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Dear Sirs,

We are pleased to deliver Newsletter of the Warsaw Office of Garrigues, where topics relevant for the business activity are discussed.

We present and discuss planned and introduced changes in the law and practice of law enforcement and administration agencies, such as courts or tax authorities and analyze their impact on business. We also cover interesting cases which we encountered in our practice.

We believe that Garrigues Polska Newsletter serves as a platform to share information and expertise with our clients and other entities engaged in business in Poland. We believe that such exchange of information shall help and streamline doing business in Poland.

In case of any questions or need to analyze specific cases, please get in touch with our lawyers, whose contact details are on the last page of the Newsletter.

Advocate Adriana Andrzejewska

REAL ESTATE

Perpetual usufruct fees on the agenda again

In one of its latest resolutions dated May 15, 2013 (file No III CZP 24/13), the Polish Supreme Court held that an update of the annual fee for perpetual usufruct should pertain to an entire real property for which a separate land and mortgage register is kept. If a given real property is comprised of several plots of land, then it is not allowed to amend the annual fee with respect to certain plots only. The issue of the fees gathered in connection with the perpetual usufruct recurs every now and again. The existing problems refer not only to fees collected for using the land (given in perpetual usufruct) but also to those regarding changes of the purpose specified in the relevant contracts and collected in connection with alterations of the use of the real property. The perpetual usufruct has its origin in the communism period. The right of the perpetual usufruct was devised as an instrument of promoting the housing construction. With a dawn of the free market economy the perpetual usufruct has been changed into a mechanism through which the state and local government units plan development of certain areas and obtain funding for their daily activities. As a result, the public authorities employ different measures to procure additional sources of financing, by and large at the cost of perpetual usufructuaries. It is possible to defend against at least some of those fees (or hikes), however it requires an in-depth analysis and certain level of experience which we are always happy to provide you with.

Advocate Maciej Gaca, LL.M.

CORPORATE LAW

The freedom of contract in corporate charters

There is no doubt that both articles of association (in limited liability companies) and statutes (in joint stock companies) are subject to the principle of the freedom of contract. Shareholders are free to shape the content of corporate charters. However, in case of corporate charters the freedom of contract is limited not only by the nature of this specific legal relationship, the provisions of law and the principles of community life but also by some special provisions which lay down when additional clauses are permitted and when it is allowed to stipulate provisions different from those provided in the Commercial Companies Code. On the whole, it is permitted to modify provisions regarding the company's representation, actions of company's corporate bodies, trading in shares, etc. However, it is worth remembering that other terms are subject to the principle of the freedom of contract as well. Nonetheless, it is not always possible to indicate without any doubt what are consequences of introducing a given clause into the

company's charter. Some of charter's clauses will have effect vis-à-vis third parties but others will be effective just towards members of the corporate bodies. Having said that, it should be mentioned that it is always possible to draw up the corporate charter in such a way, so it could live up to expectations of the investors to the greatest extent admissible at the same time benefiting from the principle of freedom of contract.

Advocate Justyna Dubielak

LABOR LAW

Extended settlement period / Variable work time

On June 13, 2013 the Parliament (lower chamber) adopted the amendment to the Labor Code with respect to the extension of the settlement period and make more flexible the work time system by introducing the variable working time schedule.

Extended settlement period

According to the adopted project, the settlement period, regardless the applicable working time system at the workplace might be extended up to 12 month. The extension may occur if it is justified by objective reasons, reasons of technical nature or related to the organization of work. Moreover, by extension of the settlement period, the employer shall remember of complying with the general rules on safety and health of its employees.

In line with the government position, the extension of the settlement period is to introduce more rational organization of work, especially during the economic crisis.

Working time schedule – minimal statutory pay

The proposed changes are referring also to the working time schedule, which might be prepared for a period shorter than the settlement period applicable at the employer. This provision will be practically applicable in particular in the extended settlement periods. If, in a particular period, upon the prepared working time schedule the employee will not obtain the right to the remuneration, as set in the employment contract, the employee will be entitled to the minimal statutory pay (in 2013 it is gross PLN 1600). Such situation may occur in production enterprises, when the orders for the produced products decrease in a particular period, and there is no justification to terminate the employment contracts.

Working time schedule – flexible hours of commencing work

The amendment, moreover, proposes the introduction of provisions which allow the employer as well as the employee to freely decide on what time to commence work. Due to application of that working time schedule, the employee (as well as the employer) is allowed to determine the moment of commencement and termination of work (i.e. from 7.00 am to 9.00 am) in the given settlement period.

Tax Advisor Szymon Murawski

TAX LAW

Assault on binding rulings

Starting from the next year, the rules applicable to binding rulings issued by the Ministry of Finance may be significantly changed. Namely, the binding ruling may be issued only in relation to the future state of affairs (i.e. the transactions which will be concluded in the future). It will be also impossible to ask about the cases being subject to general binding ruling.

What is more important is the fact that the tax office will be entitled to refuse issuing a ruling when it arbitrarily declares that the motion for binding ruling demonstrates the will of a taxpayer to avoid taxation. Such opinion will be issued by the new founded office – the Council for Tax Avoidance Matters. The opinion of the Council will cost PLN 25,000 or PLN 50,000 – when the transaction is going to be performed with a foreign entity.

Abogado David Jelicz

PUBLIC PROCUREMENT

New directives regulating market of public procurement

The market of public procurement in the European Union generates orders for approximately EUR 420 billion per annum (according to the data as of 2009). Due to the above, in order to improve the process of granting the contracts, the works on the new Classical Directive as well as the new directive on concessions and selection of private partners (as of public-private partnership) were undertaken.

The aim of the new Classical Directive is to (i) decrease the costs of the public procurement procedure, (ii) accelerate the procedure of granting the public contract – introduction of the electronic communication and decrease the number of the requested documents – (iii) facilitate small and medium enterprises' participation in public procurement, creation of the common market of public procurement and (iv) effectively combat the conflicts of interests, favouritism and corruption.

Simultaneously, the proposed changes of the directive of concessions and selection of a private partner are to supplement the European system by introducing the rules on service concessions.

The drafts prepared by the European Commission were sent to the Council of the European Union and the European Parliament. It is planned that the directives will be adopted within the current year.

Advocate Szymon Renkiewicz

CAPITAL AND FINANCIAL MARKETS

New types of investments funds

Since May 15, 2013 in the European Economic Area there are two new regimes envisaged for managers of Undertaking for Collective Investment (UCITS).

The Regulation (EU) No 345/2013 of the European Parliament and of the Council on the European venture capital funds, dated April 17, 2013 (O.J. EU L No 115/1) introduces a new type of investment funds, which are supposed to deal with financing small and medium size undertakings being in the initial phase of their development yet having a significant potential for growth. This type of investment funds will be allowed to use a shortcut EuVECA which means the European venture capital fund.

The second of the EU Regulations – the Regulation (EU) No 346/2013 of the European Parliament and of the Council on European social entrepreneurship funds, dated April 17, 2013 (O.J. EU L. No 115/18) introduces the term of the European social entrepreneurship fund. These types of funds are permitted to use the shortcut EuSEF. EuSEFs are devised to provide financing to social undertakings established with an aim of pursuing social goals and tackling the social consequences of economic crisis.

Both types of new investment funds will be entitled to collect necessary capital on the whole territory of the European Union.

The above information does not constitute a legal opinion. Garrigues accepts no liability for the consequences of any actions taken solely on the basis of the contents of this information, unless that information is subsequently confirmed in writing in a form of formal advice.

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