

Newsletter

CEE Legal Updates

September 2014

IN THIS ISSUE

LEGAL UPDATES FOR THE CEE REGION

BWSP is pleased to announce that from now on we will provide our valued clients with regular legal updates from the CEE region.

First of all we would like to highlight that the BWSP group celebrates its second anniversary this September. For this special occasion we would like to congratulate all the members of the BWSP team and thank all partners for the hard work.

In addition we would like to draw your attention to our new website: **www.bwsplegal.com,** where you can find regular updates on the BWSP Group and general information's about our service lines and desks.

This month's newsletter includes numerous interesting articles such as an article on amendments to the law on labour and bankruptcy, the acquisition of agricultural land in Slovakia as well as the Hungarian Constitution Court.

Should you have any questions to the articles in our newsletter, please feel free to contact us.

AMENDMENTS TO THE LAW ON LABOUR AND THE LAW ON BANKRUPTCY, AS WELL AS THE NEW LAW ON PRIVATISATION

The National Assembly of the Republic of Serbia has been rather active during the summer months of 2014, and it voted in the amendments to certain laws that are expected to significantly change the business climate in Serbia.

1) *The Law amending the Law on Labour* entered into force in end-July 2014. Following its adoption, employment in Serbia is expected to increase, unnecessary administrative procedure should be diminished and legal certainty ensured both for employers and employees.

One of the novelties among the amendments to the law is that, in case of employment termination, the employer shall be bound to pay financial remuneration to the employee instead of vacation time, in the amount of average salary in the preceding 12 months and corresponding to the number of days of unused vacation. Also, the calculation of salary and salary remuneration that the employer shall be bound to pay represents an executive document.

A crucial new provision among the amendments to the law on labour envisages the right to remuneration based on the years of service and amounting to 0.4% per year of service exclusively with the current employer. The remuneration for dismissal due to redundancy amounts at least to the sum of one-third of employee's salary for each finalized year of work with the current employer.

The amendments no longer envisage remuneration for work in shifts. Another important novelty is that temporary employment may last up to two years and that employees shall be entitled to take vacation after one month of continuous work.

The provision of the law pertaining to employment record, as well as the Rulebook on employment record shall cease to be valid as from January 1, 2016. Finally, it is noteworthy that the minimum fines for offences prescribed by this law have been increased.

The legislator expects that the given amendments to the law on labour will contribute to stimulation of domestic and foreign investment in economy and to overcoming of economic crisis, increase of employment and overall economic growth.

2) *The Law amending the Law on Bankruptcy* entered into force at the beginning of August 2014. These amendments primarily ensure the conditions for creation of good business environment and they should also contribute to more efficient bankruptcy proceedings.

The amendments to the law will ensure greater procedural transparency, which is achieved both by regulations whereby all acts are displayed on the court notice board i.e. portal of the relevant court, as well as at the portal of the Agency for licencing of bankruptcy administrators, when applicable in certain situations.

Also, pursuant to the amendments, the bankruptcy administrator shall be bound, within 20 days, to submit to the board of creditors, bankruptcy judge and authorised organization quarterly written reports on the progress of bankruptcy procedure and bankruptcy estate. One of the significant changes is reflected in the changed statute of limitations for all claims for damage compensation, and that is now a uniform period of three years.

Significant change to the law on bankruptcy is the introduction of the notion of lien creditor in addition to the existing secured creditors. The plan for reorganization of legal entities has a more comprehensive concept and the content of the Pre-packaged reorganization plan is also more precisely defined.

New provisions have been adopted prescribing that the

rights of lien creditors may not be reduced or diminished by reorganization plan without their explicit consent, whereas they are not allowed to vote on the reorganization plan. The amendments abolish the mandatory consent of the Commission for the protection of competition for submission of reorganization plan, unless the bankruptcy debtor is a medium and large legal entity pursuant to the law regulating the criteria for classification of legal entities.

A large number of new additional provisions in the law pertain to international bankruptcy, and the law consistently implements the rule on the centre of main interests. Finally, regarding penalty provisions, a new penalty has been introduced - *failure to give notice of collection of claim.*

The main aim of the amendments to the law on bankruptcy is primarily to resolve the issues of companies undergoing restructuring and their debts. The intention of the legislator was to make the bankruptcy proceedings faster and more transparent in order for legal entities to operate in a healthier business environment.

3) *The Law on privatization* entered into force at the beginning of August 2014. This law enables crucial novelties that will strive to contribute to quicker and more successful finalization of the instituted privatization proceedings, as well as to quicker realization of the upcoming ones, simultaneously ensuring greater transparency and clarity of the proceedings.

The new law introduces a wider definition of privatization notice and it prescribes that its subject may now be public capital and property, in addition to the socially-owned capital.

The new law explicitly stipulates that the deadline for implementation of privatization is **December 31, 2015,** and in line therewith, the privatisation of socially-owned capital of the privatization subject needs to be privatized by that time, while the privatization of public capital and assets of the subject is done pursuant to the decision of relevant authorities.

Crucial changes are also new models and methods of privatization. It is prescribed that one of the models is strategic partnership, which opens new possibilities during sale of capital without compensation. It is explicitly stipulated that the means of payment in privatization procedure is exclusively money in dinars or foreign currency, which eliminates the possibility for payment in bonds.

Agency for privatization got a new spectrum of competences. Among other, it is authorised to make public calls for collection of letters of interest for all entities for privatization within its portfolio, even for those that there was no initiative for, it proposes to the minister of economy the model and method for privatization, measures and example for unburdening the subject of privatization and the initial price, it institutes bankruptcy against the subject of privatization.

All activities that used to be performed by the ministry for privatization will be done by the ministry in charge of economy, in line with new legal provisions. An important novelty is that the new law abolishes the term of restructuring.

An important provision in the new law is that the privatization procedure is tasked to the Agency for privatization, which makes public call for all entities that privatization has not been instituted for until the adoption of the law, and that within 30 days after the day of adoption of the law. Also, *strategic partnership* is an entirely new model introduced by the provisions of the new law *and it enables* cooperation between domestic and foreign entities i.e. joint investment through establishment of a new company and recapitalization of the existing one, thus realizing the procedure of privatisation.

The privatization procedures instituted under the previous Law on privatization shall be continued under the provisions of the new law.

One of the aims of the new Law on Privatisation is to resolve the issues during privatization procedure and finalization of the instituted procedures. What is more,

the new methods of privatization strive to contribute to stimulation of domestic and foreign investments in the economy, as well as to its growth.

Conclusion:

General and professional public are reasonably posing numerous questions regarding the new solutions of the given laws. There are major dilemmas as to the future effects of the new legal provisions, since they significantly change the position of employers and employees, as well as legal persons in bankruptcy or privatization proceedings. Will the new regulations diminish the employee's rights? Do the employers have a facilitated procedure for dismissal? Will bankruptcy proceedings be more transparent? Will the instituted privatizations be accelerated?

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ACQUISITION OF AGRICULTURAL LAND IN SLOVAKIA BECOMES RESTRICTED

When Slovakia became a member of the European Union back in May 2004, Slovakia imposed a moratorium on the sale of agricultural land to foreign persons until 30 April 2011. Subsequently in January 2011, this moratorium was extended for another three years until 30 April 2014.

Due to the lapse of the moratorium, the Ministry of Agriculture and Rural Development of the Slovak Republic (the "**Ministry**") proposed an act, which should generally regulate the acquisition of agricultural land. The act No. 140/2014 Coll. on acquisition of agricultural land (the "**Act**") became effective on 1 June 2014. Its aim is to restrict the acquisition of agricultural land by foreign or unprofessional persons and speculations with such land in order to use it for another purpose than agricultural production. It also strengthens the acquisition by domestic persons actively performing agricultural production. By strengthening the position of domestic agriculturalists, the Act intends to stop the deterioration of agricultural land and safeguard its preservation and protection.

The acquisition of agricultural land by means of a purchase or donation agreement and also its acquisition in course of enforcement proceedings are restricted by the Act. These restrictions consist mainly of a determination of specific persons solely entitled to acquire agricultural land and a special offering process, which must be followed by the owner of the agricultural land, if it decides to sell its land.

However, these restrictions do not apply if the agricultural land is acquired by:

i) a person performing agricultural production as a business activity at least three (3) years prior the conclusion of the particular transfer agreement in the municipality, where the agricultural land is located; or
ii) a co-owner of the agricultural land; or
iii) a close or related person of the transferor.

Moreover, amongst other exceptions, agricultural land in the municipal area (i.e. the municipality's residential area) and agricultural land up to 2.000 sqm are not covered by the Act.

Should the agricultural land not be transferred to the persons under points (i) to (iii) above or none of the above mentioned exemptions apply (the "**Exempted Transfers**"), then the agricultural land's acquisition is subject to the restrictions under the Act, i.e. the owner must follow the below mentioned special offering process.

1. PERSONSENTITLED TO ACQUIRE AGRICULTURAL LAND

In course of the special offering process, only persons having permanent residence or registered office in Slovakia for at least ten (10) years and performing agricultural production as a business activity for at least three (3) years before the conclusion of the transfer agreement are entitled to acquire agricultural land (the "**Entitled Persons**").

Moreover, the Act priorities Entitled Persons performing agricultural production in the municipality, where the transferred agricultural land is located over Entitled Persons located in the neighbouring municipality. Last but not least, should even these Entitled Persons (either domestic or neighbouring) not express their interest in the acquisition, then the Entitled Persons irrespective of their place of business in Slovakia may do so.

2. PROHIBITION OF ACQUISITION OF AGRICULTURAL LAND

The Act also introduces a *quid pro quo* rule under which agricultural land may not be acquired by states, citizens of states, natural persons with permanent residence or legal entities with registered office in states, which do not allow Slovak citizens or legal entities the acquisition of agricultural land (the "**Prohibited Transferees**"). Nevertheless, this rule does not cover member states of the European Union and the European Economic Area, Switzerland as well as states, which are exempted by means of a mutual agreement between the Slovak Republic and the particular state. Inheritance proceedings are exempted from this rule as well.

3. SPECIFIC OFFERING PROCESS

Prior to a sale of agricultural land, the transferor must publish an offer for transfer of agricultural land (the "**Offer**") at least for a period of fifteen (15) days (i) with the Register of publication of offers for transfer of agricultural land (the "**Register**") on the website of the Ministry (the "**Publication Period**") and also (ii) at the official noticeboard of the municipality, where the agricultural land is located.

The Offer is valid for six (6) months after the lapse of the above mentioned fifteen-day time period. It means that the Offer will be published with the Register during the Publication Period and after the lapse of this period the owner has six (6) months to transfer its agricultural land. Should the owner not manage to transfer its agricultural land during this six-month period, the owner must repeatedly publish the Offer. The reason behind this provision is to eliminate an inadequate time span between the Offer's publication and the actual transfer of the agricultural land, as during such time span the conditions for the transfer could significantly change.

The Offer must amongst others include the price for the agricultural land asked by the transferor per sqm as well as the time period and address for the presentation of offers for transfer of the agricultural land.

The offering for the agricultural land's acquisition using the Register is a two-stage process. Firstly, the land is offered to Entitled Persons in the neighbouring municipality. Should these persons not reflect to the offer, then the land is offered to Entitled Persons irrespective of their place of business. In case that several Entitled Persons respond at the first or second stage, the owner may pick one of these persons and transfer its agricultural land, regardless of the offered price. A reasonable question at this point would be – why is the land not firstly offered to Entitled Persons located in municipality, where the agricultural land is located? The Act anticipates that such Entitled Persons are publicly known in the municipality, so there is no need for an official offering process and this transfer is considered as an Exempted Transfer.

Entitled Persons express their interest in the acquisition of agricultural land by sending corresponding written information to the transferor's address and within the time period specified in the Offer. If no information is sent within five (5) days after the lapse of the Publication Period, it is deemed that the Entitled Persons have no interest in the acquisition. In addition, the Entitled Persons register their interest also online with the Register.

In case that none Entitled Persons express their interest in the acquisition of the agricultural land, the transferor may transfer the land to another person under the following conditions:

(i) the purchase price must be in the amount stated in the Offer;
(ii) the transferee must have a permanent residence or registered office in Slovakia for at least ten (10) years; and
(iii) the transfer shall take place within six (6) months after the lapse of the Publication Period at the latest.

For avoidance of any doubts, if a foreign person meets the criteria mentioned under points (i) to (iii) above and is not a Prohibited Transferee, the owner may transfer its agricultural land also to such person.

4. LAND REGISTRY PROCEEDINGS

In order to register the change in the ownership of the agricultural land with the responsible land registry, certain documents must be presented to the land registry and must also form an annex of the respective transfer agreement. Otherwise, the land registry shall not register the ownership's change.

In case of Exempted Transfers, e.g. a sworn declaration of the transferee stating that it is a close or related person of the transferor or a confirmation of the municipality stating that the transferee is indeed a person, which performs agricultural activities as a business at least three (3) years before the conclusion of the particular transfer agreement in the specific municipality and is a tax payer in the specific municipality must be presented to the land registry.

If the owner plans to transfer its agricultural land and this transfer is not an Exempted Transfer, the owner must follow the above mentioned specific offering process, which is quite burdensome and complicated.

After this offering process has taken place, certain documents must be presented to the land registry verifying and proving that the parties have complied with the Act's regulation. Such verification and proving is performed by the district office, in which territory the agricultural land is located (the "**District Office**"). The respective application must be filed by the transferee before the actual transfer agreement is signed and it must fulfil the requirements set out in the Act.

The District Office shall issue a certificate stating that the conditions for the acquisition of agricultural land have been fulfilled within thirty (30) days after the filing of the proper and complete application. In more complex transactions, the District Office may prolong this time period to sixty (60) days. Such certificate shall be then enclosed to the transfer agreement, which shall be presented to the land registry. If the conditions for the acquisition of agricultural land have not been fulfilled by the parties, the District Office will reject the application. The Act however does not state, which document should be presented to the land registry if the Entitled Persons do not express their interest in the acquisition of the agricultural land. According to the Ministry, in such case the Register shall issue an online confirmation that none Entitled Persons have expressed their interest in the acquisition, whereby the District Office has access to the Register to verify it. This confirmation will then be enclosed to the transfer agreement, which shall be presented to the land registry.

5. FURTHER DESTINY OF THE ACT?

Already at its presentation by the Slovak government, the provisions of the Act lead to criticism on the side of the opposition and the professional public. The reason for this criticism is the fact that the Act's controversial restrictions pose a significant encroachment of the rights of the agricultural land's owners and as such could be considered in breach with the Constitution of the Slovak Republic. In particular, the right to dispose of the agricultural land's owner is clearly encroached by the newly introduced regulation. The owner may transfer its agricultural land only to specific persons and must follow a specific process.

The encroachment of ownership rights is indeed permissible under the Constitution of the Slovak Republic but only if such encroachment is realized only to the necessary extent and in the public interest, on the basis of law and for adequate compensation. The prevailing opinion of the professional public is that the encroachment of ownership rights introduced by the Act does not fulfil the conditions set out in the Constitution of the Slovak Republic or merely fulfils the condition that it is realized on the basis of law (i.e. the Act). The encroachment is not realized only to the necessary extent, the public interest is questionable and no compensation is granted for this encroachment. Thus, the opposition in the National Parliament of the Slovak Republic intends to challenge the Act in proceedings before the Constitutional Court of the Slovak Republic.

Apart from the Act's likely non-conformance with the Constitution of the Slovak Republic, the provisions of the Act are not well drafted. There are also some blank spots in the introduced legal regulation, which give rise to uncertainty and unclearness. Also, the Act introduces new terminology, which has not been defined by it or any other legal act and thus remains subject to interpretation.

Due to the above mentioned imperfections of the Act, the practical realisation of its provisions might become complicated, unclear and burdensome. Adding the likely non-conformance with the Constitution of the Slovak Republic, the further destiny of the Act remains questionable.

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CONSTITUTIONAL COURT PROCLAIMS SOME PROVISIONS OF THE LABOUR CODE UNCONSTITUTIONAL FOR PRIVACY LAW CONCERNS, INTRODUCTION OF THE "RIGHT TO LIE"

The Hungarian Constitution Court („CC") issued a detailed decision [decision No. 17/2014. (V. 30.) AB] on the right of pregnant women and women under medical fertilization treatment to hide their pregnancy / fertilization process. The decision was published on 27 May 2014. The breakthrough ruling is introducing the "right to lie" in Hungary that is already recognized in some other EU member states.

In its decision the CC expressed its privacy concerns and eliminated a provision from Act No. I. of 2012 on the Labour Code, with retroactive effect.

Background

The Fundamental Law of Hungary protects privacy and family life. According to Article II thereof, human dignity shall be inviolable and every human being shall have the right to life and human dignity; embryonic and foetal life and shall be subject to protection from the moment of conception. Further, according to Article VI of the Fundamental Law of Hungary, every person shall have the right to the protection of his or her private and family life, home, relations and good reputation, and every person shall have the right to the protection of his or her personal data, and to access and disseminate data of public interest.

Further, in Hungary, pregnant woman are protected by law from termination (during pregnancy and until the third anniversary of the child or when they terminated their nursing period without work). According to some judgments the protection is "objective" and consequently applies to the woman even if she was not

aware of her pregnancy; however, such judgments are rare.

The consistent court practice relating to the interpretation of the above provision has always been controversial, most judges argued that the employee must inform the employer at the time of the termination (at the latest) in order to benefit from the protection. Moreover, an individual judgment even confirmed that if the employee hides her pregnancy from the employer, she is not protected from the termination since she is acting in bad faith.

In order to unify the court practice in this regard and to protect the employer's interest, the parliament incorporated a provision to the LC that the protection applies only if the employee informs the employer about the pregnancy / medical treatment. According to the original section 65 (5) of LC, the pregnant women and women under fertilization process are subject to termination protection provided that they properly inform their employer about the fact of pregnancy / fertilization process.

The commissioner for fundamental rights ("Commissioner") submitted to the Constitutional Court a petition for ex-post normative control, asking for the constitutional review of Section 65 (5) of the LC . According to his opinion formed on the basis of reviewing the studies dealing with the codification of the new LC as well as the Hungarian and the European practice of fundamental rights, there are serious justifiable constitutional concerns regarding the challenged regulation on the termination protection. As pointed out by the petitioner, the provision requiring an employee to talk about pregnancy is impossible if the employee is not aware of the pregnancy. He highlighted that those who are not aware of their medical status should also need protection. He referred to the Fundamental Law which ensures the right for privacy and private family life. The commissioner for fundamental rights held that the recent changes in the provisions of the Fundamental Law in the field of privacy do not imply the disregarding of the Constitutional Court's judicial practice – based also on the practice of the European Court of Human Rights – related to the right to private life. Moreover, the Commissioner made a reference to a Curia decision from 2004 arguing that it is against the principles of law to require an employee to talk about her pregnancy to the employer or even to give false information.

Decision of the Constitutional Court

The Constitutional Court accepted the claim of the Commissioner and canceled section 65 (5) from the LC with retroactive effect. In the decision the CC gives a detailed analysis on the concept of privacy and introduced the "right to lie" in order to prevent human dignity.

In the decision the CC gives a detailed reasoning relating to the practice of the European Court of Justice protecting the rights of pregnant women and the requirements for equal treatment. However, the CC explains that it is not only an equal opportunity question but also an issue relating to privacy protection. In its view, the CC must examine (within the frame of the petition of the Commissioner) whether making the protection against dismissal defined in the Section 65 (3) a) and e) conditional upon informing the employer about it – before giving notice of dismissal – by the employee infringes the right to privacy or private family life. During this scrutiny by the CC, the starting point was the determination of the protection scope of the referred fundamental rights.

The CC has interpreted the right to privacy and its relation to the right to human dignity in its previous decision No. 32/2013. (XI. 22.). It came to the conclusion that the Article VI (1) of the Fundamental Law – contrary to Article 59. § (1) of the previous Constitution – provides comprehensive protection of privacy: and covers the private and family life, home, communication and good reputation of the private individual. As regards the substance of privacy, it continued to deem sustainable the definition – representing the overall essence of the notion of private

element of privacy is that others may not interfere or have access thereto against the will of the person concerned. The Court highlighted that there is a particularly close relationship between the right to privacy ensured by Article VI. (1) of the Fundamental Law and the right to human dignity guaranteed by Article II. of the Fundamental Law.

In the CC's interpretation, Article II. of the Fundamental Law provides basis for the protection of the "untouchable area of the formation of privacy", which is completely excluded from any kind of state intervention, since it is the basis for human dignity. Nonetheless, according to the Fundamental Law, the protection of privacy is not restricted only to the inner sphere or intimacy protected also by Article II of the Fundamental Law, but it also covers privacy of a wider sense (communication) and the territorial sphere, in which the private and family life unfolds (home). Beyond this, the image created about one's life enjoys individual protection as well (right to good reputation). [30] Article XVII (3) of the Fundamental Law concretizes the protection of rights ensured in Article II and VI (1) of the Fundamental Law in relation to employment: „Every employee has the right to working conditions which respect his or her health, safety and dignity." The safe working conditions, not endangering the health of employees are ensured by the Act XCIII of 1993 on labour safety; to respect employees' dignity by the Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, furthermore during the employment by the provisions of the LC guaranteeing the protection of personal rights and Sections 2:42–54. § of the Act V of 2013 on the Civil Code. Section 9 § (1) of the LC stipulates the general requirement of the protection of personal rights. Personality rights are named within the Civil Code, thus the right to privacy and the right to the protection of personal data as well [CC 2:43. § b), e)]. The protection of personality rights in labour law – according to the reasoning of the LC – is of high importance, primarily due to the imbalanced nature of the employment relationship. According to Section 10. § (1) of the LC, an employee may be requested to make a statement or to disclose certain information only if it does not violate his rights relating to personality, and if deemed necessary for the conclusion, fulfilment or termination of the employment relationship.

With view to the fact that the circumstances defined in Sections 65. § (3) a) and e) of the LC are regarded as personal data, the Constitutional Court referred to its previous practice regarding the relationship of the right to privacy and the right to protect personal data ensured by Section VI. (2) of the Fundamental Law. The Constitutional Court (since 1991) had not construed the right to protect personal data as a traditional protective right, but taking into account its active side as well, interpreted it as right of informational self-determination. The CC highlighted that the right of informational self-determination is closely linked to the right to privacy, whilst it contains the right to decide as to when and within what limits will the individual reveal its data related to its person. The restriction of the right of informational self-determination – contrary to the right to privacy– is not aligned primarily to the character of the data, but to its use. The right of informational self-determination comprehensively protects the personal data of the private individual, irrespectively of how the data controller came to the possession of those.

Interpretation of the term "private life" in Hungary by other authorities

The definition of private life is a broad concept with no exhaustive definition in Hungary. Different interpretations are available in decisions adopted by criminal or civil courts. However, in general, the concept is wider than that of the right to privacy and it concerns a sphere within which everyone can freely pursue the development and fulfillment of his/her personality. In the interpretation of the CC, the right to private life is not only wider than to right to privacy, but it is covered by the "information self-determination" that requires active (pro-active) conduct from the affected individual.

The previous Data Protection Commissioner already analyzed in details the employee's rights to protect certain information from the employer and he pointed

out in several opinions and statements that the employee may not be forced to provide information on his /her private life to the employer unless the question of the employer affects the material part of the employment relationship. For example, pregnant women can only be requested to provide information on their pregnancy if the information is relevant to work schedule or to dangers involved in fulfilling certain positions. In any other case, it falls under the right of the woman's information self determination whether to provide the information to the employer or not.

Under Hungarian law, the decision of the CC may serve as a basis for the re-opening of the closed litigation in which pregnant woman were affected. The case also shows that the interpretation of privacy law remains at the table of the Constitution Court, further refining its previous practice interpreting the notions of privacy, private life, and personal data protection.

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CHANGES IN ROMANIAN LAND LAW CONCERNING EXTRA VILAN AGRICULTURAL LAND

In March 2014, Law no. 17/2014 was issued. This is a new law referring to the conditions for the sale and purchase of extra vilan agricultural land.

In Romania land is defined as agricultural land and non—agricultural land. Agricultural land can only be used for agriculture and is variously defined depending on the quality of the land. Land is also shown on the development plans as either intra vilan – that is land within the city boundary which has been defined as land available for non-agricultural use and extra vilan which is land not available for development. Land can be defined as intra vilan even if it is not connected physically to a town. This allows industrial estates to be developed outside of town boundaries.

The main laws in Romanian concerning land are the Romanian Constitution; Law no. 18/1991 Land Law; Law no. 1/2000 concerning ownership rights of agricultural and forest land and Law no. 169/1997, Law no. 312/2005 concerning the acquisition of private proprietary right/ownership of land by foreign citizens and the foreign legal persons and Law no. 17/2014 and its Methodological Norms from the 13th May 2014 ("the Norms").

The Romanian Constitution provides in art. 44 paragraph 2 that foreign citizens and stateless persons may acquire right/ownership of land only as a result of the accession of Romania to the European Union and other international treaties and in accordance with the conditions provided by the Romanian organic law as well as by inheritance.

Law 17/2014 applies only to extra vilan agricultural land and is applicable to Romanian citizens, citizens of a member State of the European Union, stateless persons residing in the European Union and to legal persons having Romanian nationality or the nationality of a member State of the European Union, as well as those who are citizens of a country who is part of the EEAA and of the Swiss Confederation ("Land owners").

Law 17/2014 gives pre-emption rights to a defined class of persons on the sale of extra vilan agricultural land. The sale of this type of land can only be done in accordance with the Romanian Civil Code and respecting the pre-emption right given persons by Law 17/2014.

The persons entitled to the pre-emption right are the following; i) co-owners, ii) tenant farmers (arendasi), iii) neighbouring owners and iv) the Romanian State, through the State Agency. Law 17/2014 gives pre-emption rights to these persons to purchase extra vilan agricultural land at the same price and conditions as the owner wishes to sell to a third party.

Pre-emption rights in Romania are regulated in accordance with art. 1730 – 1740 of the Romanian Civil Code; Law no. 17/2014 contains specific rules for the exercising of pre-emption rights for extra vilan agricultural land.

For Law 17/2014 to have effect the sellers of the land have to have signed a sale purchase agreement for a land in authentic form before a public notary.

To implement the provisions of Law 17/2014 the seller must register with the local town hall where the land is situated, an application requesting the display of the sale offer for the sale of the land so that the persons entitled to the pre-emption rights can be made aware of the proposed sale and exercise their pre-emption rights if they wish to do so. The application for registration must be accompanied with the sale offer and other documents mentioned in the Norms.

Within one working day after the registration of the application with the town hall, it must display for a period of thirty days the sale offer at its office and, if applicable, on its internet page. Further In three working days starting from the date of registration of the seller's application the town hall must send to the central and territorial offices of the Agriculture and Rural Development Ministry a file containing details of the sale offer, a copy of the application, the list of the persons who are entitled to the pre-emption rights, and the other documents attached to the seller's application. In three working days from the date of recording the file to the central and territorial offices, these offices must display on their internet sites the sale offer for a period of fifteen days.

Within the thirty day period provided for the advertisement the persons with pre-emption rights must express their intention to exercise their pre-emption right. They do this by communicating in writing their acceptance of the offer by the seller and register such acceptance with the town hall where it was displayed. Failure to register the acceptance within the thirty day period leads to cancellation of the pre-emption right.

Within 24 hours of receipt of any exercise of the pre-emption right the town hall must display the information mentioned in the Norms in respect of any acceptance and must send it to the central and territorial offices in order for it to be displayed by these offices.

Where within the period of thirty days more than one person expressed in writing their intention to buy the land at the same price and in the same conditions as those proposed by the seller then seller will choose between the potential buyers in accordance to their ranking and advise the town hall accordingly. If there are a number of persons who wish to buy of the same ranking then the Seller can choose from them the person to whom he wishes to sell the land.

In within the period of thirty days a person with a lower ranking pre-emption right offers a higher price than the price stipulated in the offer or of the price offered by another person with a higher ranking then the seller may reinitiate the sale and pre-emption procedure with those of a higher rank by registering the sale offer with this new price.

If at the end of the thirty day period no-one with a pre-emption right has expressed an intention to buy the land then the seller can sell the land, in accordance with the Law and its Norms. The seller must communicate in writing this fact to the town hall. The seller cannot sell the land at a lower price than the price asked for in his initial offer. If the seller concludes any sale agreement for a lower price this transaction is null and void.

In addition to the general terms set out in law 17/2014 there are special conditions in respect of a sale purchase agreement relating to extra vilan agricultural lands situated in or near the Romanian borders, the Black Sea shore, special objectives and archaeological site. In addition for the conclusion of a sale and purchase agreement, in authentic form, for agricultural land located in the extra vilan area, the public notary must obtain the final opinion/advice/approval from the to the local structures for land with an area of up to thirty (30) hectares included and to the central structure for land with an area of over thirty (30) hectares.

In conclusion therefore Land Owners as previously described can buy agricultural land situated in the extra vilan areas of Romania respecting the pre-emption rights of the co-owners, the tenant farmers, the neighbours owners, Romanian State and in accordance with the procedure provided by Law no. 17/20014 and its Methodological Norms.

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NEW ACT ON THE ECONOMIC AND FINANCIAL RELATIONS WITH COMPANIES REGISTERED IN JURISDICTIONS WITH PREFERENTIAL FISCAL ARRANGEMENTS, THEIR RELATED PARTIES AND REAL OWNERS

On the 3th of January 2014 in State Gazette, issue No 1, the Act on the Economic and Financial Relations with Companies Registered in Jurisdictions with Preferential Fiscal Arrangements, Their Related Parties and Beneficial Owners (the "Law") was published. The new regulation is in conformity with the European trend of fight of decrease of tax fraud, tax avoidance, aggressive tax planning and tax havens, presented with European Parliament Resolution of 21 May 2013 on Fight against Tax Fraud, Tax Evasion and Tax Havens. The Parliament provides for a number of measures such as increasing of transparency of companies' tax payments, encouraging international automatic exchange of information and abolition of harmful tax measures. In addition Member States should not provide state aid or access to public procurement to companies that breach EU tax standards, they should require a disclosure of information related to penalties or convictions for tax-related offences for all companies bidding for a public procurement contract. Same paper suggests that public authorities, while respecting obligations agreed under the revised Late Payments Directive, are enabled to include a clause in a public procurement contract that allows them to terminate the contract if a supplier subsequently breaches the tax compliance obligations; to prohibit access to EU public procurement of goods and services and refuse to grant state aid to companies based in blacklisted jurisdictions, to prohibit access to state and EU aids for such companies, etc.

The purposes of the Bulgarian Law are non-admission of companies registered in jurisdictions with preferential fiscal arrangements, their related parties and beneficial owners to utilize public funds and manage their financial resource in contradiction to public interests as well as prevention of tax evasion. The Law refers to the definition of "jurisdictions with preferential fiscal arrangements", as set forth in Corporate Income Tax Act. These are states or territories, with which the Republic of Bulgaria does not have double tax treaty in force and where the income or corporate tax due, or the substituting taxes on incomes under the Income Taxes on Individuals Act, which a foreign person has generated or will generate are more than 60 % lower of the corporate or income tax on these incomes in the Republic of Bulgaria. Between such jurisdictions fall US Virgin Islands; Principality of Andorra, Anguilla (British); Channel Islands (British); Antigua and Barbuda; Aruba (Netherlands); The Commonwealth of the Bahamas; Barbados; Belize; Bermuda Islands (British); British Virgin Islands; Republic of Vanuatu; Gibraltar (British); Grenada; Guam (US); Cooperative Republic of Guyana; Dominican Republic; Cayman Islands (British); Christmas Island (British); Republic of Liberia; Principality of Liechtenstein; Republic of Maldives; Republic of Mauritius; Principality of Monaco; Montserrat (British); Republic of Nauru; Niue (New Zealand); Republic of Palau; Cook Islands (New

Zealand); Isle of Man (British); Saint Lucia; Federation of Saint Kitts and Nevis; Turks and Caicos Islands (British); Republic of Fiji; Republic of Panama; Independent State of Samoa; Republic of San Marino; Republic of Seychelles; Solomon Islands ; Saint Vincent and Grenadines; Kingdom of Tonga; Republic of Trinidad and Tobago; Tuvalu; Falkland Islands (British); Netherlands Antilles (Netherlands); Hong Kong (China).

With respect to the definition of “related parties” the Commerce Act shall be applicable. The Act provides for following relations to fall within the scope of “related parties”:

• spouses, relatives in direct line up to any degree of consanguinity, collateral relatives up to the second degree of consanguinity inclusive, and affines up to the third degree of affinity inclusive;

• an employer and an employee;

• two individuals, one of whom participates in the management of the company of the other;

• partners;

• a company and an individual who holds more than 5 per cent of the participating interests and issued voting shares in the company;

• parties whose activities are under the direct or indirect control of a third party;

• parties who exercise joint direct or indirect control over a third party;

• two individuals, of whom one is a commercial agent of the other;

• two individuals, of whom one has made a donation in favour of the other.

"Related parties" shall also be the party who either directly or indirectly participates in the management, control or capital of another party or parties, which may enable them to agree on terms and conditions which differ from the standard practice.

Prohibitions

The Law introduces different direct and indirect prohibitions for the companies, registered in jurisdictions with preferential fiscal arrangements and their related parties. Prohibitions include:

- limitation for such companies, not only to participate in procedures for obtaining a license to carry out certain activities, but also to participate in the following companies: credit institution, insurance and reinsurance companies, insurance agents and brokers, pension insurance, payment corporation, mobile operator, carrying out activities under Markets in Financial Instruments Act;
- limitation of participation in procedures for obtaining concessions and public procedures, researching and exploring natural resources, public-private partnerships;
- participation in privatization transactions, acquiring of state or municipal property by the means of sale or compensation of municipal or state property, companies with state or municipal participation, auditors, independent evaluators and those carrying out activities under the Energy from Renewable Sources Act;
- participation in procedure under the Act for the Excise Duties and Tax Warehouses Act, participation in professional sports clubs, licensed by the relevant sports federation;
- applying for priority investment project under the Law on Investment Promotion; participation in the procedure for granting a license under the Energy Act, participation in a procedure for granting a license under the Gambling Act, participation in a procedure for granting a license to trade with dual-use goods;
- participation in the procedure for obtaining a license or the award of a contract for procurement activities and/or removal of water, participation in the process of obtaining a license

or award of a contract to perform work for the collection and disposal of municipal waste disposal in landfills or other facilities or refuse to maintain the cleanliness of public areas, participation in a company applying or obtained license for radio and television broadcaster in the Radio and Television Act;

- participation in or establishing of a company, publisher of periodical printed editions, participation in public- private partnership, establishing or participating in a research agency or an entity, which prepares and provides public opinion surveys;

- acquiring ownership of land and forests of the state forest fund.

Prohibition Exemptions

The Law includes the following exceptions from the limitations above:

- When shares of a company, registered in jurisdictions with preferential fiscal arrangements, are traded on a regulated market in European Union member-state, a state under the EEA Agreement, or when shares of this company are traded on a market listed in a number of special laws and the beneficial owners – natural persons are public;

- When the company, registered in jurisdictions with preferential fiscal arrangements, is a part of an economic group that meets the criteria explicitly set out in the Law;

The company in which directly or indirectly participates a company which is registered in jurisdiction with preferential tax regime and which is publisher of periodic press and has presented information for its beneficial owners. The law stipulates that information for individualization of the beneficial owners shall be published in the first issue for each year. Exemption is acceptable for the cases when they are a public company under the Law for Public Sale of Stocks or its national legislation. In this case, the only information that is presented is the authority according to the applicable legislation that controls it. The above information of the beneficial owners or the competent authorities is also presented to the Ministry of Culture and both on the internet site of the Ministry and of the respective periodic press.

Submission of incorrect data aimed at application of law exceptions by particular company shall be punished by variety of sanctions, among others: refusal to issue a license, suspension from the procurement procedure along with the imposition of fines, declaring invalid the sale or the relevant procedure, etc.

It should be noted that the administrative sanction for using of documents with untrue content in order to prove exception is up to 500 000 BGN in case that a harder administrative penalty does not apply. The sanction for a second violation reaches 1 000 000 BGN.

Commercial Register Registration

Circumstances, providing exemption from the above prohibitions must be registered with the Bulgarian Commercial Register. Besides these circumstances, the identifying data of the beneficial owners is a subject to registration. In the event a company has not registered these facts, the prohibition shall be applicable. In case that the exemption applies to a company, registered in jurisdictions with preferential fiscal arrangements, the information shall be registered on the file of the company in the Commercial Register. In case that there is no other legal ground that the foreign company shall have a file in the Bulgarian Commercial Register, the Law is the legal ground for its registration. The rest of the exemptions shall be registered on the file of the respective related company in the Commercial Register.

The latest amendments of the Ordinance No 1/2007 for Bookkeeping and Access to the Commercial Register of the Minister of Justice as of 27.06.2014 now allow all

legal entities to declare their beneficial owners. The amendments apply both to legal entities that are subject to registration in the Commercial Register and to foreign legal entities, registered in jurisdictions with preferential fiscal arrangements. The procedure includes submission of standard application as well as a notary certified declaration with information identifying the beneficial owners and official documents which prove the existence and representatives of the company, registered in jurisdiction with preferential fiscal arrangements.

Implementation of the Law

All companies that the Law applies to, had six months term commencing on 1st of January 2014, to take the necessary measures to be compliant with the requirements of the Law. Otherwise, the competent authority is entitled to impose the sanctions, which are provided by the Law for incorrect data as described hereinabove, including but not limited to refusal of licensing or withdrawal of already given license, disqualifying from privatization procedure or public procurement procedure as the case may be.

The Law stipulates that the control over its execution shall be performed by the authority, which is competent for each particular case, such as Bulgarian National Bank to procedure of licensing of credit institutions as stipulated in the Law for Credit Institutions, Financial Supervision Commission to licensing insurance company as the case may be.

Given the broad scope of the definition of "related parties" laid down in the Commerce Act, any company engaged in any of the activities regulated by the Act shall carry out its own assessment of the Law applicability and implementation.

The Law also implemented important amendment in tax legislation as a result of the extension of the definition for related parties in the Tax Social Security Procedure Code. The following parties are also considered as related parties:

- A local person and foreign person, when the latter is registered in a state which is not a member state of the European Union and in which the due income or corporate tax on income of foreign persons as a result of transactions is with more than 60 per cent lower than income or corporate tax in the country, unless the local person provides evidence that the foreign person owes tax, which is not subject to preferential treatment or that the foreign person has realized the goods or services on the local market; and the country in which the foreign person is registered, refuses or is unable to exchange information about the business transactions or relationships when there is international tax treaty in force;
- A local person and a legal entity, resident in Bulgaria or abroad, which is controlled by a person which has the features described in the previous bullet;
- A foreign person and a foreign legal entity operating in the country through a permanent establishment, or a foreign individual, realizing income from a source in the country through a base for transactions carried out through the fixed permanent establishment;
- The owners of the local entity and the foreign entity of the first bullet.

The deals between such parties shall be treated by the tax authorities as deals between related parties and this shall influence the burden of proof whether such deals are real. It could lead to deviation from tax treating and to end up with assessment of VAT, or to be treated as a hidden distribution of assets and tax on dividend to be assessed, or assessment of corporate tax for the other party of the deal, etc.

Although the Law was followed by many discussions on its restrictive approach of regulation, the exception for periodic press, etc., it should be noted that it provides completely new regulation and resolution of the efforts for decrease of tax fraud, tax avoidance and leak of public finance.

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