Legal Newsletter

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Renewable Energy Sources – Draft New Law

At the end of July the Ministry of Economy published a long-awaited draft act on renewable energy sources (the “RES”). It was not the first attempt to regulate the RES-related issues – the first draft was published in December 2011, however, it was so widely criticised that the Ministry decided to prepare a new document. Will a new draft meet the investors’ expectations?

In order to fully comprehend the significance of the matter, it is advisable first to look at basic data pertaining to the Polish electric power industry. Thus, approximately 90% of electric power generated in Poland derives from coal combustion. The remaining part – almost 10% - derives from renewable sources (in particular wind power plants, water turbine plants, biomass combustion). In accordance with Directive 2009/28/EC, the renewable energy share in the total energy consumption in Poland in 2020 should constitute at least 15%.

The RES Act is aimed at facilitating the attainment of the assumed share of „green energy” in the total power generation in Poland through systematizing the existing provisions regulating that issue (dispersed at present in the Energy Law), but first of all through redefinition of the existing systems of support for the RES-based power generation.

In accordance with the draft new law, support for the RES projects will depend on three basic factors: source type, installed capacity and the year of putting the installation into operation. Application of the first factor stems from the fact that the costs of generation of an electric power unit differ depending on the source. For example, the cost of generation of one megawatt hour (MWh) from water is relatively low depending on the source. For example, the cost of generation of an electric power unit differ depending on the source. For example, the cost of generation of one megawatt hour (MWh) from water is relatively low and amounts to approx. PLN 100, whereas in the case of solar energy (photovoltaic) the said cost may amount even to PLN 1,200. In other words, the higher the generation costs, the greater support is provided for in order to develop the source. The second factor – volume of the source – is based on assumption that the smaller the source is, the greater support it requires. Such assumption is in line with the general purpose of the act, which is to provide special support to the so-called dispersed energy generation, i.e. small power production units (small and micro-installations). Finally, the third factor – the draft act assumes that the older the installation, the less support it should be given. Undoubtedly, such a solution will not satisfy operators of old, already amortised water turbine plants.

Thus, what is to be the actual support for the RES? In accordance with the draft act, such support is to be based on two elements. The first is introduction of an obligation of electric power purchase by the so-called supplier of last resort (Art. 38 of the RES Act). The seller of last resort will every year be nominated by the president of the Energy Regulatory Office, and it will be an electric power (heat, gas) seller that supplies power to the biggest number of power consumer in households in relation to the number of such power consumers connected to the power grid of the operator of a certain electric power (gas) system within the area of its operation. Such a solution is to assure the RES owners that there will always be a purchaser ready to buy all power they generate. The purchase price – PLN 198.90 for 1 MWh – will be the same irrespective of the energy generation source (traditional or the RES). It is worth mentioning that the above amount will be subject to annual indexation with the use of a relevant Central Statistical Office index.

The other element of the policy of support is the issuance of the so-called certificates of origin or green certificates for the RES-based energy (Art. 41 of the RES Act). This solution is not new: regulations in that respect were introduced to the Energy Law as early as in 2005. The draft RES Act upholds the majority of currently binding provisions in that respect. Thus, the President of the Energy Regulatory Office issues certificates of origin at the request of the power company (power generator). Each power company that generates or trades in electric power and sells it to end users within the territory of Poland should be issued and present for redemption by the ERO President a relevant volume of certificates of origin or pay the so called substitution fee (Art. 45 of the RES Act). In fact, such a regulation creates by statute demand for certificates of origin, which (along with the price for the sold energy) constitute sources of the RES operators’ income.

A vital novelty is introduction of the so-called corrective coefficients in order to adjust the certificate-of-origin-based system to the type of the RES installation (Art. 60 of the RES Act). Corrective coefficients will be set for the period of five years for each type and total capacity of the RES installation set up. And thus, the 2013 corrective coefficient for wind power plants with the capacity exceeding 500kW will amount...
to 0.90, whereas the 2013 coefficient for photovoltaic installation with the capacity exceeding 100 kW will be 2.85.

The above system of support was calculated for a 15-year period for each RES-based installation put into operation. The Ministry of Economy assures that within the above period the costs of investments in the renewable energy sources will recoup. However, when reviewing the Ministry’s assumptions underlying the said calculation, one may doubt whether the actual market situation is accounted for. In particular, the assumption in accordance with which 30% of funds invested in renewable energy sources should be provided by the investor and only 70% of such funds by an external source may prove too optimistic an assumption, in particular in view of the fact that a relevant credit facility should be repaid within 15 years.

Therefore, in fact, upheld were major assumptions of the existing support system grounded on an obligation of buying the RES-based energy and issuance of certificates of origin with the reservation of amendments stemming from introduction of corrective coefficients. Thus, it was decided not to implement the so-called feed-in-tariffs system, successfully introduced in Germany, France or Spain. The said system consists in determining fixed rates (preferential towards rates for energy generated in traditional sources) for each kilowatt hour of electric power. The above-mentioned rates depend on both the source of renewable energy and its installation capacity. In Poland the said system is to be applied to the so-called micro-installations only, which is in line with the policy of relaxing requirements towards the said installations’ setup and operation.

Thus, what is the opinion on the new draft of the RES Act? Reinstatement of the obligation of buying RES-based electric power from suppliers of last resort met with favourable reception (it is worth mentioning that such a regulation was not included in the draft presented in December 2011). On the other hand, the bone of contention will probably be the corrective coefficients value, which – in the opinion prevailing in the renewable energy industry – should be higher and cover a longer support period. Undoubtedly, the final wording of the RES Act will be subject to heated discussion, which puts into a question bold statements of the Ministry of Economy that the act is to enter into force at the beginning of January 2013.

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Encumbrance on all real estate created through division with a mortgage established on a share in the joint ownership – Constitutional Tribunal judgment of 10 July 2012

On 10 July 2012, the Constitutional Tribunal pronounced a judgment (case file no. P 15/12), wherein it found unconstitutional Article 76 paragraph 1 sentence two of the Act of 6 July 1982 on Land and Mortgage Registers and the Mortgage.

Under Article 76 paragraph 1 sentence two of the Act of 6 July 1982 on Land and Mortgage Registers and the Mortgage, a mortgage established on a fractional part of the real estate encumbrances in the same proportion fractional parts of all pieces of real estate created through division. The above-mentioned provision was introduced to the law on 20 February 2011. From that day on (also in a situation where a mortgage had been established before the said provision's entry into force), if co-owners intended to dissolve the joint ownership where certain shares in co-ownership were encumbered with mortgages, they must have taken into account the origination of joint mortgages on all real estate created as a result of the division. As a result thereof, mortgages encumbered real estate owned by persons who were neither limited nor personal debtors of the creditors, for whose benefit mortgages were established. The said co-owners had no influence on, and even could be unaware of origination of such mortgages. In extreme cases that could lead to the loss of the ownership title through enforcement sale of the real estate created and encumbered as a result of dissolution of joint ownership through physical division of a thing. Undoubtedly, the above solution was advantageous to the creditors whose receivables were secured with a mortgage.

The Constitutional Tribunal found that the above-mentioned provision was inconsistent with Article 31 paragraph 3 and Article 21 paragraph 1 of the Constitution. The Tribunal held that the above-described situation leads to limitation of the ownership title. The above limitation is expressed in the actual preventing of an unlimited use of basic and inherent co-owner’s right of demanding the joint ownership dissolution. Another manifestation of the said limitation is the awareness of consequences (of assuming liability for a third-party debt) may leave a co-owner in a no-choice position and actually force him to remain a co-owner until the mortgage on another co-owner’s share exists. Moreover, the co-owners whose shares have not been encumbered are exposed to having their real estate encumbered in a situation where the dissolution of joint ownership is demanded by the owner of an encumbered share, to whom such a solution may be advantageous. The Tribunal also indicated that protection of the creditor’s rights that underlain introduction of the said provision may be granted otherwise. Therefore, it is not necessary to strengthen the creditor’s position to the disadvantage of owners of the separated real estate, and the cost borne by co-owners of non-encumbered shares is inadequately high in comparison with advantages gained by the creditor.

The Constitutional Tribunal found that there was no need to postpone the loss of the binding force of Article 76 paragraph 1 sentence two of the Act of 6 July 1982 on Land and Mortgage Registers and the Mortgage. Thus, the above-mentioned provision became ineffective on the day of its announcement in the Journal of Laws, i.e. on 19 July 2012 (Journal of Laws of 2012, item 827). On that day the above issue ceased to be regulated by statute. As a result, the legislation returned to the status preceding the entry into force of the amendment of the Act on Land and Mortgage Registers and the Mortgage on 20 February 2011 – that issue has been left to the judicial decisions of courts.

In the period preceding 20 February 2011 courts had made variable decisions with reference to encumbering with a mortgage real estate separated through division,
the mortgage whereon encumbered only some shares in the joint ownership. The Supreme Court has issued numerous differing decisions, including also those consistent with the decision of the Tribunal. As an example here may serve the decision of 4 November 1997 (case file no. I CKN 291/97), wherein the Supreme Court stated that encumbering with a joint mortgage, under Article 76 paragraph 1 of the Act of 6 July 1982 on Land and Mortgage Registers and the Mortgage, of all the real estate created through division may take place only in a situation where before the division the entire real estate had been encumbered with a mortgage. Undoubtedly, now, when considering similar issues, the courts will make decisions reflecting the above judicial approach and, first of all, the standpoint expressed in the Constitutional Tribunal decision of 10 July 2012.

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Prohibited provisions in variable interest rate clauses

Recent judgment of the Appellate Court in Warsaw, issued in the case instituted by the President of the Office for the Protection of Competition and Consumers against one of the banks for declaring the clause determining the amount of interest on the mortgage loans prohibited, instigated the discussion on variable interest rate clauses applied by banks in loan agreements, in particular those concluded with consumers.

In its petition against the bank, the Office for the Protection of Competition and Consumers (OPCC) questioned the following provisions applied by the said bank in mortgage loan agreements, finding them abusive clauses:

“The loan interest rate may change during the lifetime of the agreement if at least one of the following financial parameters of the money and capital market changes:

- interest rate on interbank deposits (WIBID/WIBOR)
- yield on treasury bills, treasury bonds
- change of the NBP interest rates and within the scope stemming from the change of these parameters”

According to the OPCC, the above-mentioned provision was too general and imprecise, which permitted the bank to set the amount of interest on the loan at its discretion. According to the OPCC, as the result of the use of the phrase may change during the lifetime of the agreement, the bank may change the interest rate at its discretion and at freely chosen time, hence, it is authorised to introduce amendments concerning the interest rate to the detriment of the borrower.

In the opinion of the President of the Office for the Protection of Competition and Consumers, the change of the interest rate should depend on objective premises, and not the subjective decision of the bank.

The Appellate Court in Warsaw, when considering the petition as the subsequent instance, stated that the clause questioned in the petition is prohibited and banned its use. According to the court, the provision included in the specimen agreement applied by the defendant bank was not phrased unambiguously.

When the judgment becomes final and non-appealable, the decision will be entered to the abusive clauses register, and their use in transactions with consumers will be forbidden. If, despite that fact, the entrepreneurs will keep applying such clauses, the OPCC may institute proceedings on infringement of the consumers’ group interests and, consequently, impose on the entrepreneur the fine in the amount of up to 10% of the previous year revenue.

In the light of the above judgment of the Appellate Court and the Supreme Court decisions issued so far it should be stated that the condition underlying admissibility of the credit facility interest rate change by the bank is indicating in the agreement the premises (reasons) for such the change, i.e., introduction to such the agreement the so-called modification clause. The said clause should indicate actual situations wherein the agreement may be unilaterally changed with reference to the interest rate, as well as the criteria and consequences of such changes, in order to enable the client (borrower) to evaluate whether the reasons justifying the change did take place.

In the transactions two types of floating rate clauses are applied:

- reference clauses,
- discretionary (non-reference) clauses.

With reference to the ones mentioned under no.1), the index adopted as the reference one must be independent of the bank’s discretionary powers and published in generally accessible source. As part of the correctly carried out change of the interest rate, the lender provides the consumer, on the durable carrier, with information on the change of the interest rate before such the change is effectuated (i.e., before applying variable interest rate). However, if under the agreement, the interest rate applicable to the credit facility is dependent on the variable interest rate or the index, the parties may determine in the agreement another way of notifying the consumer of the change, e.g. ex post. Thus, the provisions in force permit the lender to apply the variable interest rate without the previous notification, already upon the change of the basic parameter.

In the light of the Supreme Court decisions, it is required to clearly determine in the agreement the change of the reference index that will instigate the change of the interest rate, and the exact amount by which the interest rate will increase or decrease. If the agreement makes reference to several reference indexes, in particular in the case where such indexes were to change jointly, the agreement should indicate in what way all such factors
will affect the interest rate applicable to the credit facility. Any discretionary decisions of the bank are excluded here.

Such restrictive requirements in respect of the reference clause (client’s capability of their easy review) justify in such cases waiver of the necessity of giving the client the right to terminate the agreement in connection with the interest rate change.

Subsequently, the Supreme Court decisions concerning non-reference clauses point to the necessity of indicating exact factors (factual circumstances) justifying the interest rate change and the relationship between the change of such factors and the volume of the interest rate change. Usually the Courts emphasise the introduction of objective criteria for the above-mentioned change and verifiability of their occurrence, hence, the indexes adopted as the base for the change should derive from public sources. In the theory of law, the selection of premises for the change verifiable by the client and the choice of the best possible manner for their determination should be found justified also for non-reference clauses.

However, the Supreme Court has taken also decisions, pursuant to which the requirement to indicate in detail in what way the volume of changes of individual parameters, including the relationships between parameters change, might be decisive for the volume of the interest rate change, is too restrictive the requirement.

A change of the interest rate under non-reference clauses may not be effected automatically, but it requires the relevant declaration of will made by the bank to the client. Thus, the changed interest rate may be applied only after the declaration within the above-mentioned scope is made. The above, in turn, is linked with the necessity to give the client the right to terminate the agreement.

Giving regard to the provisions the T Recommendation issued by the financial supervision authorities and numerous decisions of the Supreme Court, the limitations with reference to the application of variable interest rates apply to agreements concluded with both, consumers and those clients of the bank that do not fall in that category.

However, as far as agreements with consumers are concerned, provisions related to the interest rate and, in particular, its change, may be controlled as to their abusiveness, i.e. the possible incompliance with good practices or flagrant violation of the consumers’ interest. Non-consumers, in turn, may be protected under other provisions of law (e.g., based on principles of social cohesion, freedom of contract limitations, etc.).

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Property dividend in a limited liability company

In accordance with Article 191 § 1 of the Commercial Companies Code, a shareholder in a limited liability company is entitled to participate in the profit shown in the financial statement and allotted for distribution under a resolution of the meeting of shareholders. The Code does not include detailed provisions that would indicate the form of payment of a dividend. Although in practice, most often the dividend is settled in cash, the theory of law permits the payment of a dividend in a non-cash form. The latter form of a dividend is referred to as the property dividend or the dividend in kind.

The company’s decision on payment of a dividend in kind is very often taken in a situation where the company has no cash means, nor may it be provided with a credit facility, and simultaneously it wishes to satisfy the shareholders’ claim for payment of a dividend. Moreover, such a decision may stem from economic reasons – the shareholders are provided with assets that are useful to them and needless for the company, and at the same time the company limits its expenses connected with the transfer of these assets. Payment of a dividend in kind may also apply for the purposes of separation of a part of the company assets and an actual division of the company.

The property dividend should be distinguished from the institution of the so-called deed in lieu (datio in solutum) provided for in Article 453 of the Civil Code, which occurs in a situation where the company passes a resolution on distribution of profit and payment of a dividend in an indicated amount of cash and next, under a separate agreement with a shareholder, instead of payment of the indicated amount, the company transfers to the shareholder an ownership title to a certain thing. Another institution that generates a similar legal effect is a novation, consisting in cancellation of the existing obligation through undertaking by the debtor, with the creditor’s consent, to make other performance or even the same performance, but on different legal grounds (Article 506 of the Civil Code).

It is assumed that first of all liquid commodities are capable of becoming an object of a dividend. The sales market for such goods must be easily accessible to a shareholder, a steady demand for such goods must exist, and the sale of such a good should be possible with a minimum effort on the part of a shareholder. Thus, usually it is possible to pay out a dividend in the form of goods (e.g., products, raw materials acquired by the company), machines, an enterprise or an organised part thereof, share in a joint ownership of movables or real estate, right of perpetual usufruct, limited rights in rem, licences, know-how, trademark protection right, patents, lease, tenancy, shares in companies (in particular those quoted on the stock exchange), or services rendered by the company.

The property dividend must constitute a benefit for the shareholder and have an economic value that may be assessed and referred to the profit expressed numerically. The necessity of appraising the value of a non-cash dividend results from provisions regulating the amount of payments to shareholders (Article 192 of the Commercial Companies Code). This may entail the necessity of appraising the object of a dividend and a prior passing of a resolution determining the preferred method of appraisal of performances as well as the appraising entity. A resolution on the payment of a dividend in kind should determine in detail the objects of a dividend and their value. In a situation where an object of a dividend is an indivisible performance, it may prove necessary to determine the principles of mutual settlements among the shareholders. Moreover, in certain circumstances, payment of a property dividend, due to its object or value, may necessitate obtaining consent of other company bodies or state authorities.
It should be emphasised that despite the absence of explicit regulations referring to the payment of a property dividend, in practice it is assumed that such an action will be possible following an introduction of relevant provisions to the company’s articles of association (in particular in a situation where the object of the dividend is slow moving stock). Regulations in that respect may indicate, for example, the majority of votes by which a relevant resolution should be passed, the minimum fraction of a dividend that should be paid in cash or the type of performances that may constitute an object of a property dividend.

It is also worth mentioning that the tax provisions in force allow the company to avoid income tax in connection with transferring to a shareholder objects as a property dividend.

Giving regard to risks stemming from the absence of detailed provisions referring directly to a dividend in kind and the planned amendment of the tax law, payment of a property dividend should be consulted from both tax and legal perspectives.

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Employee’s right to daily and weekly rest

I. General principles

Provisions of the Labour Code require the employer to organize the employee’s work in such a way as to guarantee the employee an undisturbed daily and weekly rest. Thus, the employee is entitled to: at least 11 hours of undisturbed rest per each day (Art. 132 of the Labour Code), and at least 35 hours of undisturbed rest in any week, including at least 11 hours of undisturbed rest per day (Art. 133 of the Labour Code). The above-mentioned 35-hour rest period is the rest between the last hour of the last working day of a working week and the first hour of the first day of a subsequent working week.

The rest should be understood as the time left at the sole disposal of the employee. Thus, not the time between the last hour (preceding the rest) and the first hour (following the rest) when the work is rendered within a certain period i.e. a day or a week, but the time between the last and the first hour when the employee is at the sole disposal of the employer in connection with or as part of the employment relationship between them. The method of calculation of such time proved problematic with reference to the employee’s business trips.

For example, a question arises if in a situation where the employee is on a business trip, e.g., participates in negotiations in a city other than the place of his work, an 11-hour period should be calculated from the moment of negotiations completion or that of the employee’s arrival at the place (city) of rendering work as indicated in the employment contract.

Since the rest within the meaning of Art. 132 and Art. 133 of the Labour Code is the time left at the sole disposal of the employee, and not the time when the employee renders work, i.e., activities stemming from the employment relationship between the employer and the employee, an 11-hour period of rest should be calculated from the moment of the employee’s arrival at the place (city) of rendering work as indicated in the employment contract.

The above standpoint is confirmed by the Supreme Court judgment of 23 June 2005 (II PK 265/04), in accordance wherewith it should be assumed that the order to carry out tasks (activities) that require taking up a business trip must – along with the prescribed daily working hours – fit within the limits set by the above-mentioned rest periods, thus any infringements thereof would entail the employer’s obligation to provide the employee with equivalent rest periods.”

It should, however, be mentioned that the above standpoint of the Supreme Court was found controversial by many legal academics and commentators.

II. Employee’s daily rest

As mentioned above, an employee’s 11-hour undisturbed rest per day is a recognised rule. A day shall be understood as 24 consecutive hours, starting from the hour when the employee commences work in accordance with the working time schedule, by which s/he is bound.

The above-mentioned obligation of ensuring 11 hours of uninterrupted rest per day does not refer to employees who, on behalf of the employer, manage the enterprise or cases where it is necessary for the employees to carry out a rescue operation in order to protect human life or health, property or environment, or to repair a breakdown. Such employees are entitled to an equivalent rest period within a settlement period, which means that within the said settlement period, on other days, such an employee should be given a rest period, the duration whereof should equal the number of hours that were used up for the above-mentioned activities and not the employee’s uninterrupted 11-hour daily rest.

For example, an employee managing an enterprise in June worked on Tuesday until 22.00 hrs, and on Wednesday – until 24.00 hrs. His standard working hours are from 8.00 to 16.00. Should he be given an additional rest period? And if he should, what number of hours and when?

Pursuant to Art. 132 of the Labour Code, it is a rule that an employee is entitled to an 11-hour daily rest. From Tuesday to Wednesday the employee had 10 hours of rest (from 22.00 hrs to 8.00 hrs), and from Wednesday to Thursday – 8 hours of rest (from 24.00 hrs to 8.00 hrs). Thus, the employee’s daily rest was diminished by 1 and 3 hours respectively, 4 hours total. In the enterprise applicable is a 3-month settlement period, thus the (second) settlement period ends in June and in that month the employer should give the employee the lacking 4 hours of rest.
The above-mentioned principle of an 11-hour daily rest does not apply to employees that render work that consists in exercising supervision over equipment or is connected with being on temporary standby to exercise work, with reference to whom the balanced working time system may be applied, as part whereof the daily amount of working time may be extended, however, no more than up to 16 hours, in a settlement period not longer than 1 month.

In the working time system referred to above, immediately after each instance of work in extended daily working hours, the employee is entitled to rest in the amount of no less than the time corresponding to the number of hours worked. Therefore, if an employee worked for e.g. 12 hours, his daily rest may not be shorter than 12 hours.

The 11-hour daily rest principle does not apply either to employees employed in guarding property or protection of persons, as well as employees of an establishment’s fire protection teams and an establishment’s rescue services, with reference to whom the balanced working time system may be applied, as part whereof the daily amount of working time may be extended even up to 24 hours. Also in this case immediately after performing work as part of the extended daily working time, the employee is entitled to rest in the amount of no less than the time corresponding to the number of hours worked i.e., if an employee worked for 24 hours, his daily rest may not be shorter than 24 hours.

III. Employee’s weekly rest

Irrespective of the amount of the above-mentioned daily rest, i.e., irrespective of whether such daily rest takes 11, 16 or 24 hours, each week the employee is entitled to at least 35 hours of undisturbed rest.

Weekly rest should fall on Sunday. Sunday covers 24 consecutive hours, starting on that day at 6.00 hrs, unless a certain employer set some other time. If work on Sundays is permitted, weekly rest may fall on a day other than Sunday.

However, the law provides for exceptions also with reference to the employee’s weekly rest. Such exceptions refer to employees that manage an establishment on the employer’s behalf and to the necessity of carrying out by the employees a rescue operation in order to protect human life or health, property or environment, or to repair a breakdown, as well as the event of a change of a time of rendering work by the employee in connection with a change of a shift at which such an employee performs work. In such a situation a weekly undisturbed rest may take less than 35 hours, however, it may not be shorter than 24 hours.

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Amendments to the law

**Act on Payment Dates in Commercial Transactions**

The Ministry of Economy has drawn up a bill of a new Act on Payment Dates in Commercial Transactions. The new legislation will supersede the Act of 12 June 2003 on Payment Dates in Commercial Transactions, which was aimed at disciplining the parties to commercial transactions (in particular the debtors) to set payment dates shortly after the delivery of goods or provision of services. However, the instruments provided for therein proved insufficient. According to the amendment, payment dates in transactions between entrepreneurs should not exceed 60 calendar dates, whereas between entrepreneurs and public authorities – 30 days. A 60-day payment date is to be a rule, an exception wherefrom might result from an agreement between entrepreneurs, unless this was grossly unfair to the creditor. Otherwise, if a payment date exceeding 60 days is set, it should be treated as delay in payment, and the creditor, following execution of its contractual and legal obligations, is entitled to receive interest for delay. In transactions with public authorities it will be possible to exceed a 30-day payment date to no more than 60 calendar days if this is justified by special nature or special provisions of the agreement. After that time limit the creditor will be entitled to statutory interest for delay. No amendment was introduced to the Act in force with reference to the creditor’s entitlement to demand statutory interest, constituting the so-called trade credit fee, in the event where the agreement provides for more than 30 days for payment. The said entitlement will not be vested in creditors in commercial transactions where the debtor is a medical entity. In order to ensure an effective pursuing payment of the so-called fixed compensation and repayment of any and all costs incurred in connection with pursuing due amounts in the civil proceedings, the Act provides for introduction of a relevant amendment to the Code of Civil Proceedings, exceeding the scope of possible claims as part of the proceedings by writ of payment carried out under Article 485 § 2a. Provisions of the Act will not apply to agreements concluded before 16 March 2013, i.e., before the planned date of the Act’s entry into force. The bill is at the stage of interministerial consultations. It will implement to Polish legal system Directive 2011/7/UE of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions.

**Emission Trading Scheme – assumptions for a new act**

On 14 August 2012 the Council of Ministers approved assumptions for the act that will determine the principles of operation of the emission trading scheme in years 2013-2020. The act is also to establish: tasks of entities supervising and administering the EU ETS, including those vested in the Minister of Environment and the National Centre for Emissions Management; principles of spending funds deriving from auction sale of emission allowances – it was decided that the said funds will constitute budgetary receipts of the state; principles of sale of emission allowances at auctions to be organized by the National Centre for Emissions Management, and some other regulations.

**New principles governing child care leave – draft amendment**

The Minister for Work and Social Policy has prepared a draft amendment of the Labour Code provisions regulating the child care leave. The draft amendment provides for extending the child care leave period up to 37 months, with a reservation that out of that period one month for each parent or carer of a child (such month will not be transferable). Thus, if one of the parents will not take advantage of a non-transferable part of the leave vested in him/her, the amount of the leave for one child will be limited to 35 or 36 months. Moreover, extended – from three to four months – is also to be the amount of child care leave that may be used simultaneously by both parents or carers of the child. It will be possible to use this leave in five parts (at present – in four parts). New will be the regulation in accordance wherewith the child care leave will not be proportionally limited if in a certain calendar year, following the employee’s acquisition of the right to such a leave, the employee uses the child care leave and next, in the same year, returns to work. Under the currently binding regulations, the amount of the child care leave is reduced. In addition, the period of prescription with reference to a claim for the child care leave will not commence, and the commenced will be tolled for the period of use of the child care leave. The amendment of the Labour Code provisions concerning the child care leave is necessitated by Directive of 8 March 2010 implementing the revised framework agreement on parental leave.
Commencement of the business activity
The latest draft amendment of the Labour Code and some other acts, the bill whereof was on 14 August 2012 adopted by the Council of Ministers, proposes limiting – from 14 to 3 days – of the period for the issuance of a confirmation on awarding the Tax Identification Number (NIP) to firms (other than natural persons) that commence their business activity. The Prime Ministry explains that thanks to such a solution, the firm’s registration with the tax office will be shorter and an entrepreneur will be able to commence the business activity earlier. The bill provides also for exempting employers from the obligation of notifying the National Labour Inspection and the National Public Health Inspection of the place, type and scope of the business activity carried out. The necessary data will be obtained by the inspections from the register of entities maintained by the Main Statistical Office and the payers’ accounts maintained by the Social Security Agency. According to the World Bank, this means limiting by 1/3 the entity registration procedures (two out of six procedures are to be cancelled). As a result, the Prime Ministry emphasizes, Poland should rank higher in the World Bank’s Doing Business Report.

Cadastral tax – statement by the Ministry of Finance
The Ministry of Finance informed that from 2004 it had not worked on the change of principles of the real estate taxation. Therefore, unauthorised are statements that the Ministry is preparing to introduce the tax, where the basis for taxation of all types of the real estate and parts thereof would be the value of the real estate (the so-called cadastral tax). The issues related to taxation of the real estate are regulated in Chapter 2 of the Act on Local Taxes and Fees and secondary legislation thereto.

New Cooperative Savings and Credit Unions Act
On 26 July 2012 there was published the Cooperative Savings and Credit Unions Act of 5 November 2009 (Dz.U.2012.855). The Act had waited for publication for more than 2 years as its compliance with the Constitution was analysed by the Tribunal. Following the new provisions’ entry into force, certain competence, at present vested in the National Association of Cooperative Savings and Credit Unions, will be transferred to the Financial Supervision Commission. The above refers to supervisory and decision-making powers concerning risk limits and investment policy, as well as authorisation to make decisions on criteria for selection of members of certain bodies of Cooperative Savings and Credit Unions. Following the amendment, the National Association of Cooperative Savings and Credit Unions will remain an institution that associates unions and controls the compliance of their activities with the Act and recommendations of the Financial Supervision Commission. It will also secure the unions’ solvency. The National Association of Cooperative Savings and Credit Unions will be able to issue payment cards if a certain union may not do it itself. Moreover, it will also be required to provide assistance to newly-created unions and it will be able to carry out other activities based on an agreement concluded with a certain union. In order to secure economic safety, the unions will be required to possess their own funds, adjusted to the volume of activity carried out. The Act also provides for the creation of savings and loan fund that will be created out of the members’ contributions and savings made by the union members. The maximum amount of loans and credits given to one union member and the amount of such member’s obligations resulting from suretyships given was established at 10% of the savings and loan fund, and in the case of loans and
credit facilities given with respect to the business activity carried out by a member – 15% of the union's own funds. Subsequently, the total amount of loans given to all members for purposes related to the business activity run may not exceed 150% of own funds. The union is required to keep its solvency ratio at the level of at least 5%. However, the manner and detailed principles of calculation of the solvency ratio will be determined by the Minister. It will also be the Minister, who, following the consultation with the Financial Supervision Commission and the National Association of Cooperative Savings and Credit Unions, will be authorised to issue binding norms for admissible risk in the unions’ activity. The Financial Supervision Commission, in turn, will be able to issue recommendations concerning good practices of cautious and stable management of cooperative savings and credit unions. Majority of provisions of the Act will enter into force on 27 October 2012.

Press Law – amendment

On 27 July 2012 the Sejm passed the Act on Amendment of the Press Law, which is aimed at adjustment of the law to the decisions of the Constitutional Tribunal of 5 May 2004 (P 2/2003) and 1 December 2010 (K 41/2007). In the amendment deleted was the regulation providing for punishing editors-in-chief that fail to publish corrections or publish such corrections in violation of the law. Claims stemming from such actions may be sought before the civil court. Moreover, the draft gives up the institution of an answer to a statement threatening personal rights since, as it was pointed out by the Tribunal, it does not differ from the correction. The amendment modifies the catalogue of persons authorised to write a correction, clarifies issues concerning the manner of correction delivery and premises for the publication refusal. Limited, from one month to 21 days, was the period for demanding publication of a correction. The corrections already sent will have to be published: in electronic media – within 3 business days, in daily newspapers – in the next issue prepared for publishing, or – if it is technically impossible – in the next one, however, not later than within 7 days. The Act provides also for a substantial acceleration of proceedings for the correction publication. The court will have 30 days for consideration of the case, both in the first instance and for consideration of an appeal. The periods for submitting an answer to the statement of claim, an appeal and an answer thereto are limited to 7 days. It will not be possible to file the cassation appeal in respect of the decisions. The Act was referred to the Senat. It will be considered by the Culture and Media Committee.

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