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Audit Tax & Legal Services

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The first issue of 2008 of News Alfery reports on the Labour Code Amendment effective as of 1 January 2008, the Judgment of the Constitutional Court dated 12 March 2008 on the complaint against the new Labour Code, and finally the Commercial Code Amendment effective as of 1 March 2008. We have also prepared a legislative overview regarding the Czech government subsidies in the area of renewable energies.

(1) Amendment to the Labour Code

Act No. 362/2007 Coll., amending Act No. 262/2006 Coll., the Labour Code, as amended, and other related laws, took effect on 1 January 2008. This Act represents the fourth amendment to the new Labour Code. The amendment offers no fundamental conceptual changes, but rather makes some concepts more accurate. It is known as a "technical" amendment. Below we summarise some of the most significant changes:

- As far as the concept of probation period is concerned, the moment of commencement of the probation period was made more accurate so that it is clear that the probation period begins on the date of employment. This eliminates the provision stipulating that the probation period begins on the day following the date of employment. Furthermore, it is explicitly stipulated that the probation period shall be extended by the time for which the employee cannot perform his job due to obstacles preventing him from doing so.
- When paying compensation, pursuant to S. 67 of the Labour Code, starting from 1 January 2007 the employer is obliged to pay severance equalling 12 average monthly wages in the event of employment termination due to industrial injury or occupational disease, even if the employer was not responsible for the industrial injury or occupational disease. What is now new is that if the employer is released from responsibility, the employer is not obliged to pay the severance. Furthermore the amount of compensation paid to an employee who immediately terminated employment pursuant to S. 56 of the Labour Code has been stated clearly. The modification has also affected the obligation to return compensation. Pursuant to the Labour Code amendment, the employee is not obliged to return compensation should he work for the same employer based on a contract to complete a job after termination of employment.
- In the area of the legal regulation of working hours, the limitation of working hours for employees under the age of 18 years was modified. Originally, the length of a shift on individual days for such workers could not exceed six hours, while the length of the stipulated weekly working hours for a worker with multiple labour relationships (under S. 3, second sentence of the Labour Code) in total was 30 working hours per week. Now, however, the length of a shift in individual days may not exceed eight hours and in multiple labour relationships the length of weekly working hours in total may not exceed 40 hours per week.
- The condition to fulfil weekly working hours while being on flexible working terms within the framework of evenly scheduled working hours was removed. The conditions for the even and uneven scheduling of working hours are also unified, and in both cases a maximum four-week settlement period for the fulfilment of average weekly working hours is stipulated. Additional changes include, e.g. elimination of the requirement of prior consent by individual employees for the introduction of the working hours account, the ability to change the schedule of working hours while using the working hours account, the ability to divide breaks at work for rest and food into multiple parts so that at least one part has a minimum duration of 15 minutes, the possibility to compensate for the break periods for employees in agriculture and seasonal work in agriculture.
- A welcome change is the reintroduction of the ability to negotiate with employees wages with consideration for any overtime work under the conditions stipulated by the Labour Code. However, this option applies only to managerial employees.
- Concerning salaries, it was further stipulated that the provision of salaries for nightshift work, for work on Saturdays and Sundays in collective bargaining agreements is to take priority over the modification that is contained in the Labour Code. There is also a new specification of the range of cases when the employer is obliged, when transferring an employee to alternative work, to provide an additional payment to the employee's salary of up to the amount of the average earnings.
- There is an application specification in the area of compensations under S. 369 et seq. of the Labour Code and some terminological specifications (such as occupational preventive care).

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(2) Labour Code and Finding of the Constitutional Court of the Czech Republic of 12 March 2008

Responding to criticism of the new Labour Code (Act No. 262/2006 Coll., as amended, effective from 1 January 2007), the Constitutional Court of the Czech Republic partly satisfied on 12 March 2008 a motion filed by a group of deputies and a group of senators to nullify certain provisions of the Labour Code. The Constitutional Court of the Czech Republic nullified, or modified, as the case may be, 11 out of the 30 contested Labour Code provisions. The changes shall become effective on the day of publication of the finding of the Constitutional Court of the Czech Republic in the Collection of Laws of the Czech Republic.

The changes pertain particularly to the status of trade unions and to their competences (which have been restricted), to the relationship between the Labour Code and the Civil Code, and to limits of the freedom of contract. A list of the most significant changes is provided below:

- Changes in the possibility to depart from the Labour Code when regulating rights and obligations in employment relationships;
- Nullification of the general principle of delegation of the Labour Code upon the Civil Code;
- Nullification of the possibility to withdraw from a contract according to the Civil Code (nullification of the reference in S. 18 of the Labour Code to S. 48, S. 49 of Act No. 40/1964 Coll., Civil Code, as amended);
- Abolition of absolute invalidity of legal acts that were exempted from voidability (legal acts aiming at origination of an employment relationship or conclusion of a contract for work performed outside of an employment relationship);
- The principle of equality among trade unions has been emphasised in relation to the process of bargaining collective agreements. With this respect, the right of an employer to conclude a collective agreement with the strongest trade union (i.e. the trade union with the largest membership) should the trade unions not agree when concluding a collective agreement, has been nullified;
- In the area of informing and negotiating, restrictions to the possibility of the establishment and existence of employee councils have been abolished. Employee councils can now be established also in companies in which trade unions exist. The task of employee councils should be primarily to ensure the right to information and negotiation. Trade unions retain exclusive competence in collective bargaining;
- Abolishment of the restrictions to the possibility of the employer to issue internal regulations if a trade union exists, or to condition issuance of internal regulations by the approval of the trade unions in the collective agreement, as the case may be;
- Abolishment of the right of trade unions to inspect compliance with labour regulations (the Labour Code, the Employment Act, and other labour regulations) including the collective agreement and internal regulations, and to instruct the employers bindingly to rectify identified defects, with the exception of occupational health and safety controls for individual employers which will still be performed by trade unions and the costs of which will be paid by the State. With this respect, the following obligations of the employers have been also nullified: to allow for the entry of inspecting members of the trade union to the workplace, to submit the requested information and materials and to cooperate in order to ensure performance of the inspection, and to subsequently submit a report stating what measures were adopted to rectify defects identified by the inspection or to implement measures proposed by the trade union which performed the inspection.

The Czech Government announced preparations of a "conceptual amendment" to the Labour Code which should be based, among other things, on this finding of the Constitutional Court and aim at a more liberal and flexible labour market in the Czech Republic.

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(3) Commercial Code Amendment

As of 1 March 2008, an amendment (Act No. 344/2007 Coll.) to the Commercial Code came into effect. By virtue of this amendment, some EU directives have been implemented in the Czech legal system.

The most important changes include the following:

(a) Corporate documents

The term "corporate documents" under S. 13a of the CC is construed in a wider sense. Previously, mandatory details (i.e. trade name, seat, identification number, entry in the Commercial Register) had to be stated in all orders, business correspondence and invoices. Now the term "corporate documents" has been extended to include contracts and websites. This means that an entrepreneur shall state the above details also in all contracts and websites. This obligation applies to all entrepreneurs, both legal persons and individuals.

Within the framework of extending S. 13a of the CC, provisions of S. 24 of Act No. 200/1990 Coll., on Minor Offences, as amended, have also been altered. This section now also refers to mandatory details to be provided in contracts and websites. Should the details stipulated by S. 13a of the CC not be provided, a fine of up to CZK 50,000 may be imposed on the entrepreneur and the entrepreneur may be prohibited from business activities for a period of one year.

(b) Collection of documents of the Commercial Register

The amendment to Insolvency Act No. 182/2006 Coll. has also affected the wording of the Commercial Code. Now, S. 38i(1)(h) stipulates the documents that must be provided to the Commercial Register should insolvency proceedings be commenced:

- Resolution to commence insolvency proceedings
- Resolution to issue preliminary orders
- Ruling on bankruptcy, or another ruling on insolvency motion
- Resolution to adjudicate bankruptcy and to approve the final report
- Resolution to allow for restructuring
- Resolution to approve a restructuring plan and amendments thereof
- Resolution to terminate insolvency proceedings

Additionally, a new paragraph no. 3 on profits distribution was added to S. 38i of the CC, stipulating that a motion to distribute profits and the final version thereof, or a motion to settle a loss, if it is not part of the financial statement, and a report on relations between interconnected entities, provided that an annual report is prepared by the controlled entity, shall be included in the collection of documents along with the financial statement or the annual report.

(3) Financial Collateral

Another amendment of the Commercial Code deals with financial collaterals, governed by Ss. 323a through 323h of the CC. These provisions have been amended in accordance with Directive 2002/47/EC. S. 323a (1) of the CC defines the term "financial collateral", stipulating that it means the right to pledge financial collateral taken by qualified parties for the purpose of securing the performance of a financial obligation, and a transfer of financial collateral taken by qualified parties for the purpose of securing or otherwise covering the performance of a financial obligation. Qualified parties are defined particularly under S. 323a (3) of the CC, and they include e.g. banks, insurance companies, stock brokers,

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pension funds, and the Czech National Bank. These entities are authorised to take the right to pledge or to perform a transfer of collaterals provided. There is a new provision under S. 323d of the CC, which regulates financial collateral based on the right to pledge financial means. Under the agreed terms and conditions, the collateral taker has the right to dispose of the pledged financial means. In this context, S. 323f of the CC has also been redrafted. This section stipulates that the legal effects of financial collateral in the form of a transfer of financial collateral shall be governed by agreement of the parties, regardless of any general provisions applying to transfer of title as security for obligation, transfer of debt as security for obligation, and/or to the right to pledge.

(4) Support for Generation of Electricity from Renewable Sources

As a part of their efforts aiming at the protection of the climate and the environment, the European economies have been trying for a number of years to support the development of alternative sources of electricity and to significantly increase the share of renewable sources or energy in the overall electricity generation. In 2001 the European Union set a target whereby 21% of electricity generated in the EU Member States should come from renewable energy sources. A significant increase in the share of energy generated from renewable sources in the overall energy consumption has been recently recorded also in the Czech Republic.

As socially desirable and environmentally friendly, generation of electricity from renewable sources is supported by individual EU member states by implementing various instruments. Due to the lack of uniformity in their energy policies, individual member countries have so far introduced several different types of systems supporting generation of "environmentally friendly energy". As laid out by the effective regulations, the key measures supporting generation of electricity from renewable sources in the Czech Republic include mainly the guaranteed "purchase prices" and the system of "green premiums".

As far as the support for generation of electricity from renewable sources in a form of guaranteed purchase prices is concerned, the regional distribution system operator or the transmission system operator is obligated to purchase from a producer of electricity from renewable sources the entire amount of electricity generated from the relevant renewable source. On the other hand, in the case of support in the form of green premiums, the producer is required to find its customer to whom to sell the generated electricity by itself. The above-described systems of support cannot be used simultaneously and the producer of electricity from renewable sources is entitled to choose once in a year which form of support to use. The level of purchase prices and green premiums in CZK/MWh is set for each type of renewable source by the Energy Regulatory Office and published in the Energy Regulatory Office in the form of price decisions (for 2008 ERO Price Decision No. 7/2007 applies).

(a) The Green Premiums System

The green premium is an additional payment on top of the electricity market price, which may be obtained by the producer of electricity from renewable sources. If the producer of electricity from renewable sources chooses to use the system of support in the form of green premiums and sells its own energy for market prices to any end customer or reseller of electric energy, the producer has the right to receive green bonuses from the regional distribution company on the basis of a submitted statement. Under the green premium system of support the producer can then sell the electricity to its customer, which can either be an end customer or electricity reseller. The market price of the electricity sold by the producer to the customer is given by the agreement between the producer and the customer and thus is not determined by the Energy Regulatory Office.

The green premium system's main advantage is that the producer has the ability to directly influence the amount of yield from the produced electricity and to achieve higher yield than in the purchase price regime. The green premium, the amount of which is fixed by the Energy Regulatory Office, is paid to the producer in addition to the market price of the electricity. The disadvantage of the green premium system is a certain degree of uncertainty, because the producer is not guaranteed 100% sale of the electricity produced on the market as it is in the purchase price regime. In the green premium regime, the producer must actively seek customers for its electricity.

(b) Purchase Price System

Purchase prices of electricity from renewable sources are, according to the law on the support of the use of renewable sources, guaranteed for 15 years from the date of their introduction into the operation. These prices are adjusted on an on-going basis according to the developments in the industrial producer price index. It is not out of question that the

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purchase price of renewable sources electricity can, in the case of new sources, decrease from year to year, however, no more than by 5%. Due to the fact that, upon a decrease in purchase prices for individual categories of renewable sources the amount of the yield for a unit of electricity from such renewable sources must stay the same for 15 years, it is possible to say that a decrease in purchase price is possible only in those categories of renewable sources where operational (fuel) costs play a significant role. These categories of renewable sources include primarily the production of electricity from biomass and biogas, the price of which can significantly influence the guaranteed level of yield during the useful life of the equipment.

On the other hand, compared to the purchase prices the green premiums have an advantage, because their amount also takes in consideration the increased risks connected with selling the produced electricity on the market. Green premiums for individual categories also take in consideration the level of the market price of electricity for individual types of renewable sources.

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