

# Legal Update

July – September 2008

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OVERVIEW OF LEGISLATION  
PUBLISHED IN THE COLLECTION OF  
LAWS

The information in this newsletter is correct to the best of our knowledge and belief at the time of going to press. Specific advice on items contained in this newsletter should be sought, however, before investment and other decisions are made.

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*We trust that you find Legal Update a useful source of information. We are always interested in receiving your views on this newsletter, in particular regarding its content, format and frequency.*

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In this Legal Update, please find a summary of certain provisions of a number of laws published in the Collection of Laws in July, August and September 2008.

### OVERVIEW OF LEGISLATION PUBLISHED IN THE COLLECTION OF LAWS

#### ENERGETICS

#### **ACT No. 283/1008 Coll., on amending and supplementing Act No. 656/2004 Coll. on Energy and consequential amendments, amending and supplementing of certain laws, as amended**

The amendment stipulates the duty to obtain a license/certificate of the investment plan's compliance with the measures of the Long-term Energy Policy Concept of Slovak Republic regarding construction of electricity facilities, gasworks facilities, pipeline transportation of fuels or oil and distribution of liquefied petroleum gas.

However, the license is not required for constructing energy facilities for (i)

generation of electricity in a generating facility with a total installed capacity of up to 1 MW; (ii) production of gas, (iii) distribution of electricity and distribution of gas, conducted by the system operator in the part of the defined territory.

In connection with the above mentioned the amendment sets out the content of the investment plan, as well as the conditions for the issuance of a license.

In order to avoid discrimination and cross subsidies the Amendment stipulates the duty of the electricity producer, gas producer, transmission system operator, distribution system operator, the gas transmission system operator, the gas distribution system operator, and the gas storage facility operator to keep separate records of matters which are the subject of accounting, and separate records of costs and revenues, assets and liabilities. Furthermore, the Amendment also states a set of rules for distribution of assets, liabilities, costs and revenues, and sets depreciation rules independently for each activity of electricity transmission, electricity distribution, gas transmission, gas distribution, and storage facility operation.

The Amendment enables the electricity producer, who is also a supplier of the electricity, as well as the electricity dealer, to sell electricity by the means of auctions in compliance with the rules laid down by the Regulatory Office for Network Industries.

Moreover, the Amendment increases the electricity and gas market transparency and improves the foreknowledge of the household customer of electricity or gas about the prices of the electricity or gas stated in the invoice of the supplied electricity or gas. The information on the structure of the prices for the supply of electricity or gas contains the purchase price of the electricity or gas, business activities of the supplier, transmission of gas, distribution of electricity or gas, loss incurred during transmission and distribution of electricity, systematic services in electro-energetics and system operations in electro-energetics. Finally, the Amendment specifies the rights and obligations of electricity suppliers and amends the Act on Regulation in Network Industries and the Act on Excise Duty on electricity, Coal and Natural Gas.

The Amendment became effective as of 1 August 2008, with the exception of some of the provisions, which will be effective as of 1 January 2009.

### **MEASURE of the Regulatory Office for Network Industries of 27 August 2008 on the rules for selling electricity on auctions**

The Measure specifies the methods for announcing auctions, evaluating offers, stipulates conditions for participating in the auction as well as the conditions for notification of auction and for the materials accompanying the offers.

The notification of auction has to be published on the announcer's webpage at least 10 days before opening the bidding. The auction is managed by a three-member-committee established by the announcer prior to the announcement of the auction. However, as the Measure sets forth, one of the members has to be a representative of the Regulatory Office for Network Industries.

Only a bidder that has no capital participation on the announcer's undertaking and does not conduct business with the announcer in his own name, or as a silent partner, or by

means of an association, has the right to participate in the auction.

The Measure became effective as of 10 September 2008.

### **NOTIFICATION of the Regulatory Office for Network Industries published as No. 311/2008 Coll.**

In Decree No. 2/2008 issued on 28 July 2008 The Regulatory Office for Network Industries stipulated regulation of prices in the energetic sector. By the said Decree the Regulatory Office for Network Industries sets out the methods, procedures and conditions of price regulation, materials and methods for submitting price offers in the electro-energetic sphere.

The Decree became effective as of 10 August, with the exception of the derogatory provisions, which will enter into force on 1 January 2009.

### **REAL ESTATE LAW**

#### **ACT No. 285/2008 Coll., on amending and supplementing of the Act No. 330/1991 Coll. on Land Adjustments, Arrangement of Land Ownership, Land Offices, Land Fund and Land Societies as amended**

The aim of the amendment, which became effective as of 31 July 2008, was to regulate two aspects of activity of the Slovak Land Fund (hereinafter only "SLF"), as it is accompanied by significant financial transactions and contractual relationships that interfere in ownership rights to land.

The first change that the amendment introduces is the obligation of SLF to publish on its website all the contracts that SLF enters into in connection with performance of its authority. In order to improve the control mechanisms and increase the transparency of the fund, the obligation to submit the annual report to the National Council has been

introduced as well. During the commenting procedure, citizens and experts from various fields relating to the fund's activities are allowed to make comments on the report.

Furthermore, the amendment introduces a change in governing bodies of SLF. Their fundamental powers shall be stipulated directly by the Act without a necessity of their further elaboration in secondary legislation. Existing Board of Directors and Advisory Board merge into a single body – Fund Board – with supervisory powers only. The Board consists of eleven members elected by the National Council for the period of three years. Likewise, the National Council has the power to remove the board members from their office.

The whole responsibility for operation of SLF lies within the competence of the Managing Director and the Deputy Managing Director, respectively. They are the main executive parts of SLF and in certain matters their joint action and signing is required. They shall be appointed by the Government based on the proposal of the Ministry of Agriculture.

The Act became effective as of 31 July 2008.

#### **REGULATION of the Ministry of Agriculture of the Slovak Republic of 18 June 2008 stipulating the details of methods of keeping records of lands**

By stipulating certain details of keeping records of leased lands this Regulation of the Ministry of Agriculture of the Slovak Republic puts through the act No. 504/2003 Coll. on lease of agricultural lands, agricultural enterprise and forest lands and on amendment of certain acts.

Records of lands are kept for cadastral territories, divided into a) lands leased on basis of a lease agreement, b) lands cultivated on basis of special regulation and c) lands, which are owned and cultivated by the by the lessee.

The record of lands contains (i) text part (ii) map part – i.e. the copy of the cadastral map with marked land borders and information on bonity of the soil and (iii) collection of deeds, which comprises in particular of lease and sublease contracts, excerpts from Ownership Deeds or other documents evidencing the ownership right to the land.

Record shall be updated as of 31st October of the calendar year in the form of an supplement.

This Regulation became effective as of 1 August 2008.

## LABOUR LAW

### **REGULATION of the Ministry of Health of the Slovak Republic No. 292/2008 Coll. on particularities of extent and content of the work health service, on constitution of the team of experts, who practise it and on requirements on their professional qualification**

The regulation repeals and replaces the former Regulation of the Ministry of Health of the Slovak Republic No. 458/2006 Coll. regulating the same topic.

The content of work of a work health service comprises in particular of assessment of factors of the work environment and work conditions, advisory to the employer and submission of proposals of measures from the perspective of protection and positive influence on the employees' health.

Work health service is active also at employees and natural persons – entrepreneurs, who do not further employ any other persons. It shall exercise in particular monitoring and assessment of health condition and immunization.

Work health service participates on education and training of employers and employees in topics such as work impacts, work conditions and cooperates with the providers of healthcare, the Social insurance, health insurance companies as well as with state authorities in the area of public health.

The regulation sets forth the minimum constitution of the teams of work health service experts. Team members must be doctors specialised in selected medical areas, a nurse and an assistant. The constitution of teas differs with regard to the nature of work and its categorization from the health risks point of view. The regulation stipulates that a doctor may be a tam leader in one team of experts of work health service only.

Appendix to the Regulation defines the minimum extent of exercise of work health service for respective categories of work in hours per year.

This Regulation became effective as of 1 August 2008 except for certain provisions entering into force on 1 January 2009.

## FINANCIAL MARKET

### **ACT No. 297/2008 of the Code on protection against legalisation of income coming from criminal activity and against financial support of terrorism and on change and amendment of some acts**

The new Act on laundering has been adopted as a follow-up of adoption of the revised version of protection against legalisation of income coming from criminal activity and financial support of terrorism on European level.

Legalisation of income coming from criminal activity is a concealment of property coming from criminal activity or concealment of its illegal origin and its further use like a legal one.

The Act amends and specifies concepts including more precise meaning of „obliged persons“. Among these, there are mostly banks and other bank institutions, advocates, tax advisors, salesroom operators. With respect to the fact that, from the point of view of legalisation and possible financial support of terrorism, cash operations are particularly risky, according to this regulation the obliged person is also each entrepreneur performing cash operation in the minimum amount of EUR 15,000 in one or several operations.

A non-standard business operation is a legal or different act indicating possible legalisation or financial support of terrorism after this has been conducted. A non-standard business operation is for example a business which – with taking into account its complexity, unusually big volume of financial means or other similar facts-deviates from the standard description/character of particular business or client business with a client, in case of whom it can be supposed that with regard to their job, position or any other such fact they are not or cannot be the owner.

The Act also introduces a concept of politically exponated entity, who within this Act is a legal entity performing an important public service and during its provision and one year from termination of this provision has no permanent address in the Slovak Republic.

The Act specifies provision of client identification and introduces a duty of subsequent verification of received client identification data. The Act specifies the extent of duties in the area of client care with the application of risk approach. Amended are the exceptions of

client care, when only a simple care is performed and vice versa, in the case of „more risky clients“ a higher level of care is supposed. For this purpose the obliged persons are entitled to ask a client for information and documents needed for performing the relevant care.

The obliged person must process their own activity program against legalisation and financial support of terrorism. Employees of the obliged person must keep confidentiality of the received data under the penalty up to SKK 100,000.

The Financial Report Unit is an authorised body for the fight against legalisation of income coming from criminal activity and financial support of terrorism. The Act defines its tasks, competences and international collaboration possibilities. The Financial Report Unit is an independent body of the Financial Police of the Police Forces of the Slovak Republic.

In case of noncompliance with the duties under this Act, the Financial Report Unit can impose a fine depending on the position/status of the obliged person up to the amount of SKK 10.000.000.

This Act became effective as of 1 September 2008.

## **NOTIFICATION of the National bank of Slovakia No. 250/2008 Coll. on issuance of measure stipulating the way of evidencing the fulfillment of requirements for grant of permission to carry out insurance activities and for the grant of permission to carry out re-insurance activities**

By virtue of this Measure, the National Bank of Slovakia (hereinafter only the “NBS”), pursuant to the Act on Insurance stipulated the way of evidencing the fulfillment of requirements for grant of permission to carry out insurance activities to an insurance company or a branch office of a foreign insurance company as well as for the grant of permission to carry out re-insurance activities to a re-insurance company or a branch office of a foreign re-insurance company.

The Measure defines the way of evidencing the meeting of requirements concerning the payment of the registered capital, transparency and trustworthiness of source of the registered capital and other financial resources of the insurance and re-insurance company, appropriateness of persons with qualified stake in the company and professional qualifications and trustworthiness of the managers, exercise of supervision over the insurance/re-insurance company activities, location of the seat and headquarters in the territory of the Slovak Republic as well as of its technical and organisational readiness.

Accordingly, the Measure stipulates the way of evidencing the fulfillment of requirements for a insurance/re-insurance company branch office.

This Measure is published in the Journal of the National Bank of Slovakia, issue No. 20/2008, and has been made available at all NBS branch Office.

The Measure became effective as of 15 July 2008.

## **NOTIFICATION of the National Bank of Slovakia No. 276/2008 Coll. on issuance of measure stipulating the requisites of an application for grant of prior consent pursuant to Section 70 par. 1 of the Act on Securities**

This Measure defines the requisites of an application pursuant to Section 70 par. 1 of the Act on Securities, according to which a prior consent of the NBS is required for:

a) acquisition or excess of stake in the registered capital of a securities broker or voting rights in a securities broker in the amount of 20%, 33% and 50% or for a securities broker becoming subsidiary of another parent company in one or several

operations directly or in concerted practise,  
b) decrease of the registered capital of a securities broker, unless it is caused by economic loss,  
c) election of persons proposed for members of the board of directors, head of branch Office of a securities broker; should the activity of a securities broker be exercised by a bank or branch Office of a bank, the prior consent shall apply only to those persons responsible for the exercise of the securities broker activity,  
d) change of seat of the securities broker,  
e) merger, consolidation or split of a securities broker including consolidation of other legal entity with a securities broker or for return of the permission for provision of investment services,  
f) sale of enterprise or part of enterprise of a securities broker or its branch office,  
g) carrying out the activity of a Central Depository.

The Measure shall ensure execution of Section 70 par. 1 of the Act on Securities even after the amendments effective from 1 November 2007 and 1 January 2008 relating to the provision of investment services. The Measure repeals the regulation of the Ministry of Finance of the Slovak republic No. 43/2002 Coll., stipulating the requisites of an application for grant of prior consent pursuant to Section 70 par. 1 of the Act on Securities.

This Measure is published in the Journal of the National Bank of Slovakia, issue No. 21/2008, and has been made available at all NBS branch Office.

The Measure became effective as of 15 August 2008.

## **MEASURE of the National Bank of Slovakia No. 288/2008 Coll. on the requisites of an application for grant of prior consent of the NBS pursuant to the Act on Collective Investment**

This Measure was issued on the basis of the Act No. 594/2003 Coll. on Collective Investment and it stipulates in details, among other, the requisites, annexes and papers necessary for the application for grant of a prior consent of NBS for particularly the following activities:

- a) The administration company becoming a subsidiary of another parent company,
- b) decrease of the registered capital of an administration company, unless it is caused by economic loss,
- c) entrusting of the investments management to another legal entity,
- d) sale of administration company enterprise or part thereof ,
- e) consolidation of share funds et alia.

By virtue of this Measure, the regulation of the Ministry of Finance of the Slovak republic No. 615/2003 Coll. on the requisites of an application for grant of prior consent of the Financial Markets Authority pursuant to the Act on Collective Investment

The Measure became effective as of 1 September 2008.

## **MEASURE of the National Bank of Slovakia No. 357/2008 Coll. on assets engagement relating to the financial derivatives**

This Measure regulates the particularities of what shall be understood under the term position in the financial derivatives, asset engagement for the purposes of the Act on Collective Investment and assets engagement against the counterparty. As an asset engagement shall be deemed the value of the risk, to which the assets in a share fund is exposed due to the position in the derivatives.

Asset engagement may be calculated by method of obligations principle

directly defined in the measure or by a method of an own model determining the value at risk. In case that own model is employed for calculation of the asset engagement, such model must meet the prescribed requirements e.g. calculation on daily basis or application of unilateral interval of reliability of 99%.

The Measure became effective as of 1 October 2008.

## **FINANCE**

### **ACT No. 270/2008 Coll. amending and supplementing Act No. 510/2002 Coll. on Payment System, amending and supplementing of certain laws, as amended**

The most crucial change brought by the new legislation is the possibility to perform domestic and cross-border transfers of funds in real-time by the means of the Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2). This change is related to the fact that the Slovak National Bank became a part of the European payment system. As a part of the European payment system the Slovak system operated by the Slovak National Bank was awarded the official abbreviation TARGET2-SK.

Effective as of 1 January 2009 clearance of calculated positions of the domestic payment system SIPS will be conducted under the payment system TARGET2-SK.

The Amendment has extended the scope of the persons entitled to issue electronic money instruments. Entities other than the Slovak National Bank, banks and foreign bank branches and electronic money institutions have the right to issue electronic money instruments after acquiring license from the Slovak National Bank. Electronic money instruments can be issued

under the condition that the amount of the funds held in the instrument does not exceed 150 EUR and the value of all of the issuer's obligations arising from the actually unsettled sums of the electronic money issued by the issuer ordinarily does not exceed the limit of 5.000.000 EUR and never exceeds the limit of 6.000.000 EUR. For the mentioned issuers the new legislation establishes specific notification duties in relation to the Slovak National Bank.

Provisions governing the rules of the payment system have been amended as well. Pursuant to the Amendment, rules of the payment system have to be referred to in the contract on payment system between the operator and the participant. The operator of the payment system is obliged to provide the participant with the rules of the payment system in written or electronic form prior to entering the contract.

In addition, some other acts have been amended and supplemented by the said act, e. g. the Insurance Act, Act on Euro Adoption in Slovak Republic, or the Act on Bankruptcy and Restructuralization.

The Amendment became effective as of 1 August 2008, with exception of some provisions, which will be effective as of the day of the adoption of euro in the Slovak Republic.

### **ORDINANCE of the Ministry of Justice of the Slovak Republic No. 246/2008 Coll. on regulations and proceeding during a redenomination of capital deposit value and denomination value of registered capital from the Slovak currency into Euro**

The Ordinance defines detailed

regulations and proceeding during a redenomination of capital deposit value and denomination value of registered capital from the Slovak currency into Euro.

During the redenomination process, calculation and rounding of the capital deposit value (i.e. shareholder deposit, membership deposit, founder deposit or other property deposit being a part of the registered capital of legal persons) and capital of a foundation entity from the Slovak currency into Euro the denomination deposit value is calculated and rounded off to maximum six decimals and in case of rounding downwards to at least two decimals.

A proposal to register the redenomination deposit value and denomination capital value of commercial companies and cooperative associations into the Commercial Register shall be performed within one year after Euro implementation in the Slovak Republic and submitted in a form defined in the Ordinance and including official verified signatures of authorised persons. One year after the Euro implementation and in case it is proposed to register the redenomination value, as well as other data into the Commercial Register, the proposal to register the redenomination value is submitted in a form used when registering a change of existing data in the Commercial Register.

A decision of redenomination deposit value and a change of Memorandum of Association, Founder's Deed. or Articles of Association and Power of Attorney together with official verified signature of attorney (should they submit the proposal) will be enclosed to the proposal.

The Ordinance became effective as of 8 July 2008.

**ORDINANCE of the National Bank of Slovakia No. 240/2008 Coll. determining the number of decimals during rounding process regarding redenomination process of certain securities from the Slovak currency into Euro**

The Ordinance determines the number of decimals during a rounding process during redenomination process of securities from the Slovak Currency into Euro.

During a redenomination process of asset securities (i.e. shares, temporary certificates, cooperative association share certificates, or other securities being a deposit of registered capital or other investment or shares of any other common property of shareholders) from the Slovak currency into Euro the Ordinance determines that number of decimals during a denomination rounding process of one security **be maximum six decimals and in case of rounding downwards at least two decimals.**

During a redenomination process of debt securities (i.e. bonds, treasury bonds, certificates of deposit or other securities being a monetary obligation of its issuer or other defined person) from the Slovak currency into Euro the Ordinance determines the number of decimals during a rounding process of denominational value of one security **to two decimals.**

The Ordinance became effective as of 8 July 2008.