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LAWS AND REGULATIONS OF THE REPUBLIC OF LITHUANIA

ALCOHOL CONTROL

New Version of the Rules for Issuance of Conformity Documents for Alcohol Products Approved

On 7 February 2008, the Director of the State Food and Veterinary Service of the Republic of Lithuania by his Order No. B1-96 (official gazette *Valstybės Žinios*, 2008, No. 18-666) approved new versions of two documents: "Rules for Issuance of Conformity Documents for Alcohol Products Applicable in Sale, Storage and Transportation of Alcohol Products" (hereinafter referred to as the "Rules") and "Requirements for Conformity Documents for Alcohol Products" (hereinafter referred to as the "Requirements").

The new version of the Rules provides for additional duties for entities related to sale, storage and transportation of alcohol products in comparison with the old version.

The first duty is related to companies licensed to produce alcohol products. They additionally must, selling each shipment of alcohol products produced by them to companies licensed to engage in retail sale of alcohol beverages, issue a conformity declaration in accordance with a form given in the Requirements.

The second duty is applicable to companies related to wine products. Companies having the right to import alcohol products, bringing alcohol products into the country or licensed to engage in wholesale of alcohol beverages, in sale of, respectively, imported and/or brought wine products to companies licensed to engage in retail sale of alcohol beverages, must in the transportation documents additionally indicate the information requested by Regulation No. 884/2001 of the European Commission, and in sale of alcohol beverages (except for imported wine products) – must issue copies of a transportation document and the document referring to wine products analysis data or must make certain entries in legally valid documents on supply of goods.

The Rules also provide for a right of the State Food and Veterinary Service to suspend sale of alcohol products if the documents specified in the Rules are not submitted in time upon request of the Service.

The new version of the Rules also contains an earlier general rule that each batch of products produced in the Republic of Lithuania must have documents of conformity of alcohol products issued by the laboratory certified by the State Food and Veterinary Service. Still, it must be noted that the Requirements provide for a special rule for beer manufacturers that have the right to make use (under a contract) of services of foodstuffs quality analysis laboratories belonging to other authorities or companies certified under the established procedure. Such beer manufacturers can issue

a conformity declaration for the beer manufactured by them based on beer analysis statements issued by the said laboratories.

FINANCE LAW

Description of the Procedure of Calculating Votes of Persons Directly or Indirectly Holding Shares in an Insurance Company or a Reinsurance Company Approved

On 29 January 2008, the Insurance Supervisory Commission of the Republic of Lithuania adopted Resolution "On Approval of the Description of the Procedure of Calculating Votes of Persons Directly or Indirectly Holding Shares in an Insurance Company or a Reinsurance Company" (official gazette *Valstybės Žinios*, 2008, No. 15-546) (hereinafter referred to as the "Resolution"), which came into effect on 6 February 2008.

The Resolution approved the description of the procedure of calculating votes of persons directly or indirectly holding shares in an insurance company or a reinsurance company (hereinafter referred to as the "Description"), which is applicable to calculation of voting rights carried by shares in an insurance company or a reinsurance company, holders of which are considered to be direct or indirect managers of shares in an insurance company or a reinsurance company.

The Description also regulates what is regarded as votes held by a person, how a voting right is calculated, conditions under which a management company or a financial brokerage company can act independently of the holding company, documents to be submitted to Insurance Supervisory Commission of the Republic of Lithuania in order to make use of exceptions provided for in the Description.

Description of the Procedure of Issuing a Permit to Acquire Holding Shares in an Insurance Company or a Reinsurance Company and Submission of Information about Change of Persons Directly or Indirectly Holding Shares in an Insurance Company or a Reinsurance Company Approved

On 29 January 2008, the Insurance Supervisory Commission of the Republic of Lithuania adopted Resolution No. N 9 "On Approval of the Description of the Procedure of Issuing a Permit to Directly or Indirectly Acquire Holding Shares in an Insurance Company or a Reinsurance Company and Submission of Information about Change of Persons Directly or Indirectly Holding Shares in an Insurance Company or a Reinsurance Company" (official gazette *Valstybės Žinios*, 2008, No. 15-547) (hereinafter referred to as the "Resolution"), which came into effect on 6 February 2008.

The description approved by the Resolution (hereinafter referred to as the "Description") regulates the procedure of issuing a permit to directly or indirectly acquire shares in an insurance company or a reinsurance company and submission of information about change of persons directly or indirectly holding shares in an insurance company or a reinsurance company to the Insurance Supervisory Commission.

The Description indicates the conditions in case of which a permit of the Insurance Supervisory Commission is to be

obtained for acquisition of shares in an insurance company. Also, cases are indicated when such a permit is not necessary. The Description gives a full list of documents to be presented to the Insurance Supervisory Commission by a person or a group of closely related persons who after direct or indirect acquisition of shares are going to become a direct or indirect manager of shares in an insurance company or a reinsurance company.

PROTECTION OF CONSUMER RIGHTS

Rules for Examination of Violations of the Law of the Republic of Lithuania on Prohibition of Unfair Business-to-Consumer Commercial Practices Approved

On 5 February 2008, the Minister of Justice of the Republic of Lithuania by his Order No. 1R-68 (official gazette *Valstybės Žinios*, 2008, No. 17-589) approved the Rules for Examination of Violations of the Law of the Republic of Lithuania on Prohibition of Unfair Business-to-Consumer Commercial Practices (hereinafter referred to as the "Rules").

The Rules are applicable to examination of cases of unfair business-to consumer commercial practices (established by the Law of the Republic of Lithuania on Prohibition of Unfair Business-to-Consumer Commercial Practices) falling within the competence of the State Consumer Rights Protection Authority (hereinafter referred to as the "Authority"). The Rules provide that the Director of the Authority is to form by his order a special commission for examination of such violations.

The Rules provide for and discuss in detail submission of requests (complaints) to investigate unfair commercial practices, preparation for examination of a case in a meeting of the commission, the procedure of holding case examination meetings and adoption of resolutions.

The commission, within thirty days as of the submission of a request (complaint) to the Authority, is to take a decision either to begin or refuse to begin the procedure, indicating reasons for such decision. Also, it is possible for the Authority to commence a violation examination procedure on its own initiative.

The Rules provide for a duty of the Authority to pass the material on violations having features of a criminal act to law enforcement authorities. Also, if necessary, the Authority must apply to a state authority, supervising relevant commercial practices, for its opinion.

The Authority has the right to request information and documents from commercial entities and, if necessary, also samples of goods necessary for investigation of violations, to demand that a commercial entity would make its statements on commercial activities more accurate and would substantiate them if, with regard to lawful interests of a commercial entity or consumer, such a demand seems expedient in circumstances of the violation. The Authority is entitled to demand that commercial entities and other persons responsible for commercial activities arrive and give oral or written explanations. It is noteworthy that the Authority is also competent in certain cases to use an interim measure – obliging an entity to suspend its unfair commercial practices.

The Authority can impose two types of sanctions – a fine or a warning.

A commercial entity, objecting to the resolution of the commission on imposition of a fine or giving of a warning, has a right to appeal against such a resolution in court within one month as of the receipt of the resolution.

SECURITIES

Rules for Notifying about Acquisition or Loss of a Shareholding Interest Supplemented

On 14 February 2008, the Securities Commission of the Republic of Lithuania adopted Resolution No. 1K-2 (official gazette *Valstybės Žinios*, 2008, No. 21-800) (hereinafter referred to as the “Resolution”), which supplemented Resolution No. 1K-5 of the Securities Commission of the Republic of Lithuania “On Approval of the Rules for Notifying about Acquisition or Loss of a Shareholding Interest”, dated 23 February 2007 (official gazette *Valstybės Žinios*, 2007, No. 26-981). The Resolution came into effect on 22 February 2008.

The Resolution added new chapters to the Rules for Notifying about Acquisition or Loss of a Shareholding Interest: new Chapter IV establishes control mechanisms applicable to market makers and Chapter V defines types of securities which according to a formal agreement give their owner an option to acquire already issued shares of the issuer in the future, discusses the procedure of the implementation of the duty to notify about the acquired block of voting rights.

The Resolution also corrected the form of the notification about acquisition or loss of a shareholding interest to be submitted, provides for an appendix of this form and for a newly introduced notification by a market maker.

Rules for Capital Adequacy Requirements for Financial Brokerage Companies and Management Companies Amended and Supplemented

On 31 January 2008, the Securities Commission of the Republic of Lithuania adopted Resolution No. 1K-1 (official gazette *Valstybės Žinios*, 2008, No. 16-580) (hereinafter referred to as the “Resolution”), which amended and supplemented Resolution No. 1K-10 of the Securities Commission of the Republic of Lithuania “On Approval of the Rules for Capital Adequacy Requirements for Financial Brokerage Companies and Management Companies”, dated 22 March 2007 (official gazette *Valstybės Žinios*, 2007, No. 36-1349). The Resolution came into effect on 8 February 2008.

Having taken into consideration inaccuracies noticed, comments and proposals given by market participants, the rules amended by the Resolution of the Securities Commission of the Republic of Lithuania defined the terms “Risk Capital Company”, “Public Sector Undertakings”, also corrected definitions of “Illiquid Assets”, “Non-trading books” and “Risks Specified in the Trading Book”.

The Resolution regulates in more detail the calculation of the need for risk capital in connection of risk of decrease of credit and receivables. According to it, application of risk weights depends on the position and its credit quality. Credit quality can be determined taking into account credit risk ratings given to those positions by recognised external credit

assessment institutions or credit risk ratings given by export credit agencies. A company may suggest one or more recognised external credit assessment institutions meeting the established requirements for the purpose of using their credit risk ratings to determine risk weights for assets and off-balance-sheet items.

The Resolution extended the list of debt financial instruments considered as recognised positions, including securities issued by institutions which may be subject to the second or higher credit quality step.

It is also established that in case of securities or commodities repurchase and lending transactions, the change costs are calculated by deducting the market value of the received security from the market value of the transferred securities or commodities. In case of reverse repurchase and borrowing transactions, the change costs are calculated by deducting the market value of the received securities or commodities from the market value of the given security. The accrued interest is added in calculating the market values of lent or borrowed amounts and the security.

Management companies, as well as financial brokerage companies having licences of categories B or C, have a duty to submit quarterly reports and notify the Securities Commission of the Republic of Lithuania about each financial instruments or commodities transaction conducted during the quarter on its own account.

IMPORTANT DRAFT LAWS AND REGULATIONS

COMPANY LAW

Draft Law on Amending the Enterprise Bankruptcy Law of the Republic of Lithuania Presented by the Government to the Seimas

On 6 February 2008, the Government of the Republic of Lithuania adopted Resolution No. 106 (official gazette *Valstybės Žinios*, 2008, No. 20-730), by which it approved of the draft Law on Amending and Supplementing Articles 1, 2, 3, 6, 7, 8, 9, 10, 11, 13¹, 18, 20, 21, 22, 23, 29, 30, 31, 32, 33, 35, 36 and 37 of the Enterprise Bankruptcy Law of the Republic of Lithuania and Supplementing the Law with a Schedule (hereinafter referred to as the “Draft Law”) and decided to present it to the Seimas of the Republic of Lithuania.

The Draft Law is aimed at speeding up enterprise bankruptcy procedures, as well as protecting creditors’ interests, i.e. to transfer the management of assets of a bankrupt enterprise to the administrator as soon as possible, so that dishonest managers or owners of the enterprise could not sell or hide them, to increase the liability of bankruptcy administrators.

The Draft Law is going to amend the currently effective Enterprise Bankruptcy Law, making it applicable to all legal entities registered in the Republic of Lithuania in accordance with the law, except for budget institutions, political parties, trade unions and religious communities and associations.

The Draft Law suggests to establish that a creditor could initiate bankruptcy proceedings in court for corporate debtor

earlier, before the expiry of the term of three months, but to leave the provision that a creditor or creditors must give a written notification to the enterprise about its/their intention to initiate bankruptcy proceedings in court, specifying in the notification which obligations the enterprise defaulted on and indicate a time limit for their fulfilment which cannot be less than 30 days.

When a petition in bankruptcy is filed by employees of the enterprise that does not have sufficient assets to pay for the administration expenses, the bankruptcy proceedings can be initiated and the bankruptcy administrator appointed in such a case must work without remuneration. In order to avoid that, it is suggested to establish that in case the employees of such enterprise file a petition in bankruptcy regarding unfulfilled claims related to labour relations, claims for indemnification due to mutilation or other bodily injury, occupational disease or death caused by an accident at work, the bankruptcy proceedings are to be initiated. It is also established that the court is to fix the amount of court and administration expenses (the size of such amount must be limited) and to take measures that this amount would be recovered from the manager, owner(s) of the enterprise.

In order to speed up the performance of the bankruptcy procedures, the Draft Law provides for a court's duty to inform the administrator about initiated bankruptcy proceedings no later than on the next business day after the date of the decision to initiate bankruptcy proceedings against an enterprise, also for a court's duty to inform the Insurance Supervisory Commission of the Republic of Lithuania about initiated bankruptcy proceedings against an insurance company within the same time limit, and the Securities Commission if bankruptcy proceedings are initiated against a financial brokerage company or a public limited liability company which is deemed to be an issuer under the Law of the Republic of Lithuania on Securities, as well as the Register of Legal Entities no later than on the next business day after the effective date of the court decision to initiate bankruptcy proceedings. The Draft Law also provides for the administrator's duty to arrive at the registered office of the enterprise going bankrupt and to ensure security of the assets of such enterprise going bankrupt no later than on the next business day after the receipt of the indicated documents. The Draft Law provides for a possibility, if necessary, for a court to impose bigger fines on persons (up to LTL 10,000) whose actions delay the initiation of bankruptcy proceedings or hinder the performance of bankruptcy procedures. It is suggested to impose a fine in this amount on the execution officer delaying the transfer of property seizure documents and writs of execution for debt recovery from the enterprise going bankrupt to the court examining the bankruptcy case.

During enterprise bankruptcy process, its management bodies lose their powers, therefore, it is suggested to vest the creditors' meeting with a right to approve annual financial statements (balance sheet and income statement), which will be made during the enterprise bankruptcy process, and in case of a simplified bankruptcy process, such financial statements should be approved by the court.

In order to avoid potential abuse, when the administrator having interest in decisions taken in the creditors' meeting or the former manager, owner of the enterprise or a close relative of such former manager or owner is elected chairman of the creditors' meeting, the Draft Law suggests to establish that only a creditor can be elected chairman of the creditors'

meeting, except for such creditor who is the former manager (disregarding the cause and date of his dismissal) or owner of the enterprise or a close relative of such persons.

Taking into account that administrators often have considerable assets of an enterprise going bankrupt or a bankrupt enterprise at their disposal, and the property owned by the administrators would not always be sufficient to indemnify for the damage caused to creditors during enterprise bankruptcy procedures, it is suggested to establish that they must be mandatorily insured. The drafters of the Draft Law believe that administrators, with regard to the character of their activities, should be insured at the sum insured equivalent to that applicable to execution officers, therefore, they suggest to establish that the minimum sum insured of compulsory insurance against the administrator's professional civil liability should be LTL 200,000 per one insured event.

IMPORTANT DECISIONS OF COURTS OF THE REPUBLIC OF LITHUANIA

COMPANY LAW

Supreme Court of Lithuania Spoke on Shareholders' Duty to Notify the Securities Commission and the Issuer about Loss or Acquisition of a Shareholding Interest

The Supreme Court of Lithuania (hereinafter referred to as the "SCL") examined a civil case according to a cassation appeal of the claimants R. J. and T. R. in the civil case according to the claim of the claimants R. J. and T. R. against the respondent AB Spauda for invalidation of a resolution of the general meeting of shareholders (case No. 3K-3-29).

The panel of judges investigated whether the court of first instance and the appellate court that examined the case properly interpreted and applied the rules of law applicable to shareholders' obligation to notify the Securities Commission and the issuer about the loss or acquisition of a shareholding interest, as well as the rules providing for legal consequences of improper fulfilment of such obligation (paragraph 2(1) of Article 346 of the Civil Procedure Code).

The SCL noted in its judgement that in case when a shareholder notifies about a change of his shareholding interest but does not meet the requirements of the notification procedure with full accuracy, in case of a dispute it must be evaluated whether the defects of the notification were material, i.e. whether the content of the notification was materially distorted to be recognised as improper and result in consequences provided for in law.

The SCL indicated that any inaccuracy of little importance in the notification is not a basis to treat it as an improper notification if that inaccuracy did not prevent the perception and due evaluation of the reallocation of shareholders' votes.

The SCL stated that consequences of an improper notification specified in paragraph 8 of Article 15 of the Law on Securities Market - restriction of the right to vote by shares the transfer (acquisition) of which was not properly notified of - are applicable only to a person who acquired the shares but did not present information about it.

REAL ESTATE

Supreme Court of Lithuania Spoke on Termination of a Land Lease Agreement before Term on the Lessor's Request when the Lessee Does Not Use the Land in Accordance with the Agreement or the Main Purpose of the Land

The SCL examined a civil case according to a cassation appeal of the claimant UAB Ethical Products Distribution in the civil case according to the claim of the claimant UAB Ethical Products Distribution against the respondent the Administration of the Marijampolė County Governor for recognising the termination of the agreement for lease of state-owned land for non-agricultural activities to be unlawful and cancellation of the order (case No. 3K-3-54/2008).

The panel of judges analysed whether the lessor had a right to terminate the land lease agreement before term on the basis that the claimant, during a period of six years, did not use and did not start to use the leased state-owned land plot (except for its care) according to its purpose without any objective reasons (paragraph 1(1) of Article 6.564 of the Civil Code).

The SCL explained that the state, letting the land plot intended for commercial and business activities to the lessee, had a purpose not only to receive rent and ensure proper care of the land plot, but also expected that the activities provided for in the disputed agreement will be performed and developed on the land plot and such use of the state-owned land plot will result in creation of new jobs, products or services, etc. and thus will contribute to the common welfare of the society.

The SCL did not uphold the statements of the appellant that a material breach of an agreement can be caused only by active actions of the lessee when the land is used not in accordance with the agreement or the main purpose of the land.

LAW OF OBLIGATIONS

Supreme Court of Lithuania Spoke on the Independence of the Obligation to Transfer the Publishing Business of the Newspaper Reklama from the Obligation to Assign Exclusive Publishing Rights

The SCL examined a civil case according to a cassation appeal of UAB Reklamos Laikraštis in the civil case according to the claim of the claimant UAB Reklamos Laikraštis against the respondents UAB Vilniaus Skelbimai, UAB Norekso Valdoso for debt adjudgment and invalidation of the agreement termination (case No. 3K-3-6/2008).

The SCL established that the subject-matter of the agreement made between the parties to the dispute consisted of two obligations, i.e. assignment of exclusive publishing rights and sale of publishing business of the publication Reklama. Referring to the case material, the SCL stated that the claimant assumed an obligation under the agreement to assign rights that it did not actually have to the respondent. For this reason, it became necessary to establish whether, in case of a dispute, an indivisible agreement was concluded and whether, in case of invalidity of one of its parts, it is to be considered that the agreement was not concluded at all, i.e. whether the parties to the dispute provided for a universal or joint obligation in the

agreement, or whether the parties to the dispute agreed on two obligations which are to be regarded separate and independent and invalidity of one of such obligations does not affect the validity of the other obligation under the agreement.

The panel of judges noted that usually transfer of a business with the aim to take over a market share of a legal entity in a certain business also includes the assignment of exclusive rights held by such an entity that are related to such business or granting an exclusive right to make use of them to the assignee of such rights (e.g. in cases of franchise, distribution, company sale - purchase, company lease, etc.). The assignment of exclusive rights together with the sale of business is significant because it ensures that the assignee of such rights, seeking to take over the counterparty's business, will have a possibility to act lawfully, unrestrictedly and safely in a relevant market share, having an established reputation among consumers, clients and other market participants. But a failure to assign exclusive rights can by itself not deprive of a possibility to do business in a part of a certain market, but only to limit the business possibilities to a certain extent. As it has been mentioned in the case in question, a part of the agreement between the parties to the dispute dealing with the assignment of non-existing exclusive publishing rights is null and void because the claimant undertook to assign the rights it did not have.

The SCL decided that the obligations provided for in the text of the agreement between the parties to the dispute are not separated, but in the context of the case in question, actions of the parties to the dispute after the conclusion of the agreement clearly show that, in spite of the fact that the claimant did not assign exclusive publishing rights to the respondent, whereas the respondent, as a reasonable, honest and prudent business entity, could and must have known that the claimant assumed an obligation under the agreement to assign exclusive publishing rights that it did not have, the respondent actually took over the claimant's market share in the business of publishing an advertising newspaper.

The SCL arrived at the conclusion that, due to the actions of the parties, the obligations provided for in the agreement - to assign exclusive publishing rights and to transfer the claimant's newspaper publishing business to the respondent - became independent obligations, therefore, the panel of judges decided that invalidity of one of such obligations, i.e. the obligation to assign exclusive publishing rights, does not affect the validity or invalidity of the other obligation of the claimant - to transfer the newspaper publishing business.

EXECUTION OF COURT DECISIONS

Supreme Court of Lithuania Spoke on Changing the Procedure of Execution of a Decision (Judgement) not Changing the Content of such Decision (Judgement)

The SCL examined a civil case according to a cassation appeal of the claimant R. Š. in the civil case according to the statement of the applicant execution officer G. P. to the persons concerned R. Š. and V. Š. regarding change of the procedure of execution of a court decision (case No. 3K-3-61/2008).

In this case the court of first instance by its judgement decided to satisfy the application of the execution officer for a change

of the procedure of execution of a court judgement by which a settlement agreement was confirmed, giving the right to one of the parties, i.e. the claimant, to sell an apartment.

The SCL explained that the procedure of execution of a court decision (judgement) can be changed without changing the content of such decision (judgement) by which a legal dispute of the parties regarding property was settled. Thus, a change of the decision execution procedure can help to solve process issues in connection with the execution of the decision.

Meanwhile, the court of first instance by its judgement did not solve the issue of changing the decision execution procedure, but amended a condition of the settlement agreement confirmed by an effective court judgement. Therefore, the SCL arrived at the conclusion that the court of first instance could not by its judgement satisfy the request in the application of the execution officer and change the condition of the settlement agreement. This judgement was reasonably reversed by the appellate court, rejecting the application of the execution officer.

The SCL also stated that the appellate court in its judgement improperly explained the right of the parties to address a court for amending the settlement agreement confirmed by an effective court judgement, as it did not evaluate *res judicata* of the effective court decision (judgement), meaning the preliminary nature of the circumstances established by such decision (judgement) and not allowing repeated filing of a claim regarding an identical dispute. In the opinion of the SCL, the parties could amend the settlement agreement between them by their mutual agreement or take a decision on its conditions upon renewal of the process in the case (paragraphs 1(2) and 1(9) of Article 366 of the Civil Procedure Code).

EUROPEAN UNION LAW NEWS

VAT

New Rules on the Place of Supply of Services and a New Procedure for VAT Refunds Adopted by the Council of the European Union

On 12 February 2008 the Council of the European Union had adopted two directives. One of the directives is on new rules on the place of supply of services, and the other one – on a new procedure for VAT refunds. The directives will ensure that VAT on services will accrue to the country of consumption, and will establish a new procedure for claiming VAT refunds to ensure quicker processing.

From 1 January 2010, the new rules on the place of supply of services will mean that business-to-business supplies of services will be taxed where the customer is situated, rather than where the supplier is located. For business-to-consumer supplies of services, the place of taxation will continue to be where the supplier is established.

However, in certain circumstances, the general rules for supplies both to businesses and to consumers will not be applicable and specific rules will apply to reflect the principle of taxation at the place of consumption. These exceptions

concern services such as restaurant and catering services, the hiring of means of transport, cultural, sporting, scientific and educational services, and telecommunications, broadcasting and electronic services supplied to consumers.

Also from 1 January 2010, the current procedure for reimbursement of VAT incurred by EU businesses in Member States where they are not established will be replaced by a new fully electronic procedure, thereby ensuring a quicker refund to claimants. A new feature is that businesses will be paid interest if Member States are late making refunds.

With regard to telecoms, broadcasting and electronic services, the introduction of the new rules on the place of business to consumer supplies will be postponed until 1 January 2015. From that date, these services will be taxed in the country where the consumer is established. Suppliers will be permitted to discharge their VAT obligations using a “one stop” scheme which will enable them to fulfil their VAT obligations in their home Member State, including for services provided in other Member States where they are not established. These obligations are registration, declaration and payment.

The VAT revenue from these services will be transferred from the country where the supplier is located to that where the customer is situated. Both directives came into effect on 20 February 2008; however, the term of implementation of individual provisions would differ.

PUBLIC-PRIVATE PARTNERSHIP

The European Commission adopted an Interpretative Communication on the application of Community law on Public Procurement and Concessions to Institutionalised Public-Private Partnerships

On 5 February 2008 the European Commission adopted communication on the application of Community law on the founding of Institutionalised Public-Private Partnerships (IPPP) to provide services for the public.

Private capital for public undertakings and the transfer of know-how from the private to the public sector are drivers for public bodies to found IPPP. New business opportunities in areas traditionally reserved for the public sector constitute key benefits of these partnerships for the private sector. IPPP are of particular importance at times where there is a lack of significant investment in the public infrastructure. To reap the full benefits of such partnerships it is, however, essential that private partners are selected on the basis of a fair and transparent procedure. Fair and transparent selection procedures also minimise the risk of undue advantages of the selected private shareholders over their competitors.

The Commission's guidance is based on a ruling of the European Court of Justice (C-26/03 "Stadt Halle"). The Stadt Halle case requires transparent and competitive award procedures whenever public contracts or concessions are awarded to public-private partnerships. The guidance clarifies the EC rules that apply when an IPPP is set up. In so doing, it provides greater legal certainty not only for the public sector but also for private investors in the area of Public-Private Partnerships (PPP).

The communication explains the EC rules that apply when private partners are chosen for an IPPP. Depending on the nature of the task (public contract or concession) to be attributed to the IPPP, either the Public Procurement Directives or the general EC Treaty principles apply to the selection procedure of the private partner. The Interpretative Communication expresses the view of the Commission that under Community law one tendering procedure suffices when an IPPP is set up. Accordingly, Community law does not require a double tendering – one for selecting the private partner to the IPPP and another one for awarding public contracts or concessions to the public-private partnership – when an IPPP is established.

The Communication also affirms that an IPPP must remain within the scope of its initial object, i.e. the original contract awarded, and cannot obtain any further public contracts or concessions without another procedure in accordance with EC public procurement rules. It is also acknowledged that IPPP are usually set up to provide services over a fairly long period and must, thus, be able to adjust to certain changes in the economic, legal or technical environment. The Communication explains the conditions under which these developments could be taken into account.

This legislative review is for information purposes only and does not reflect all aspects of legal regulation. For full legal advice please contact our law firm by phone: (370 5) 251 44 44, (370 5) 251 44 45.