

# Central European Law

REBECCA J. HANSON\*

## I. Introduction

The year 1998 saw continuing refinement in the commercial law field in Central Europe. Generally, the countries of Central Europe continued several trends that have been in evidence in the region since the fall of communism, including privatization, developing competition law and policy, liberalization of foreign investment laws, modernization of bankruptcy and insolvency laws, and modernization of securities regulation, among others.

## II. Bulgaria

PAVLINA POPOVA\*\*

Bulgaria's economic performance has improved significantly over the last year. Substantial progress in macroeconomic stabilization has been achieved and structural reforms have been advanced. The most significant legislative instruments in the field of commercial law, foreign investment, and taxation that were adopted in Bulgaria in 1998 include the following.

### A. THE LAW ON PROTECTION OF COMPETITION

The Law on Protection of Competition (Competition Law), entered into force on May 12, 1998,<sup>1</sup> replaces the 1991 Act and regulates the activities of the Commission for the Protection of Competition (the CPC), conferring upon it the following powers: (i) to determine violations of the Competition Law; (ii) to issue permits provided for in the law; (iii) to bring actions for repeal of administrative acts by the competent courts; (iv) to order the cessation of violations of the Competition Law and the restoration of the injured party; and (v) to declare certain agreements non-competitive.

### B. THE LAW ON TELECOMMUNICATIONS

This law creates the regulatory framework of the telecommunications sector; sets up the structure, tasks, and activities of the State Telecommunications Commission as regulatory

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1. The Law on Protection of Competition, State Gazette No. 52/1998.

body, and defines the terms and conditions for granting licenses for providing different types of telecommunications services.<sup>2</sup>

### C. THE LAW ON VAT

This law sets up conditions for registration and deregistration of companies for VAT purposes and defines taxable and exempt supplies as well as procedural rules for payment of VAT.<sup>3</sup> Any person who has a taxable turnover exceeding BGL seventy-five million during the preceding twelve months must register for VAT purposes. Under certain conditions, the law allows voluntary registration of persons whose taxable turnover is below BGL seventy-five million. One single VAT rate exists which was reduced by the law from twenty-two percent to twenty percent.

### D. AMENDMENTS OF THE LAW ON CORPORATE INCOME TAX

These amendments reduce corporate tax rates from thirty percent to twenty-seven percent in an effort to encourage business activities.<sup>4</sup>

### E. AMENDMENTS TO THE LAW ON COMMERCE

These amendments improve the rules for declaring insolvency and bankruptcy and clarify the procedures to be followed in those cases.<sup>5</sup>

### F. AMENDMENTS TO THE LAW ON SECURITIES, STOCK EXCHANGES, AND INVESTMENT COMPANIES

These amendments define the concepts of public company, public offering and organized off-exchange market, and give the Central Depository the status of a central registrar for public companies.<sup>6</sup>

## III. The Czech Republic

PETR KOTAB AND DAVID FALADA\*

Set forth below is a list of the most important commercial legislation and regulations enacted or issued in the Czech Republic during 1998, in the order published in the Collection of Laws, *Sbírka zákon* (Coll.). All acts of Parliament, decrees of the Government and Ministries and holdings of certain Constitutional Court decisions are numbered from the beginning of each year, and are published in general chronological order in the Collection of Laws. The citations refer to the assigned number and the year. Decisions of other

2. The Law on Telecommunications, State Gazette No. 93/1998.

3. The Law on VAT, State Gazette No. 153/1998.

4. Amendments of the Law on Corporate Income Tax, State Gazette No. 153/1998.

5. Amendments to the Law on Commerce, State Gazette No. 70/1998.

6. Amendments to the Law on Securities, Stock Exchange, and Investment Companies, State Gazette No. 42/1998.

\*Petr Kotab and David Falada of Altheimer & Gray in Prague, Czech Republic, prepared the Czech Republic report.

courts in the Czech Republic are published only sporadically and do not appear in the Collection of Laws.

The legislative developments in the Czech Republic during 1998 were affected significantly by the shift to the left in the political environment. In the summer of 1998, early elections were held, leaving the social democrats as the winning party closely followed by the Civic Democratic Party, the former rightist government party. The general outcome of the elections, however, proved to be inconclusive as the Social Democratic Party could form the government only by relying on the silent support of the Civic Democratic Party. This of course limits the legislative attempts of the new government. As far as the outlook for future legislation is concerned, it may be expected that the new government, assuming that it will not be voted down by the Parliament, will introduce legislation ensuring the government better control over various aspects of economic activity in the Czech Republic, most notably over privatization, collection of taxes, and social security and health insurance contributions.

In its effort to encourage foreign investments in the Czech Republic, the government approved Resolution No. 298/98 on April 18, 1998, containing a package of investment incentives. The incentives, together with the criteria for granting thereof, were further adjusted on December 16, 1998. Pursuant to the Resolution, as amended, investments that would qualify for the incentives: (i) must amount to at least \$10 million (U.S. dollars) during five years; (ii) must concern an environmentally friendly activity; (iii) must be related to either a Greenfield activity, such as construction of a new manufacturing plant, or to a joint venture activity; and (iv) must meet certain other minor criteria, concerning, for instance, the portion of the investment to be expended on new machinery. Such qualifying investments may be eligible for various types of incentives, which include, inter alia, (a) deferred payments of corporate taxes during the initial five years of the investment; (b) location of new manufacturing plants in the current customs-free zones or creation of new customs-free zones; (c) subsidies of up to CZK 100,000 for the creation of each new job for Czech citizens; (d) grants of interest-free loans for qualification and re-qualification training programs for Czech citizens amounting up to fifty percent of the total costs; and (e) accelerated tax depreciation for machinery and production buildings. All incentives are subject to approval by the Ministry of Finance.

#### A. ADDITIONAL LEGAL DEVELOPMENTS OF INTEREST

##### 1. *Act No. 12/1998 Coll., Amending Act No. 328/1991 Coll., on Bankruptcy and Consolidation*

The act, effective as of April 1, 1998, introduced a number of changes in bankruptcy and settlement proceedings, generally aimed at the simplification of procedural steps. The act also specifically addresses the liability of management members of the bankrupt companies who fail to file an application seeking the declaration of bankruptcy with the court. Such management members are jointly and severally liable to the creditors for all damages incurred by such creditors as a result of this failure.

##### 2. *Securities Commission, Act No. 15/1998 Coll.*

The act, effective as of April 1, 1998, established the Securities Commission as an executive administrative agency with broad powers in the areas of inspecting, supervising and sanctioning various operations in the capital market. The Securities Commission is au-

thorized, for example, to decide upon the rights and duties of legal entities and individuals involved in operations in the capital market, such as securities dealers, investment companies, and issuers of publicly traded securities, and to control compliance with obligations pertaining to disclosure and fair practice issues. The Securities Commission assumed the authority from the Ministry of Finance to impose a broad range of sanctions in response to violations of the obligations set forth, particularly in the Act on Investment Companies and Investment Funds (Act No. 248/1992 Coll., on Investment Companies and Investment Funds, as amended) and the Act on Securities (Act No. 591/1992 Coll., on Securities, as amended), including the ability to: (a) order remedies of defects within a specified time limit; (b) order a change of persons in the executive and supervisory boards of the investment fund and/or investment company; (c) order the reduction of the basic capital of an entity; (d) impose forced administration of an entity; (e) withdraw the license necessary for operation of investment companies, investment funds, and share funds; and (f) impose penalties up to CZK 100 million (approximately \$3 million in U.S. dollars).

3. *Amending Act No. 21/1992 Coll., on Banks, Acts No. 16/1998 Coll. and No. 165/1998 Coll.*

The acts strengthen the regulatory and supervising powers of the Czech National Bank in respect of the banking system by imposing stricter requirements and liability on the bank management and limiting the participation of bank directors and employees in the management of other companies. Although the acts do not entirely restrict the combination of commercial banking and investment banking activities within one bank, they provide for the separation of both of these activities within a bank by a system of Chinese walls. The acts simplify the process of acquisition of shares of a bank by foreign persons although they impose a new rule according to which a prior approval by the Czech National Bank is required for the acquisition of a qualified (i.e., 10, 20, 33, and 50 percent) shareholding in a bank by any person. The acts increase the compensation amounts payable under the mandatory insurance of deposits and extend the insurance to legal entities in addition to individuals.

4. *Liability for Damages Caused by Defects of Products, Act No. 59/1998 Coll.*

The act, effective as of June 1, 1998, clarified the position of a manufacturer of a defective product *vis-a-vis* the consumer, introducing, for the first time in the Czech Republic, the concept of product liability. The act established the direct liability of the manufacturer for all damages caused by a defective product.

5. *Investment Companies and Investment Funds, Act No. 124/1998 Coll., Amending Act No. 248/1992 Coll.*

The act, effective as of June 8, 1998, introduced a number of changes in the Act on Investment Companies and Investment Funds. These changes restated the restrictions imposed on the composition of a portfolio of an investment fund, granting certain favors to the securities issued by OECD-member countries or their central banks, and introducing measures intended to prevent insider trading within an investment fund or an investment company. The act also refines and redefines the standard of professional care required when managing investment funds or unit trusts and introduces further measures aimed at the protection of individual investors. The act further requires all investment funds and closed-end unit trusts to transform into open-end unit trusts by the year 2002. In connection with

Act No. 15/1998 Coll., investment companies and investment funds are supervised by the Securities Commission rather than by the Ministry of Finance.

6. *Lotteries, Act No. 149/1998 Coll., Amending Act No. 202/1990 Coll.*

The act, whose major part is effective as of September 1, 1998, introduced controversial restrictions particularly affecting consumer contests, which are currently considered lotteries. Pursuant to the act, an operator of a lottery or another similar game can only be a legal entity with its seat in the Czech Republic if it has been issued permission by the relevant state authority. The act further states that such permission can only be issued to a legal entity that (i) has its seat in the Czech Republic, (ii) has no foreign participation, and (iii) has Czech participants that have no foreign participation. In effect, the act makes it impossible for an entity with direct or indirect foreign capital participation to operate a consumer competition in their own name. Since such restriction has been perceived as discriminatory against foreign investments and has caused conflict with the European Union, it is expected that it will be lifted during 1999.

7. *The Exemption of Machines, Machine Equipment, Apparatuses and Tools from Import Duty, Regulation of the Ministry of Finance No. 313/1998 Coll.*

As an incentive for investments and promotion of manufacturing, the regulation provides for the exemption from the customs duty of imports of machines, machine equipment, apparatuses, and tools falling within chapters 84 and 85 of the customs tariff, based on the Harmonized Commodity Description and Coding System. The exemption is provided on the basis of certain conditions including, inter alia, the following: (i) the value of the machine equipment exceeds CZK 100 million (approximately \$300,000 in U.S. dollars); (ii) the machine equipment constitutes a technological unit and similar equipment is not available from domestic sources in the Czech Republic; (iii) the machine equipment is imported into the Czech Republic within one year after its manufacture; and (iv) the machine equipment shall be owned and used by the importer for at least four years after the importation thereof.

#### IV. Estonia

RAINO PARON AND MAIU FISCHER\*

The following is a selective list of commercial laws that were adopted and published in Estonia during 1998 and are of interest to the international business and legal community. Cites are to *Riigi Teataja*, the Estonian Official Gazette. *Riigi Teataja* is published in four parts. Part One contains legislative acts adopted by the *Riigikogu* (the Estonian Parliament), the President and the Government of Estonia. Part Two reports international agreements and treaties concluded by Estonia; and Part Three reports the cases decided by the *Riigikobus* (the National Court or the Supreme Court). Part Four contains legal acts of Estonian ministries, the Bank of Estonia (the Central Bank), the State Comptroller's Office, and local municipalities. A typical cite to *Riigi Teataja* appears as RT I 1995, 26, 353 and should be read: Part 1 of *Riigi Teataja* for 1995, volume No. 26, Article No. 353. Estonian laws are also published in English in *Estonian Legislation in Translation*.<sup>7</sup>

\*Raino Paron and Maiu Fischer of Raidla & Partners in Tallinn, Estonia, prepared the Estonia report.

7. For the subscription to *Estonian Legislation in Translation* please contact: Estonian Translation and Legislative Support Centre, Tõnismägi 8, EE0001, Tallinn, Estonia, Phone: (372) 693 5100, fax: (372) 6 461 075, e-mail: <ckeskus@legaltext.ee>.

## A. NEW ESTONIAN LAWS AND REGULATIONS

1. Law on Customs (Tolliseadus), RT I 1998, 3, 47
2. Law on Ship Flag Right and on Ship Registries (Laeva lipuõiguse ja laevaregistrite seadus), RT I 1998, 23, 321.
3. Law on Ship Property (Laeva asjaõiguse seadus), RT I 1998, 39, 409.
4. Law on Competition (Konkurentsiseadus), RT I 1998, 30, 410.
5. Law on Social Tax (Sotsiaalmaksuseadus), RT I 1998, 40, 611.
6. Law on Deposit Insurance Fund (Hoiuste Tagamise Fondi seadus), RT I 1998, 40, 612.
7. Law on Product Safety (Toote ohutuse seadus), RT I 1998, 40, 613.
8. Law on Pension Funds (Pensionifondide seadus), RT I 1998, 61, 979.
9. Law on Energy consolidated text (Energia seadus), RT I 1998, 71, 1201.
10. Law on Prohibition of Money Laundering (Rahapesu tõkestamise seadus), RT I 1998, 110, 1811.

## B. ESTONIAN LEGISLATION IN TRANSLATION

*Estonian Legislation in Translation* is a bi-monthly publication in English containing translations of most the important Estonian laws. During 1998, translations of the following laws were published:

1. Narcotic Drugs and Psychotropic Substances Act (Narkootiliste ja psühhotroopsete ainete seadus);
2. Mental Health Act (Psühhiaatrilise abi seadus);
3. Public Health Act (Rahvatervise seadus);
4. Republic of Estonia Child Protection Act (Eesti Vabariigi lastekaitse seadus);
5. Advertising Act (Reklaamiseadus);
6. Republic of Estonia Employment Contracts Act (Eesti Vabariigi töölepinguseadus);
7. Republic of Estonia Employment Contracts Act (Eesti Vabariigi töölepinguseadus);
8. Energy Act (Energiaseadus);
9. Republic of Estonia Principles of Ownership Act (Eesti Vabariigi omandireformi seadus);
10. Land Readjustment Act (Maakorraldusseadus);
11. Land Valuation Act (Maa hindamise seadus);
12. Cadastral Register Act (Maakatastri seadus);
13. Organic Agriculture Act (Mahepõllumajanduse seadus);
14. Fertilizers Act (Väetiseseadus);
15. Republic of Estonia Animal Protection Act (Eesti Vabariigi loomakaitse seadus);
16. Farm Animal Breeding Act (Põllumajandusloomade tõuaretuse seadus);
17. Databases Act (Andmekogude seadus);
18. Official Statistics Act (Riikliku statistika seadus);
19. Customs Valuation Act (Tolliväärtuse seadus);
20. Probation Supervision Act (Kriminaalhooldusseadus);
21. Investment Funds Act (Investeeringufondide seadus);
22. Competition Act (Konkurentsiseadus);
23. State Secrets Act (Riigisaladuse seadus);
24. Public Procurement Act (Riigihangete seadus);

25. Employees' Representative Act (Töötajate usaldusisiku seadus);
26. Collective Agreements Act (Kollektiivlepingu seadus);
27. Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty (Pornograafilise sisuga ja vägivalda või julmust propageerivate teoste leviku reguleerimise seadus);
28. Product Conformity Attestation Act (Toote nõuetekohasuse tõendamise seadus);
29. State Support of Enterprise Act (Ettevõtluse riikliku toetamise seadus);
30. Fiscal Marking of Liquid Fuel Act (Vedelkütuse erimärgistamise seadus);
31. Emergencies Act (Eriolukorra seadus);
32. Customs Act (Tolliseadus);
33. Industrial Design Protection Act (Tööstusdisaini kaitse seadus);
34. Trade Marks Act (Kaubamärgiseadus);
35. Rescue Act (Päästeseadus);
36. Rural Municipality and City Budgets Act (Valla-ja linnaeelarveseadus)
37. Rural Municipality and City Budgets and State Budgets Correlation Act (Valla-ja linnaeelarve ja riigieelarve vahekorra seadus);
38. Local Government Organisation Act (Kohaliku omavalitsuse korralduse seadus);
39. Territory of Estonia Administrative Division Act (Eesti territooriumi haldusjaoutuse seadus);
40. Taxation Act (Tulumaksuseadus);
41. Maritime Safety Act (Meresõiduohutuse seadus);
42. Ports Act (Sadamaseadus).

## V. Latvia

FILIP KLAVINS\*

The most important legislative development has been in the area of merger control laws and regulations. In particular, the following laws and regulations govern the procedure for mergers and acquisitions of companies in connection with competition laws.

1. The Republic of Latvia Competition Law, adopted on June 6, 1997, which became effective on January 1, 1998;
2. Cabinet of Ministers Regulations No. 73, dated March 3, 1998, "On the Submission and Review of the Notification of Merger of Enterprises (Companies)"; and
3. Decision of the Competition Council, dated May 27, 1998, "On the Methodological Instructions for the Preparation of a Notice Regarding a Proposed or Executed Agreement."

The Competition Council (*Konkurences padome*) is the highest authority for the supervision and enforcement of the competition policy in Latvia and its duties include merger control, prevention of monopoly activity, and prevention of unfair competition. Pursuant to Article 19 of the Competition Law, the market participants that wish to perform a merger in the meaning described in the law, must submit a notification to the Competition Council if both of the following conditions apply:

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\*Filip Klavins of Klavins Slaidans & Loze in Riga, Latvia, prepared the Latvia report.

1. the total turnover of the market participants in the last financial year has exceeded 25 million lats; and
2. at least one of the parties to the merger has been in a dominant status in the particular market.

The merger notification must be submitted prior to the proposed merger and is to be reviewed by the Competition Council within sixty days from the date of receipt. If the Competition Council determines that the contemplated merger would restrict, limit, or distort competition, it issues a resolution prohibiting the merger or a conditioned permission imposing on such market participants compulsory merger terms. The final resolution of the Competition Council may be appealed in court in accordance with applicable Latvian laws and regulations.

Other recent Latvian legislation of note includes:

1. Law on Mortgage-backed Securities, Act adopted Sept. 10, 1998, The Republic of Latvia Saeima and Cabinet Reporter (SCR) No. 280 (Sept. 29, 1998). This law established the legal basis for utilization of mortgage-backed securities in Latvia.
2. Law on Civil Process, Act adopted Oct. 14, 1998, SCR No. 326 (Nov. 3, 1998). This law replaces in entirety the earlier existing Civil Process Code, and regulates all court procedure in Latvia.
3. United Nations Convention on Contracts for the International Sale of Goods took effect in Latvia as of August 1, 1998.

The mutually executed USA-Latvia Treaty on the Avoidance of Double Taxation was ratified in Latvia in 1998, but is still pending ratification in the United States.

## VI. Lithuania

EUGENIJA SUTKIENE\*

In 1998, Lithuania's parliament (Seimas), the Government Cabinet of Ministers, and various ministries and departments adopted and supplemented many laws, acts and regulations designed to improve the legal and institutional framework for a functioning market economy in Lithuania. Key changes that took place in Lithuania's legal framework during 1998 that may be of significance to foreign investors include the following.

### A. AMENDMENTS TO THE LAW OF STOCK COMPANIES

The key amendments made to the law relate to companies' and shareholders' rights, management of companies, and the making of decisions, and include:

1. Limitations on a company's right to: a) borrow money from other business entities only by issuing debt securities; b) lend money to other business entities upon acquisition of debt securities issued by such entities; and c) borrow money from its shareholders by pledging its assets thereto;
2. The right of two or more shareholders to enter into an agreement to ensure the enforcement of rights of such shareholders. Formerly, the law did not provide for a

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\*Eugenija Sutkiene of McDermott, Will & Emery in Vilnius, Lithuania, prepared the Lithuania report.

possibility of entering into a shareholders' agreement; therefore, it was hard for shareholders to coordinate the exercising of such shareholders' vested rights within the interests of each of the shareholders separately.

3. Provisions for a special type of shares (golden shares) that may be owned exclusively by the state or municipalities. Special shares carry additional rights including the right to veto certain proposals or actions.
4. Provisions for a possibility of a company entering into a management agreement with the head of administration of the company. Formerly, it was exclusively a natural person working in the company under an employment contract that could be head of administration of a company. However, it is unlikely that this innovation will have wide application as the range of entities that may provide managerial services is quite narrow (e.g., no foreign company may provide such services).
5. Effective as of January 7, 1998, newly incorporated companies will have to provide in their by-laws for at least a three-fourth majority vote of the total number of shareholders present at a meeting necessary to take material actions (e.g., to adopt and to amend the by-laws of the company and to increase the authorized capital of the company, to liquidate or reorganize the company, and pass a resolution regarding any distribution of profits, including payment of dividends, any sale, transfer, lease or mortgage/pledge of any long-term tangible assets of the company). This provision will be applicable to all companies as of January 5, 2001.

**B. A RESOLUTION REGARDING PROCEDURE FOR SUBMISSION, CONSIDERATION OF APPLICATIONS BY NATIONAL AND FOREIGN BUSINESS ENTITIES FOR ACQUISITION OF TITLE TO PLOTS OF LAND THE INTENDED PURPOSES OF SUCH PLOTS OF LAND BEING OTHER THAN AGRICULTURE AND ISSUANCE OF RELEVANT PERMITS THERETO**

The resolution, adopted December 10, 1998, has enabled the implementation of the Constitutional Law on Acquisition of Title to Plots of Land the Intended Purpose of Such Plots of Land Being Other Than Agriculture enacted on June 20, 1996, which took effect February 2, 1998, i.e., the next day following the effective date of the European Agreement for the Establishment of the Association of European Communities as well as their member countries and the Republic of Lithuania. Land with an intended purpose other than agriculture may be acquired by foreign business entities that, according to their origin, are either from the states belonging to the EU, or the state parties to the European Agreement that have established the association with European communities and member countries of such communities, or from state members of the Organization for Economic Cooperation and Development (OECD) or the North Atlantic Treaty Organization (NATO).

**C. AMENDMENT TO THE LAW ON FOREIGN INVESTMENTS INTO THE REPUBLIC OF LITHUANIA**

This provides that if, after October 1, 1998, an individual invests in a company registered in the Republic of Lithuania with assets of at least 200 mln. Lit (€50 million U.S. dollars), and the investment is made within a period of three years, the Government of the Republic of Lithuania will enter into an investment agreement with the investor at the request of the latter, which provides that no rates of direct taxes, except for the VAT and excise, under tax laws applicable on the date of the investment will be increased for a period of five years,

commencing on the date of the investment. In addition, the government is vested with the authority to extend the above term up to ten years for a strategic investor.

#### D. AMENDMENTS TO THE LAW ON THE PROFITS TAX PAYABLE BY LEGAL PERSONS

As of January 1, 1999, interest received by foreign companies, except for foreign companies registered in tax haven countries or zones with respect to which specific taxation has been prescribed, from legal persons of the Republic of Lithuania and from permanent principal offices in consideration of the services provided thereto is now subject to the withholding tax at a rate of fifteen percent at source. Dividends received by foreign companies from companies of the Republic of Lithuania as well as the dividend received by legal persons of the Republic of Lithuania from other Lithuanian or foreign companies are subject to the profits tax at a rate of twenty-nine percent.

#### E. ANTI-DUMPING LAW

The law, effective July 1, 1998, has been prepared in accordance with relevant regulations adopted by the European Union.

#### F. LAW OF THE REPUBLIC OF LITHUANIA ON LEGAL STATUS OF FOREIGNERS

This law was enacted on December 17, 1998 and took effect on July 1, 1999. It prescribes the procedure for the issuing of permits to foreigners for arrival to and for leaving Lithuania, for temporary or permanent residence in Lithuania, for issue of work permits, and related matters.

### VII. Romania

ANDREW KINGSTON\*

#### A. RATIFYING ROMANIA'S ADHERENCE TO ARRANGEMENTS INSTITUTING AN INTERNATIONAL CLASSIFICATION OF INDUSTRIAL PROPERTY (LAW No. 3/1998)

Through this law, Romania adhered to the Arrangement in Nice, dated June 15, 1957, as revised in Stockholm on July 14, 1967, and Geneva on May 13, 1967, modified on October 2, 1979, regarding the international classification of products and services in view of mark registration, to the Arrangement in Locarno, dated October 8, 1968, regarding the international classification of drawings and industrial models, as revised on September 28, 1979, to the Arrangement in Strasbourg, dated March 26, 1971, regarding the international classification of patents, modified on September 28, 1979, and to the Arrangement in Vienna dated June 12, 1973, regarding the international classification of figurative elements of marks, as modified on October 1, 1985.<sup>8</sup>

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\*Andrew Kingston of Nestor, Nestor, Kingston & Petersen in Bucharest, Romania, prepared the Romania report.

8. Law No. 3/1998 Ratifying Romania's Adherence to Arrangements Instituting an International Classification of Industrial Property, O.M. No. 10, Jan. 14, 1998.

**B. RATIFYING ROMANIA'S ADHERENCE TO THE TREATY REGARDING THE TRADEMARK LAW  
(LAW No. 4/1998)**

This law was adopted in Geneva on October 27, 1994. As of January 14, 1998, the Geneva Treaty on Trademark Law became part of Romania's legislative system.<sup>9</sup>

**C. REGARDING THE LEGAL CIRCULATION OF LAND (LAW No. 54/1998)**

This law sets forth the legal regime for the sale of the land, whether agricultural or non-agricultural land.<sup>10</sup> In addition, it also clarifies another aspect that was in dispute, the fact that any Romanian legal person may own land notwithstanding its shareholding.

**D. BANKING (LAW No. 58/1998)**

This law establishes the conditions that allow a Romanian entity or foreign bank to operate in Romania, describes the activities that may or may not be performed by a bank, and establishes the legal basis by which such Romanian or foreign entities may be licensed by the National Bank to conduct banking activities in Romania.<sup>11</sup>

**E. REGARDING THE BANKRUPTCY PROCEDURES APPLICABLE TO BANKS  
(LAW No. 83/1998)**

This legislation sets forth regulations applicable to the bankruptcy procedure in case of banks authorized to act in Romania.<sup>12</sup> It supplements Law 64/1995 as modified by Government Emergency Ordinance 58/1998 that establishes the bankruptcy procedures for commercial companies.

**F. REGARDING PUBLIC PROPERTY AND ITS LEGAL REGIME (LAW 213/1998)**

In addition to applicable provisions of the Romanian Constitution, this law sets forth the legal regime for the state and local public and private domain, as well as the assets that belong to each domain.<sup>13</sup> In accordance with the Constitution, state and local public property is inalienable.

**G. REGARDING THE CONCESSION REGIME (LAW No. 219/1998)**

This law establishes the general framework for the concession. According to this law, certain assets, activities, and services belonging to state private or public domain may be the subject of concession to Romanian or foreign physical or juridical persons, for a maximum forty-nine year term.<sup>14</sup> The concession may be granted by the Romanian authorities, or autonomous institutions through public auctions or direct negotiations.

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9. Law No. 4/1998 Ratifying Romania's Adherence to the Treaty Regarding Trademark Law, O. M. No. 10, Jan. 14, 1998.

10. Law No. 54/1998 Regarding the Legal Circulation of Land, O.M. No. 102, Mar. 4, 1998.

11. Law No. 58/1998 The Banking Law, O.M. No. 121, Mar. 23, 1998.

12. Law No. 83/1998 Regarding the Bankruptcy Procedures Applicable to Banks, O.M. No. 159, Apr. 22, 1998.

13. Law No. 213/1998 Regarding Public Property and Its Legal Regime, O.M. No. 448, Nov. 24, 1998.

14. Law No. 219/1998 Regarding the Concession Regime, O.M. No. 459 Nov. 30, 1998.

H. FOR THE APPROVAL OF GOVERNMENT EMERGENCY ORDINANCE NO. 92/1997 REGARDING THE STIMULATION OF THE DIRECT INVESTMENT (LAW NO. 241/1998)

At the end of 1997, the Romanian Government issued Government Emergency Ordinance No. 92 regarding the stimulation of direct investment.<sup>15</sup> This Emergency Ordinance establishes the general legal framework of the guarantees and incentives granted for direct and portfolio investments, whether local or foreign, in Romania. The Romanian Parliament, in accordance with the procedure required under Romanian law, approved, with amendments, Government Emergency Ordinance No. 92/1997.

The new regulations define the two types of investments, direct and portfolio, that enable an investment to enjoy certain guarantees and/or benefits. The direct investment is considered to be the contribution to the formation or development of a company, acquisition of shares in a commercial company, except for portfolio investments, or formation and development of a branch in Romania by a foreign commercial company, through (i) financial contribution in national or convertible foreign currency, or (ii) in-kind contribution of tangible and intangible movables and/or immovables, or (iii) participation in the increase of an enterprise's assets by any legal means of financing. A portfolio investment is defined as the acquisition of securities on the organized capital markets, which do not allow the direct participation in the management of commercial companies.

The benefits granted under this law, subject to certain conditions, include but are not limited to custom exemptions, tax exemptions, VAT exemption, reduction of the tax on profit, guarantees against nationalization, guarantees against expropriation, the right to convert the proceeds of the investments into the currency of the investment, and the right to transfer such proceeds abroad.

I. HEALTH INSURANCE EMERGENCY ORDINANCE NO. 30/1998

This regulation modifies Law No. 145/1997 Regarding Health Insurance.<sup>16</sup> The contributions of both the employee and the employer to the health insurance fund have been increased, and as of January 1, 1999, both the employee and the employer will pay seven percent.

J. EMERGENCY ORDINANCE NO. 31/1998 REGARDING THE UNIFICATION OF FUNDS THAT ARE PART OF THE STATE INSURANCE BUDGET

According to this regulation, as of January 1, 1999, the contribution of each employee to the additional retirement fund is increased from three percent to five percent.<sup>17</sup>

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15. Law No. 241/1998 for the Approval of Government Emergency Ordinance No. 92/1997 Regarding the Stimulation of the Direct Investment, O.M. No. 483, Dec. 16, 1998.

16. Emergency Ordinance No. 30/1998 Regarding Health Insurance, O.M. No. 421, June 11, 1998.

17. Emergency Ordinance No. 31/1998 Regarding the Unification of Funds That Are Part of the State Insurance Budget, O.M. No. 419, May 11, 1998.

**K. EMERGENCY ORDINANCE No. 33/1998 REGARDING THE MODIFICATION AND COMPLETION OF GOVERNMENT ORDINANCE No. 3/1992 REGARDING VALUE ADDED TAX**

According to this regulation, the import into Romania of equipment and services, if contributed to a Romanian company registered capital, are exempt from VAT payments.<sup>18</sup>

**L. GOVERNMENT ORDINANCE No. 83/1998 REGARDING TAX ON INCOMES REALIZED IN ROMANIA BY NONRESIDENTS, NATURAL AND LEGAL PERSONS**

This Government Ordinance abrogates Government Ordinance No. 47/1997 and establishes a fifteen percent withholding tax for service and royalty payments to nonresident.<sup>19</sup> In addition, according to this regulation, the one percent withholding tax on interest paid by banks for deposits made by nonresident physical persons is no longer applicable.

**M. GOVERNMENT DECISION No. 361/1998 REGARDING THE APPROVAL OF THE METHODOLOGICAL NORMS RELATED TO THE PRIVATIZATION OF THE COMMERCIAL COMPANIES AND SALE OF ASSETS**

In 1997, the Romanian Government issued Government Emergency Ordinance No. 88/1997 Regarding the Privatization of Commercial Companies that amended the prior privatization law. This government decision clarifies certain aspects of Government Emergency Ordinance No. 88/1997 related to the distribution of shares issued after privatization due to the contribution of land for which title was issued after privatization.<sup>20</sup>

**N. GOVERNMENT DECISION No. 948/1998 REGARDING THE LEVEL OF THE SURTAX FOR GOODS IMPORTED INTO ROMANIA**

This regulation establishes, a customs surcharge of four percent, applicable to all the imported goods until December 31, 1999.<sup>21</sup>

## **VIII. Slovak Republic**

### **PAUL CARRIER\***

By the end of October 1998, a national election ushered in a new coalition government that has made significant efforts to put Slovakia on track with regard to democratization, rule-of-law and transparency issues. In return, Slovakia has been praised by such international organizations as NATO and the European Union, as well as a U.S. congressional delegation, in recent months. While the new government has not had much time for sweep-

18. Emergency Ordinance No. 31/1998 Regarding the Modification and Completion of Government Ordinance No. 3/1992 Regarding Value Added Tax, O.M. No. 432, Nov. 16, 1998.

19. Government Ordinance No. 83/1998 Regarding Tax on Incomes Realized in Romania by Nonresidents Natural and Legal Persons, O.M. No. 315, Aug. 27, 1998.

20. Government Decision No. 361/1998 Regarding the Approval of the Methodological Norms Related to the Privatization of the Commercial Companies and Sale of Assets, O.M. No. 247, July 3, 1998.

21. Government Decision No. 948/1998 Regarding the Level of the Surtax for Goods Imported into Romania, O. M. No. 518, Dec. 12, 1998.

\*Paul Carrier of Squire, Sanders & Dempsey in Bratislava, Slovak Republic, prepared the Slovak Republic report.

ing legal reform, certain laws have been amended or abolished in 1998 by both the former and the present ruling coalitions. Perhaps most telling of the new regime are policy changes that foreshadow significant legal changes to be initiated in the not-too-distant future.

An example of the change in policy is found in the area of privatization. Not only are government instrumentalities seeking to have questionable privatization transactions set aside, but an increasing number of unpaid commitments and loan defaults have occurred which often put shares of privatized companies back into the hands of the Slovak Property Fund. Through this ownership, the fund is able to direct the distribution of shares of formerly state-owned entities. Moreover, by year's end the new government had replaced the governing boards of most strategic, state-owned companies, which include banks and manufacturing concerns, not to mention setting aside for special review a number of privatization decisions made after the national elections of September, but before the new coalition government came into power.

The following are the most important new laws and amendments of a commercial or business nature.

#### A. AMENDMENT TO THE COMMERCIAL CODE (ACT NO. 11/1998 COLL.)

The Commercial Code was amended to change capitalization and valuation requirements of limited liability companies. First, the minimum required amount of registered capital was doubled to 200,000 Sk; the minimum contribution of each participating individual was raised to 30,000 Sk; and the minimum sum of paid-up minimum registered capital prior to proposal for registration of a company was raised to 100,000 Sk. Second, non-monetary contributions are now the subject of a valuation report requirement, with extra valuation requirements for non-monetary contributions in excess of 1,000,000 Sk, where the provider is an enterprise rather than an individual, or where there is a single owner of legal entity establishing a new company. Third, obligations to provide work or services as a contribution to capital are no longer permitted. In addition, the amendment adds the requirement of establishing a reserve fund in the amount of five percent of registered capital at the time of incorporation, with additions thereto from yearly net profits in the amount of at least five percent. These funds are to be kept in a blocked account. Finally, all limited liability companies established before January 1, 1997, were obliged within six months of the effective date to report whether operations were ongoing, and if not, to take steps to wind up the company and to make the appropriate changes in the Commercial Register.

In addition, the law adds new conditions to the establishment of a new limited liability company by a sole shareholder of another, no doubt to prevent the movement of assets from one to the other without satisfying debts. Prior to establishing a new limited liability company, the party seeking establishment must prove that the following have been satisfied: tax and customs liabilities; social, health and pension insurance liabilities; unemployment insurance contributions; and employee salaries.

#### B. THE BANKRUPTCY AND COMPOSITION ACT, AS AMENDED (AMENDMENT 12/1998 TO ACT NO. 328/1991 COLL.)

The Bankruptcy and Composition Act was amended to require business debtors to submit a petition for declaration of bankruptcy or composition with the appropriate court in cases where the debtor is continuously over-indebted for a period of sixty days, with certain exceptions for owners of agricultural or forest land or administrators appointed according

to Act No. 21/1992 Coll., on Banks, as amended. Moreover, this filing requirement subjects any person who is authorized to file on behalf of the debtor (e.g., members of the board of directors) to joint and several liability in favor of creditors for any losses incurred. The amendment does not make clear how the term over-indebted is defined, hence it is not yet certain whether a balance-sheet net worth concept, or a more flexible one taking into account the ability to pay all monthly debts (i.e., positive cash flow), is intended.

C. ACT NO. 45/1998 COLL. AMENDING AND SUPPLEMENTING  
ACT NO. 202/1995 COLL. ON FOREIGN EXCHANGE

This act implemented OECD recommendations and thereby removed foreign currency restrictions for Slovak legal entities. Slovak entities, including local establishments of foreign enterprise, are no longer required to surrender foreign currency in exchange for Slovak crowns. There are still certain reporting requirements for currency exchanges. Moreover, the Act authorizes entities from OECD countries to issue securities in the Slovak capital market.

D. THE PROTECTION OF PERSONAL DATA IN INFORMATION SYSTEMS  
(ACT NO. 52/1998 COLL.)

Completely replacing an old law from 1992, this new law was modeled after several Western European countries' systems and conforms substantially to Directive 97/66/EC of the European Parliament concerning the processing of personal data and the protection of privacy in the telecommunications sector. For example, the new law provides that cross-border flows of personal data may only be effectuated if the country to which the personal data flows ensures a reasonable level of protection based on circumstances such as the nature of the data, the purpose of the data transmission, and the mode of transmission. Furthermore, responsibility for ensuring protection has been expanded to cover more employees of an operator of an information system. In addition, an entirely new organ of government has been established, at least theoretically, to oversee operations of data processors, registration procedures, and qualifications and investigations into possible violations of the law. The newly-created office is to exercise independent judgment and is only bound by acts of Parliament. The appointment of the director of this office is to be made, however, by the Government of the Slovak Republic upon the advice of the Chairman of the Statistical Office of the Slovak Republic. No director has been appointed to this office. Finally, the penalties for violation of the law have been increased significantly for failures to register operating systems and for improper disclosures.

E. CREATION OF THE SLOVAK TRADE LICENSE CHAMBER (ACT NO. 126/1998 COLL.)

Based on the need to protect holders of trade licenses and to support the common interests of such owners, this law establishes the Slovak Trade License Chamber. The law sets forth requirements of membership, as well as creates the operational framework of the Chamber and its competencies.

F. ACT NO. 137/1998 COLL. AMENDING AND SUPPLEMENTING  
ACT NO. 634/1992 COLL. ON CONSUMER PROTECTION

This act emphasizes the duties of producers, exporters, importers, and suppliers, especially those of honesty in the sale of products and provision of services.

## G. AMENDING THE INCOME TAX ACT (ACT NO. 173/1998 COLL.)

The Income Tax Act was amended in response to international hire of labor concerns that include, among other things, treatment of international hires with contractual relations abroad as the employees of a Slovak employer, and therefore subject to local taxation, in cases where the international hire is directed by and must follow the orders of the Slovak person or entity.

## H. ACT NO. 397/1998 COLL. AMENDING ACT NO. 286/1992 COLL. ON INCOME TAXATION

Effective January 1999, fees paid as compensation for activities as members of a board of directors or supervisory board to individuals and business entities are no longer subject to a twenty percent withholding tax but are included as part of the standard tax base. Moreover, business depreciation for purchased or leased personal motor vehicles that are not connected to the primary business of the deprecator is now limited. License fees, rent and other business service expenses (e.g., accountancy, marketing, and legal services) may be considered deductible business expenses only where they have been paid. Finally, the purchase price of radios, televisions and recording and production equipment is no longer deductible unless directly connected to the nature of the business activity.

## I. GOVERNMENT ORDER NO. 192/1998 COLL. ON CONDITIONS FOR EXEMPTION OF NEWLY-CREATED TAX ENTITIES FROM INCOME TAXATION

This order provides for an income tax exemption in favor of entities founded by non-Slovaks in the form of joint-stock companies with a single foreign owner, for a limited period of time and subject to certain conditions, including an investment of at least 1 billion Slovak crowns (approximately \$28,500,000 U.S. dollars) into investment property used for production of goods in the Slovak Republic. Other requirements include fully paid-up capital at the time of registering shares, a five percent average increase in production, and export of the products in excess of ninety percent. Transfer of shares therein may also be made only by approval of the appropriate state body. The tax holiday is for ten subsequent taxation periods. The intention is to attract foreign direct investment to the Slovak Republic and to boost exports. Other conditions include fully paid-up capital and agreement not to issue any bonds during the period of the tax exemption.

J. NOTICE OF THE MINISTRY OF FOREIGN AFFAIRS OF THE SLOVAK REPUBLIC  
No. 215/1998 COLL. CONCLUDING OF A TREATY ON TRADEMARK RIGHTS

This notice officially recognized Slovakia's participation in a trademark treaty, which was signed in Geneva on October 27, 1994, and took effect on July 9, 1997. Pursuant to the treaty, and this official notice, trademarks for goods and services that are filed with the appropriate government office of each country are recognized and honored in all other member countries.