shares and can issue special shares, attaching special rights or obligations to them.

According to the HCC, a deviation from its rules is possible as long as the deviation (i) is not explicitly prohibited by the HCC, (ii) is not a *prima facie* violation of the rights of the company's creditors, employees or minority shareholders, and (iii) does not hinder the judicial supervision of the company. The exact scope of the two latter limitations will have to be defined by future judicial practice, but it is already clear that the legality of a deviation will have to be determined on a case-by-case basis.

Changes affecting limited liability companies ("kft") and companies limited by shares ("zrt", "nyrt")

The HCC provides that the minimum capital for a limited liability company ("kft") must be HUF 3,000,000 (ca. EUR 10,000). This actually represents a return to the previous rules: the minimum capital was also HUF 3,000,000 before 2007, when it was reduced to the current level of HUF 500,000 (ca. EUR 1,670). The new minimum capital rule applies not only to companies newly formed under the HCC, but to existing companies as well. However, there will be a transitional period during which the latter will be able to adjust their operations to the new regulations. The exact term of this transitional period has yet to be fixed by legislation, but it is expected to last one or two years following the entry-into-force of the HCC.

As regards companies limited by shares, the HCC upholds the current dichotomy of private companies limited by shares ("zrt") and public companies limited by shares ("nyrt"). However, the HCC will change the definition of these two company types by specifying the public "nyrt" as a company where the shares have to be listed on the stock exchange. Accordingly, any company limited by shares that does not have its shares listed on the stock exchange will qualify as a private "zrt". Furthermore, the HCC will prohibit newly formed companies limited by shares from raising capital publicly. As a result, under the HCC, a newly formed company limited by shares can only be incorporated as a private company ("zrt"), after which the company can decide to list its shares on the stock exchange, thereby becoming a public company ("nyrt").

The minimum share capital of the two types of companies limited by shares remains unchanged at HUF 5,000,000 for a "zrt" and HUF 20,000,000 for a "nyrt".

Operation of a company

In the case of a limited liability company ("kft") and a private company limited by shares ("zrt"), the current legislation allows provision to be made in the articles of association for the establishment of an "executive" supervisory board ("ESB"). Currently, only decisions regarding the appointment, recall and salary of the directors and the approval of certain executive decisions can be delegated to the ESB. The new rules of the HCC will allow every type of company to establish an ESB, which will not only be able to approve, but also to make certain executive decisions on any issues (not limited to the above-mentioned matters). As a result, a board responsible for executive issues can be established even at companies where a board of directors, by definition, cannot be created.

Another interesting change that will be introduced by the HCC relates to the limitation of the authority of representatives registered in the Company Register (directors, company secretaries and other authorised employees). In contrast to the current rules, the HCC stipulates that such a limitation might be valid vis-à-vis a third party if the third party knew or should have known about this limitation. However, it is unclear at present how third parties are expected to acquire knowledge of such limitations. One way could for example be if the Company Register were to include such information. This issue might be addressed by the transitional provisions that have yet to be adopted. If, however, the HCC or the transitional provisions fail to address this issue, the extent of the obligation to examine the scope of authority of the other party's representative will remain unclear. Therefore, it will probably be for the courts to determine whether one party should check the articles of association of the other party, for instance, in order to find out whether a given representative is entitled to sign the contract between the parties.

Directors' liability

The HCC states that a company's director and the company will be jointly and severally liable for any damage caused by the director vis-à-vis third parties. Currently, the injured party can only seek compensation from the company, but not from the director.

Furthermore, the current Company Act and Bankruptcy Act provide that in any situation which threatens to bring about the insolvency of a company, the directors' duty is to properly protect the creditors' rights and to give preference to their interests. If the director fails to do so, he/she may be held personally liable for the insolvent company's unpaid debts. The HCC loosens this rule by stipulating that in situations threatening to bring about the insolvency of the company, the director is merely obliged to take the creditors' interests into account, among any other interests, e.g. those of the company itself. However, the HCC will not expect the directors to give preference exclusively to the creditors' interests. If the director fails to take the creditors' interests into account, he/she may still be held personally liable for the insolvent company's unpaid debts.

Summary

Hungary's new Civil Code ("HCC") will take effect on 15 March 2014 and will introduce certain changes to corporate law. In addition to the inclusion of corporate law rules in the HCC, certain principles and basic corporate law rules that have remained constant over the past 20 years will also change. There are many questions regarding the transitional period between the current and the new regime which still need to be clarified by legislation, and some issues will have to be resolved by the courts.

For more information

Dr. Tamás Polauf
Managing Partner
Hungary
tamas.polauf@chsh.hu
Tel: + 36 1 457 8040

ROMANIA | Amendments to renewable energy law

In June 2013, the Romanian Government passed Emergency Ordinance No. 57/2013 (the "**Ordinance**") amending Law No. 220/2008 on encouraging energy production from renewable sources. The regulation postponed the granting of a certain amount of green certificates as per the initial roadmap. The legal text of the Ordinance published in the Official Gazette differs in several respects from the original version. The amendments include a provision according to which no green certificates will be granted for photovoltaic energy produced on agricultural land.

Prior to publication of the Ordinance in the Official Gazette, it was generally known that the granting of green certificates would be postponed. Thus, starting from 1 July 2013, the granting of a certain amount of green certificates for each MWh of energy produced from renewable energy sources which is fed into the electricity grid by the electricity producers is postponed as follows:

- one green certificate for new hydroelectric plants with an installed capacity of up to 10 MWh;
- one green certificate for wind power plants; and
- two green certificates for photovoltaic plants.

The producers of energy from renewable sources will recover the green certificates for which the granting was postponed by law, starting from (i) 31 March 2017 for hydroelectric and photovoltaic power plants respectively, and (ii) 1 January 2018 for wind power plants. The full recovery of such green certificates is expected to be finalized by December 2020.

Nevertheless, the general public was unaware of a very important aspect. According to the Ordinance, green certificates will not be granted for photovoltaic energy produced in areas which were agricultural land at the time the Ordinance was supposed to enter into force on 1 July 2013. This legislative amendment was foreseeable to a certain degree for operators in the field of green energy, bearing in mind that high-ranking government figures publicly expressed their intention to introduce such a measure in April 2013.
The Ordinance was published in the Official Gazette without an important provision which was mentioned in the initial draft of the legal text, according to which (heavy) consumers with an annual energy consumption greater than 150,000 MWh would be exempt from paying 50% of the green certificates from the total acquired electric energy.

However, in the published and legally binding version of the Ordinance, the abovementioned provision has been replaced by one which states that the end consumers will be exempt from paying a certain acquired percentage of the energy from renewable sources, provided that applicable European legal provisions are observed.

The eligibility conditions for end consumers to be exempt, and the quantities of energy subject to such exemption, will be regulated by the Government together with the Romanian Authority for Energy Regulation (ANRE), after notification of and approval by the European Commission.

For more information

Mirela Nathanzon
Partner
Romania
mirela.nathanzon@gp-chsh.ro
Tel: +40 21 311 12 13

SLOVAKIA | Recent Developments in Slovak Commercial Law

Act No. 25/2006 Coll. on Public Procurement (the "**PPA**") has been comprehensively amended yet again. The current version already constitutes the fourth PPA since it was enacted in 2006. Each of the previous PPAs was amended at least 4 times. According to the legislator, the core objective of the two major amendments passed in 2013 was to expedite and enhance the effectiveness of certain procurement procedures, ensure active and flexible public procurement with a particular focus on state interests, protect quality and prudent bidders and improve competition. The first of the two amendments, the so-called "small amendment", entered into force on 18 February 2013. The so-called "big amendment" entered into force on 1 July 2013 and introduced changes to the small amendment.

Financial limits

The big amendment revoked two categories of awards: the "sub-threshold" award and the "low price" award. Hence, from now on only a division into so-called "sub-limit" awards and so-called "over-limit" awards applies. The aim of this is to simplify and unify the procurement of certain goods and services and to make it easier to apply such unified rules on the part of both the addressees of these rules and the competent authorities controlling and overseeing the procurement procedure.

Definition of "extraordinarily low tender"

The big amendment also introduced a definition of "extraordinarily low tender". This move has been welcomed as it enhances legal certainty and prevents a repeat of previous problems which have arisen due to the lack of a definition. The PPA defines an extraordinarily low tender, provided at least three tenders were submitted, as a tender that is:

- at least 30% lower than the average of the other tenders
- at least 15% lower than the tender submitted by a bidder with the second lowest price and at the same time
- at least 15% lower than the assumed award value.

Restrictions applicable to subcontractors

This amendment enables the contracting authority to create specific conditions of participation for subcontractors. For instance, if the assumed value of an award is at least EUR 10 million, the contracting authority is entitled to set particular conditions of participation for those subcontractors responsible for at least 30% of the award value. In other procurement procedures, the contracting authority may introduce particular conditions for those subcontractors whose share constitutes at least 2.5% of the award value. This amendment means that the contracting authority is also entitled to require that the subcontractor has business operation(s) within the Slovak Republic. Moreover, in certain specific cases, the contracting authority may stipulate that the bidder is obliged to perform certain parts of the award personally, i.e. without using the services of subcontractors. However, subcontracting may not be excluded entirely. This amendment has come in for praise as well as criticism. On the one hand, it brings about greater legal certainty, but on the other it might lead to unjustified restrictions being placed on competition by the contracting authority. An excessive application of this rule might even result in the violation of the EU principles of the free movement of persons and goods and the freedom to provide services.

Procurement of legal, consulting and similar services

With the special and often personal character of these services in mind, the legislator decided to establish a specific legal regime governing the procurement of legal, consulting

and similar services. Under this legal regime, the contracting authority is entitled to use so-called "negotiation proceedings" for the procurement of the abovementioned services. The contracting authority is at liberty to decide whether to publish the result. Positive previous experience with the bidder or with one of its employees may also be used as a decisive criterion. Moreover, the contracting authority is entitled to conclude a contract with any of the three most successful bidders, provided its tender is no more than 20% more expensive than the tender of the winning bidder. This amendment has been heavily criticized as in practice it allows the contracting authority to select an affiliated bidder, with the other bidders having *de facto* no chance of success. On the other hand, the specific nature of these services, often including issues of a delicate nature, should also not be ignored. From this perspective, the possibility of selecting a bidder whom the contracting authority has had good experience with and trusts might be considered justified.

Objection proceedings

In order to achieve more expeditious and effective procurement, the small amendment has introduced certain changes to objection proceedings. From now on, the Public Procurement Office (the "**PPO**") is bound by the content of an objection. Thus, the PPO will deal only with those violations raised in the context of objection proceedings. Therefore, under the new law, the PPO will only examine the legality of the procedure.
The second change in particular raises questions as to the quality of future public procurement since the PPO may, in spite of obviously unfair and ineffective procurement, conclude that the procurement procedure was legal and therefore nothing else can be done.

Establishment of a new remedy

The small amendment also introduced a new appellate body, namely the Council of the PPO (the "**Council**"). A bidder may file an appeal provided the PPO has rejected objections on material grounds (i.e. it concluded that a tender was in accordance with the law). In order to file the appeal, the appellant is required to pay a security. The main goal of this is to ensure better quality and more unified case-law from the PPO. However, as the Council consists of members appointed by the government and not of independent experts, the impartiality and independence of the Council is questionable and so it remains to be seen whether its establishment will lead to better decisions being taken by the PPO.

Strict sanctions

The big amendment also introduced a new set of sanctions that may be considered rather strict. For instance, a bidder who, in order to fulfil the conditions of a tender, submits forged or inaccurate information will be banned from participating in tenders for a period of three years. The three-year ban also applies in cases of contract cancellation on the part of the contracting authority when the bidder substantially violates its contract obligations. As the legitimacy of such contract cancellation does not have to be confirmed by the courts, this sanction has been regarded as extremely controversial.

Summary

As has been mentioned above, the small and the big amendment constitute yet another wide-ranging revision of the PPA since it was first enacted. Even though they both introduced mechanisms that could in theory achieve the legislator’s objectives and which can also be regarded as a reaction to the individual needs of a contracting authority, their real impact is watered down by vague terminology, the possibility of attesting to the fulfilment of certain conditions merely by affidavit, and the unwillingness of the legislator to establish an independent appellate body and an objective appeals procedure. Furthermore, in practice, the application of the new law may prove difficult due to the current lack of certain instruments the existence of which is presumed by the amendments, such as a list of references from previous public procurers, a website, and an electronic market, etc. Thus, in our view the new law has given the contracting

authority a substantial amount of leeway to select an affiliated bidder or a bidder otherwise preferred. The fact that the government is entitled, upon the contracting authority's request, to grant more *ad hoc* exceptions regarding sub-limit awards only corroborates this view.

For more information

JUDr. Karol Šiška
Managing Partner
Slovakia
karol.siska@sp-chsh.sk
Tel: +421 2 2064 8580

Media owner and publisher:

CHSH Cerha Hempel Spiegelfeld Hlawati
Partnerschaft von Rechtsanwälten, Parkring 2, A-1010 Vienna
Tel.: +43/1/514 35 0 Fax: +43/1/514 35 35 email: office@chsh.com

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