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Daniel F. Visoiu

David Falada

Petr Kotab

Irena Frydova

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Central European Law

DANIEL F. VISOIU, JUDR. DAVID FALADA, JUDR. PETR KOTÁB, MGR. IRENA FRÝDOVÁ, MR. DAVID K. JACOBS, MARTINA LAPŠANSKÁ, TYNEL ANDRZEJ, DR. GUSZTÁV BACHER, ALINA COBUZ-BĂGNARU, KALINA STOYMIROVA TCHAKAROVA, STANISLAVA ANTONOVA KOUYOUMDJIEVA, DR. NATALIJA PERIĆ, DRAGAN KARANOVIC, DEJAN NIKOLIC, PATRICIA GANNON, ALES LUNDER, MR. KERIM KARABDIĆ, DAGNIJA LIBANE, RAYMOND SLAIDINS, KRISTINE LAZDINA, EUGENIJA SUTKIENE, MR. RAINO PARON, MS. TRIIN FROSCH, STAVROS CLERIDES, NICOS NEOPHYTOU, AND GEOFFREY MAGISTRATE*

The 2001 Year-in-Review report will cover: (I) Czech Republic, (II) Slovakia, (III) Poland, (IV) Hungary, (V) Romania, (VI) Bulgaria, (VII) Croatia, (VIII) Serbia, (IX) Slovenia, (X) Bosnia and Herzegovina, (XI) Latvia, (XII) Lithuania, (XIII) Estonia, and (XIV) Cyprus.

The Central European Law Committee would like to thank all the participating law firms and attorneys, as indicated in each country's 2001 legislative report.

*Daniel F. Visoiu, Associate, Moquet Borde & Associés—Szecskey Law Firm, and Co-Chair of the Central European Law Committee of the American Bar Association Section of International Law & Practice organized and edited this article, with the able assistance of individual country authors. Mr. Visoiu also co-authored the section on Hungary. Judr. David Falada, Judr. Petr Kotab and Mgr. Irena Frýdová, attorneys with Altheimer & Gray, Prague, prepared the section on the Czech Republic. Mr. David K. Jacobs and Martina Lapšanská, attorneys with the Squire, Sanders & Dempsey L.L.P. office in the Slovak Republic city of Bratislava prepared the section on Slovakia. Tynel Andrzej of Baker & McKenzie prepared the section on Poland. Dr. Gusztáv Bacher and Daniel F. Visoiu of Moquet Borde & Associés—Szecskey Law Firm prepared the section on Hungary. Alina Cobuz-Băgnaru of Cobuz & Associates prepared the section on Romania. Kalina Stoymirova Tchakarova, Senior Associate, and Stanislava Antonova Kouyoumdjieva, Associate, with Djingov, Gouginski, Kyutchukov & Velichkov prepared the section on Bulgaria. Dr. Natalija Perić of the Weiss Tessbach Law Firm prepared the section on Croatia. Dragan Karanovic, Dejan Nikolic, and Patricia Gannon, Partners in the Karanovic & Nolic Law Firm, prepared the section on Serbia. Ales Lunder, Partner, Thorn & Lunder, Ljubljana, prepared the section on Slovenia. Mr. Kerim Karabdić of the Karabdic Law Firm prepared the section on Bosnia and Herzegovina. Dagnija Libane, Raymond Slaidins, and Kristine Lazdina of Klavins, Slaidins & Loze prepared the section on Latvia. Eugenija Sutkiene of Jaskutelis, Sutkiene & Masiokas prepared the section on Lithuania. Mr. Raino Paron and Ms. Triin Frosch of Raidla & Partners prepared the section on Estonia. Stavros Clerides, a partner with the firm Ergoserve Consulting Limited and Clerides & Co., and Nicos Neophytou and Geoffrey Magistrate, associates with the firm Ergoserve Consulting Limited in Limassol prepared the section on Cyprus.

I. Czech Republic

Set forth below is a list of the most important commercial and commerce-related legislation and regulations enacted or issued in the Czech Republic during 2001 (or taking effect on January 1, 2001), in the order published in the Collection of Laws (Coll.). All acts of Parliament, decrees of the Government and Ministries, and certain holdings of the Constitutional Court are numbered from the beginning of each year, and are published in general chronological order in the Coll. The citations refer to the assigned number and the year.

A. COMMERCIAL LEGISLATION UPDATE

1. *Commercial Code*

- *Act No. 370/2000 Coll., amend. to Act No. 513/1991 Coll., the Commercial Code, effective Jan. 1, 2001.* The aim of this amendment is to (1) adapt the Czech legal regulation of commercial law to European standards, (2) fill in vacancies of the Commercial Code, (3) remove unclearness and interpretation problems that arise in the practice, and (4) strengthen security and transparency of business in general. This amendment mainly affects corporate issues of business companies and issues related to the Commercial Register (a public registry maintained by the court of jurisdiction over the seat of a company in which the company must be recorded in order to establish itself as a legal entity).
- *Act No. 501/2001 Coll., the Technical Amend. to Act No. 513/1991 Coll., the Commercial Code.* The main aim of this act is to (1) remove the legislative-technical mistakes that originated in the previous extensive amendment to the Commercial Code (referred to above) and (2) remove the interpretation problems that originated as a result of misunderstandings of some of the provisions of the Commercial Code especially by the state authorities.

Modifications introduced by both amendments are numerous. The following modifications may be viewed as the most significant for entrepreneurs or as having the greatest effect on the day-to-day conduct of businesses:

- The Commercial Code specifically defines an enterprise as a unit of items (things) and rights, the *universitas rerum*. Therefore, its legal relations shall be subject to provisions concerning things in the legal meaning. As a consequence, for example, an enterprise may now be pledged.
- The amendments introduced a strict prohibition against (1) abuse by a majority or a minority holder in a business company or (2) any conduct that is intended—by means of malpractice—to be detrimental for some of the company's members or shareholders.
- The conditions for establishing new business companies are stricter. For example, the amount of minimum registered capital has been increased significantly.
- New regulations concerning holdings have been introduced. A holding is a grouping where one or more entity's subject to common management by another entity, or a grouping of the controlling and controlled entities. There are two types of holdings—contractual and factual. A contractual holding originates on the grounds of a controlling agreement, which itself is a new type of contract. A factual holding may be established even without a particular contract.
- The new regulations also introduced four ways to transform a business company, namely (1) merger (by acquisition or by formation of a new company), (2) transfer of business assets to a sole shareholder, (3) division, or (4) change in the legal form.
- Finally, the amendments now permit a pledge of the ownership interest in a limited liability company, thus adding a new security instrument.

2. Other Legislation

- *Act No. 367/2000 Coll., amend. to Act No. 40/1964 Coll., the Civil Code, effective Jan. 1, 2001.* This act, *inter alia*, regulates consumer contracts and pledge rights.
- *Act No. 321/2001 Coll., on Certain Conditions of Consumer Credit Negotiation.* This act provides for terms and conditions of a contract under which a consumer loan is granted.
- *Act No. 120/2001 Coll., on Bailiffs.* This act establishes the profession of private bailiffs and the activities of these bailiffs in the execution proceedings. A bailiff is a natural person, authorized by the state, independent in his profession, who executes the execution titles according to the bailiff procedure. The Bailiffs Act leads to a better, faster, and more effective assertion of rights and practical enforcement of the legal claims of creditors. It strengthens, therefore, the position of creditors in general.

B. CORPORATE/SECURITIES

1. Securities

- *Decree of the Ministry of Finance No. 82/2001 Coll.* This decree provides for new legal requirements in the content of a prospectus, establishing the minimum obligatory content of securities prospectus and reduced securities prospectus.

2. Antitrust

- *Act No. 143/2001 Coll., on Protection of Economic Competition.* This act has completely replaced the previous legislation. In particular, it prohibits and invalidates (with certain exemptions) all agreements among competitors, resolution of entrepreneurs' associations, and concerted practices by competitors, which result or may result in a distortion of the economic competition. This act differentiates between vertical and horizontal agreements (distorting competition). It further establishes a publicly accessible Cartel Register where all agreements granted an exemption are listed. This act considerably changes the regulation of amalgamation of competitors' enterprises. The duty to apply for office approval, for example, is based on the amount of turnovers of joining competitors and not on the market share—the basis used in the previous legislation.

C. PUBLIC INTEREST

1. Human Rights

- *Act No. 273/2001 Coll., on the Rights of the Members of National Minorities.* This act regulates both the rights of the members of national minorities and the powers and responsibilities of the Ministries and other bodies of state administration.

2. Public Procurement

- *Act No. 142/2001 Coll., amend. to Act No. 199/1994 Coll., the Public Procurement Act.* This amendment, *inter alia*, increases the financial thresholds necessary to organize a public tender.

3. Electronic Signature

- *Gov't Decree No. 2001 Coll., for the Execution of Act No. 227/2000 Coll., the Act on Electronic Signature.* This decree obligates public bodies to accept technical provisions in order to accept applications in electronic form.

4. *Public Collections*

- *Act No. 117/2001 Coll., on Public Collections.* This act establishes the conditions under which to organize a public collection.

D. MISCELLANEOUS

1. *Health Matters*

- *Act No. 407/2001 Coll., amend. to Act No. 167/1998 Coll., the Act on Addictive Substances.* This amendment improves the preceding regulations for those who use and work with addictive substances.

2. *Broadcasting*

- *Act No. 37/2001, amend. to Act No. 483/1991 Coll., the Act on Czech Television.* This amendment changes the constitution of Czech television's corporate bodies.
- *Act No. 231/2001 Coll., on the operation of the radio and TV broadcasting.* This act regulates the rights and duties of persons (both legal and natural) active in broadcasting.

3. *Environment*

- *Act No. 100/2001 Coll., the Environment Impact Assessment Act, effective as of Jan. 1, 2002.* This act regulates notification of any activities that may have an impact on the environment, and sets forth the content and extent of the documentation required in connection therewith.
- *Act No. 185/2001 Coll., on Wastes.* This act is compatible with the European legislation and is effective January 1, 2002. The Waste Act stresses the prevention of creating waste and supports its preferential usage before clearing. A number of subsequent decrees regulate related issues (i.e., dangerous characteristics of waste or types of waste).
- *Act No. 254/2001 Coll., on Water Protection.* This act is compatible with the European legislation and is effective January 1, 2002. The Water Protection Act regulates the waters (both surface and subterranean) in relation to the environment.

4. *Employment/Social Security/Health Insurance*

- *Gov't Decree No. 178/2001 Coll., on the Conditions for the Protection of Employees at Work.* This decree defines work condition risk factors.

5. *Taxation*

- *Act No. 141/2001 Coll., and Act No. 262/2001 Coll., amend. to Act No. 587/1992 Coll., the Act on Consumer Taxes.* These amendments increase the tax rate of most products and unify the regime of tobacco products—creating a combined scheme of taxation. The tax is calculated according to the number of items, amount of tobacco, and price. It follows, therefore, that tobacco products prices are fixed based on the amount of tax paid. The tax refund claim, likewise, is more precisely.

6. *Banking/Insurance*

- *Act No. 319/2001 Coll., amend. to Act No. 21/1992 Coll., the Act on Banks.* This amendment improves the insurance condition of deposits in banks—the insurance is increased to EUR 25,000.
- *Act No. 482/2001 Coll., amend. to Act No. 219/1995 Coll., the Foreign Currency Act.* This amendment removes another limitation to the free movement of capital. It establishes conditions for a foreign legal entity to transact business by permitting foreign legal entities that have

an enterprise or organizational component on the territory of the Czech Republic to purchase or own real estate, without establishing a full subsidiary in the Czech Republic.

II. Slovakia

The year 2001 was a busy year in the Slovak legislature. A number of important new laws came into existence and existing laws were subject to important amendments. In many cases, the legislative process was undertaken with a view to bringing Slovak legislation in line with European Union (EU) directives in keeping with Slovakia's aspirations of joining the EU. Below are some of the changes in Slovak law during 2001.

- *Act No. 500/2001, Amend. to Act No. 513/1991 Coll. on the Commercial Code.* One of the biggest changes took place on October 3, 2001 when Parliament significantly overhauled the Commercial Code with a goal to harmonizing it with the commercial codes of EU countries. The most significant changes concern (1) establishing joint stock companies and limited liability companies and (2) limiting ownership of corporations by physical persons and other companies, as well as the liability of owners and managers. Of particular interest are the public reporting requirements that require public access to financial and charter information.
- *Act No. 483/2001 Coll. on Banking and Act No. 149/2001 Coll., amend. and supp. to Act No. 566/1992 Coll. on the National Bank of Slovakia.* In the banking area, a new Banking Act was approved by Parliament and became effective on January 1, 2002. In addition, the Act on the National Bank of Slovakia (NBS) was amended. These new laws attempt to harmonize regulation of the central bank with EU law. These amendments strengthened the authority of the NBS to supervise banks and eliminated the role of the Ministry of Finance in banking supervision except in the case of state banking institutions. In the amendments, the NBS lost the authority to state minimum and maximum interest rates with respect to deposits accepted by, and credits granted by, banks, but gave the NBS more authority in maintaining currency stability.
- *Act No. 566/2001 Coll. on Securities and Investment Services.* A new act on securities and investment services has replaced the old act on securities, Act No. 600/1992 Coll. National Council of the Slovak Republic approved this act on November 9, 2001. The act came into effect on January 1, 2002, with the exception of particular sections that have transitional periods or expressly postpone effectiveness until the Slovak Republic joins the EU. This new act was designed to harmonize Slovak capital market legislation with EU directives. One aim of the new act is to improve the protection of clients and investors from brokers' actions in the capital market. Capital adequacy minimums were expressly established for security brokers, which must be monitored by an established financial market office. Brokers' clients are to be protected by an investment guarantee fund, which shall provide indemnification in case a relevant broker fails to fulfill his or her obligations to the clients.
- *Act No. 397/2001 Coll.* In the credit market, the Bankruptcy Act and Act on Protection of Bank Deposits were amended in response to a decision of the Slovak Supreme Court, which ruled that the Bank Deposit Protection Fund (Fund) might not apply in bankruptcy proceedings for the collection of debts of bankrupt banks. Previously, the Fund was required to protect the bank deposits of citizens, but could not seek indemnification from the effected bank in a bankruptcy proceeding. Under the amendments, the Fund will be able to do so.
- Under the *Act on Financial Market Supervision* approved on December 11, 2001, an office of financial market supervision will replace the current financial market office. Market participants, rather than the state, will finance this new supervisory agency. However, the state (in particular the Finance Minister) will still have significant influence in naming the office board. The government will have the right to name the chief of the office based on a proposal from the Finance Minister, and the chief will then nominate three out of the five board members. Please note, however, that these changes have not been officially published.

- *Act No. 136/2001 Coll. on the Protection of Economic Competition and Act No. 347/1990 Coll. on Organization of Ministries and other Central Authorities of State Administration of the Slovak Republic, as amended.* On May 1, 2001, Slovakia replaced its Act on Protection of the Economic Competition—the antimonopoly law. The new act regulates the authority and organization of the Antimonopoly Office of the Slovak Republic. It increased the turnover threshold of parties to a concentration from SKK 300 million to SKK 500 million for the purpose of subjecting a transaction to Antimonopoly Office supervision. Supervision is also triggered when the turnover of individual participants exceeds SKK 150 million (up from the previous SKK 100 million) or when the market share thereof exceeds 25 percent (as opposed to the previous 20 percent). The relevant definitions for considering joint turnover were also amended and the definitions of economic groups further refined. The new law contains new regulations regarding the unlawful restriction of competition and the abuse of a dominant position in the market. Under this act, agreements evidencing collusive behavior through coordinated offers in a public procurement process are also prohibited.
- *Act No. 238/2001 Coll. on Customs and Act No. 239/2001 on Mineral Oils Excise Taxes.* On July 1, 2001, a new Customs Act came into effect with a view to implementing EU customs standards. This act addressed customs procedures, warehouse storage, and transit of goods. It also addressed fines for violations and modifies confiscation procedures. The new act cancelled the flat rate guarantee. This law also gave customs offices the authority to exempt goods from customs security in the case where the customs fee does not exceed SKK 20,000. Customs offices may fully exempt goods for a period of three months from customs duty if the goods have a customs value of less than SKK 160,000.
- *Act No. 524/2001 Coll. on Value Added Tax.* In a change also affecting international trade, the government approved a decree on the range and ways of refunding value added tax. The Value Added Tax Act became effective on January 1, 2002 and introduced tax refunds for items of a non-commercial nature with a value exceeding SKK 5,000 intended for export
- *Act No. 279/2001 Coll. and Act No. 455/1991 Coll., as amended.* In an effort to ease the burden of starting a new business, effective as of September 1, 2001, a new amendment to the Trade Licensing Act, among other things, reduced the number of state regulated trades. The amendments also reduced the number of days for issuing a concession deed by the Trade Licensing Office from sixty days to thirty days. It also broadened the list of categories of entrepreneurs who can apply for flat-rate income tax with a view toward simplifying the accounting and tax burden of small businesses.
- *Act No. 311/2001 Coll. on the Labor Code.* The new Labor Code became effective on April 1, 2002. It contains sweeping changes to the communist-inspired Labor Code in force for the past thirty-five years. This law was of significant interest to the business community. The new Labor Code establishes the fundamental rules that govern the relationship between employers and employees with a view to strengthening the freedom of contract in labor relations. A few employee-centered restrictions survived—the minimum number of vacation days is twenty days and the maximum working hours per week is forty.
- *Act No. 258/2001 Coll. on Consumer Credits.* A new Act on Consumer Credits was approved to regulate credit transactions with consumers. This act does not cover short-term credits (less than three months or fewer than four installments in less than twelve months). Consumer credit may be provided in the form of deferred payment, loan, or other legal form. This act became effective as of October 1, 2001 and also regulates the disclosure of interest rates and other credit costs.
- *Act No. 147/2001 Coll. on Advertising and on Change and Amend. of Certain Acts.* In other consumer-related legislation, in May 2001 a new Act on Advertising came into force. A critical change in this new act was to remove the concept of comparative advertising from the prior definition of unfair competition. Now, comparative advertising—that is, advertising that, directly or indirectly, names another competitor and its products or services and com-

compares the features of such products or services with those of the advertiser—is allowed under certain circumstances. This new advertising act permits advertising of alcohol products (under certain restrictions), which, except for beer, has not been previously allowed. The promotion of tobacco products is still illegal, including the distribution of tobacco samples in public and promotional advertising in most (but not all) non-smoking related newspaper and magazine articles. This act further addresses such topics as advertising of pharmaceuticals, infant nutrition, and guns and ammunition.

- *Act No. 276/2001 Coll. on Regulation in Network Industries.* Significant developments in the energy sector occurred in preparation for the privatization of energy companies in the Slovak Republic. An independent Regulatory Office for Network Industries (RONI) was created under a new Act on Regulation in Network Industries (defined as those industries engaged in the generation, purchase, transit, and distribution of electric power; the production, purchase, transit, and distribution of gas; and the production, purchase, and distribution of heat). RONI assumed powers previously performed by the Ministry of Economy and Ministry of Finance. For entities subject to this regulation, RONI will make decisions on tariffs and other performance criteria, rights, and responsibilities. This act became effective on August 1, 2001, except for certain provisions that will come into effect on January 1, 2003.
- *Act No. 223/2001 Coll. on Waste.* In May, the parliament passed a new Act on Waste, again with a view to harmonize legislation with EU norms. This new act made important changes in environmental legislation, such as granting municipalities the right to impose fines on individual citizens who do not comply with waste disposal regulations. Beginning in 2008, this act bans production, import, and use of PVC-made materials. It also addresses recycling, a topic near and dear to environmentalists, by imposing on producers and importers of certain recyclable goods the obligation to contribute to a Recycling Fund (yet to be established) in amounts (yet to be established) set by the decree. This act took effect on July 1, 2001, however, the Recycling Fund started operations as of January 1, 2002.
- *Act No. 193/2001 Coll. on Subsidy to Establish Industrial Parks and Act No. 180/1995 Coll. on Certain Measures to Settle Ownership to Lands, as amended.* The Act on Subsidy to Establish Industrial Parks came into effect on June 1, 2001. This act regulates conditions for obtaining subsidies for establishing industrial parks and defines the authority of the state administrative agencies in granting and controlling the use of subsidies. A municipality can obtain, under specific conditions, a state subsidy of up to 70 percent of the costs of establishing an industrial park—defined as a territory established as such by a municipal plan and in which industrial production of at least two entrepreneurs are concentrated—such as costs related to preparing the terrain, constructing the buildings, expropriation compensation, costs to purchase, lease, or convey such land, and other expenses.
- *Act No. 448/2001 Coll. on the Arbitration Act.* The Arbitration Act was enacted to address alternative dispute resolution. This act specifies the duties of the arbitrator, contains procedural rules, and was designed to make the arbitration proceeding easier in the Slovak Republic. It also amends some articles of the Act on Commercial Lawyers relating to arbitration. This act was approved on October 4, 2001 and came into effect fifteen days after its publication.
- *Act No. 435/2001 Coll. on Patents, Supplementary Protective Certificates, and Amendments of Other Acts.* This new Patent Act, effective as of November 1, 2001, was passed by Parliament on October 4, 2001. It attempts to harmonize Slovak and EU legislation and contains regulations on the conditions and protection of patents.

III. Poland

In the years 1989–1990, Poland's political and economic system underwent a transformation involving many social, political, and economic reforms, and above all substantive changes to the law. The changes in the social and political areas required substantial revision

of the entire legal system. These changes were a consequence of the introduction of many democratic and free-market institutions. The social and economic transformation of Poland has affected all areas of life. Polish law is rapidly changing, with EU integration being the main goal of Polish foreign and domestic policy. In 2000 and 2001, the Polish Parliament adopted approximately 150 laws designed to harmonize the Polish legal system with EU regulations. Due to Poland's determination to join the EU in the year 2003, further rapid development of the Polish legal system is expected. Below are the most important developments recently adopted within the basic fields of Polish law.

A. AMENDMENTS TO THE CIVIL CODE (JOURNAL OF LAWS 2000, No. 74, ITEM 857)

1. *Agency Contract*

As of December 9, 2000, a new agency agreement is defined in the Polish Civil Code. In line with the contract of agency, the person accepting the mandate (the agent) must solicit, for remuneration (the commission), conclusion contracts with clients, or must conclude such contracts for the benefit of the principal. The agent has to act within the scope of his business, i.e., agents are independent and should be registered as individual entrepreneurs. If the contract does not specify otherwise, the commission due to the agent should be of the amount commonly accepted in relationships of this type in the area of the agent's activity. Additionally, the agent may demand a commission for the contracts concluded by a principal as a result of the agent's activities. Moreover, if the agent has been granted the exclusive right to represent the principal with respect to a designated group of clients or a geographical area, he may also demand a commission for a contract concluded without his participation. The mandatory termination periods of the agency agreement are as follows: One month for up to one year of service, two months for more than one year of service, and three months after three years of service.

2. *Leasing Contract*

As of December 9, 2000, leasing is defined and regulated by the Polish Civil Code. Leasing is an agreement between the financing party acting within its business activity, and the user. The financing party is obliged to acquire an object from the seller and lease this object to the user. The user is obliged to pay installments equal to the acquisition price or a fee for the acquisition of the object by the financing party throughout the period of the agreement. The Civil Code provides for particular obligations of the parties, e.g., mandatory obligations of the parties and the conditions of termination of the agreement.

B. CORPORATE LAW

- *New Commercial Companies Code (Journal of Laws 2000, No. 94, Item 1037)*. The new Commercial Companies Code of 2000 (Commercial Code), effective as of January 1, 2001, generally replaced the Commercial Code of 1934. The new Commercial Code governs the formation and operation of companies according to contemporary business relations. Certain retained provisions of the Code of 1934 regulating business names and commercial representation, *prokura*, are expected to be changed in the near future. In particular, as a result of the implementation of the Commercial Code, a new type of company has been established—the limited joint stock partnership. The Commercial Code also establishes new definitions of controlled and controlling companies. The minimum share capital was raised from PLN 4,000 to PLN 50,000 in a limited liability company, and from PLN 100,000 to PLN 500,000

in a joint stock company. The above rule applies to newly established companies. Companies already in existence are obliged to increase their share capital in compliance with the new standards by the end of 2005. Meanwhile, limited liability companies should increase their share capital to PLN 25,000, and joint stock companies to PLN 250,000 by the end of 2003.

- *The Act on the National Court Register (Journal of Laws 2001, No. 17, Item 209)*. The National Court Register (NCR), which exists as of January 1, 2001, replaced the old court registers. The NCR's business entity register is the countrywide software database, in which business entities, entrepreneurs, are registered. Entities entered in the former commercial register are obliged to apply for entry into the NCR business entity register by December 31, 2003. This registration is free of charge. The old commercial registers will operate until all existing entries are transferred to the NCR. All existing entries made on the basis of the previous regulations are valid until they are registered in the NCR.

C. ENVIRONMENTAL AND WATER LAW

- *The Act of Apr. 27, 2001, the Environmental Law (Journal of Laws 2001, No. 62, Item 627)*. This act, effective as of October 1, 2001, introduces a new framework for Polish environmental regulations, including a new contaminated land regime. This new Environmental Law makes the person controlling the surface of the land (the owner or in some cases the occupier of the land) liable. It also includes stringent enforcement instruments and establishes binding soil standards. The current owners/occupiers of the land must report the contamination of their land by June 30, 2004. If they prove that they did not cause the contamination, they will not be obliged to finance the clean up.
- *The Act of Apr. 27, 2001, the Waste Act (Journal of Laws 2001, No. 62, Item 628)*. This act, effective as of October 1, 2001, replaces the old Waste Act. In EU countries, about 50 percent of waste is reprocessed. In Poland, only a small percentage of waste is reprocessed. The new Waste Act defines the rules for handling waste in more detail. Waste may only be stored if other solutions are impossible for technological or economic reasons. An entity in possession of waste is obliged to reuse or recycle waste. If this is impossible, such waste should be neutralized in a manner that complies with environmental protection requirements. The permit requirement has been extended to cover recipients of non-hazardous waste. This new Waste Act introduces stricter measures of enforcement and may result in increased investments in waste management infrastructure.
- *The Act of June 7, 2001, on Water Supply and Sewage Discharge (Journal of Laws 2000, No. 72, Item 747)*. This act, effective as of January 14, 2002, introduces significant changes with respect to the operation of water-sewage companies. Under this act, water companies are to set tariffs according to a cost model, on the basis of minimum income levels. The act introduces a new mechanism to finance investments in the modernization of water-sewage infrastructure. The municipality is to direct such development through the local zoning plan. The water companies, in addition, are to prepare long-term development plans to be the basis for setting the rates charged for the companies' services. This act aims to increase private investments in the water-sewage infrastructure.

D. NEW PHARMACEUTICAL LAW

Poland is currently introducing a set of laws to govern various aspects of business in the pharmaceutical sector. The set consists of the following acts: the Pharmaceutical Law, the Law on Medical Products, and the Law on the Office for Registration of Medicinal Products, Medical Products, and Biocidal Products. The new acts cover, among other things, the problems of registration of drugs, licensing of drug production and their wholesale, as

well as the setting up of pharmacies. In addition, they contain rules for the advertising of pharmaceuticals. These new laws were due to come into force on January 1, 2002. The Parliament postponed that date by three months. This new legislation is an important step in the harmonization of the Polish legal system with that of the EU. Certain provisions of the Pharmaceutical Law will enter into force the moment Poland becomes a member of the EU. This concerns, among others, rules on recognition of drug registration made in the EU.

Poland also introduced a new Act on Prices at the end of 2001. This act covers, among others, fixing official prices for certain pharmaceuticals. It also sets the official maximum margin for sales of drugs subject to the system of refunds of costs of drugs by the so-called patients' funds.

E. MERGER CONTROL LAW

- *New Competition Law, Act on Protection of Competition and Consumers dated Dec. 15, 2000, (Journal of Laws 2000, No. 122, Item 1319).* The Act on Protection of Competition and Consumers, effective as of April 1, 2001, governs Polish merger control law. This act provides for mandatory filings in several types of transactions, monetary thresholds for merger notification, and territorial scope criteria. Foreign mergers are subject to Polish merger control if they have, or may have, an effect on the Polish market.

There are six categories of transactions that require prior notification of the AMO: (1) mergers of undertakings, (2) creation of a joint venture, (3) taking of control of another undertaking, (4) acquisitions of shares that confer at least twenty-five percent of the voting rights at the shareholders meeting of the company, (5) performance by the same individual of a function on the management board or on the supervisory board in competing undertakings, and (6) acquisitions of shares by a financial institution, provided that the total worldwide annual turnover of the undertakings concerned (including their parent companies and subsidiaries) exceeded EUR 50 million in the year preceding the year of the notification. Notification, however, is not required if the shares are acquired with the intention to resell them within one year, provided no voting rights are exercised.

No prior notification of the AMO is required provided that, *inter alia*: (1) the target company did not generate turnover of more than 10 million EURO in Poland in either of the two years preceding the year of notification, (2) the joint market share of the undertakings concerned does not exceed twenty percent, or (3) the undertakings concerned are controlled, directly or indirectly, by the same entity.

F. PUBLIC TRADING

- *Public Trading in Securities, Investments Funds and Bonds, the Act on Public Trading in Securities of Aug. 21, 1997, (Journal of Laws 2000, No. 122, Item 1315).* On December 8, 2000, the Act on Public Trading in Securities was amended. The basic objective of the amendments was to bring the Polish capital market regulations in line with those of the EU. Most of the changes are effective as of January 15, 2001; some of them will enter into force when Poland becomes a member of the EU. The most significant changes include, among others: (1) mutual recognition rule—i.e., the Polish prospectuses, offering circulars, and admissions to public trading that meet the requirements of an EU Member State will be recognized in all EU Member States; (2) single passport rule—licenses and consents for brokerage activities

issued in a EU Member State will be recognized in Poland; (3) changes to the structure of the securities markets in Poland—creation of official and non-official markets; (4) introduction of rules governing cooperation between EU Member States regarding supervision of securities markets and transfer of information; (5) creation of a Mandatory Guarantee Fund for the protection of investors in the event of bankruptcy of a brokerage house; (6) changes to disclosure obligations of investors concerning the acquisition of significant blocks of shares; (7) some stock option plans were excluded from the scope of public trading within the meaning of this act; and (8) introduction of a statutory definition of qualified institutional buyers.

G. BANKING LAW

- *Amends. to the Banking Law (Journal of Laws 2001, No. 111, Item 1195).* On August 23, 2001, the Polish Parliament passed important amendments to the Banking Law, aimed at implementing EU Directive No. 2000/12/EU, dated March 20, 2000. The first group of amendments, effective as of January 6, 2002, covers the following issues: Electronic methods of communication, administrative control over stocks in banks and more restrictive requirements for promoters of new banks, forming new banks and forming bank subsidiaries abroad, new regulation of branches of foreign banks in Poland, settlements, as well as a new structure for banks' own funds, and new prudential supervision requirements. The second group of amendments is directly connected with Poland's expected entry into the EU and covers the following issues: New rules for EU credit institutions conducting their activities in Poland and supervision of their activities, supervision on a consolidated basis, transborder transfers, and the scope of information the Polish Banking Supervision Commission is obliged to supply to the European Commission.
- *Amends. to the Mortgage Act (Journal of Laws 2001, No. 63, Item 635).* This act, effective September 22, 2001, introduced a number of changes aimed at clarifying rules for court proceedings and mortgage regulation. In particular, the act allows contractual joint mortgages, as well as mortgages in foreign currencies, to be established.
- *The new Act on the Prevention of Money Laundering (Journal of Laws 2000, No. 116, Item 1216).* This act of November 16, 2000, on the counteraction of introducing property values coming from illegal or concealed sources into financial trading, which came into force on June 23, 2001, is aimed at implementing Directive 91/308/EEC of June 10, 1991, on the prevention of money laundering. This act obliges several financial institutions to register all transactions with a value exceeding EUR 10,000, as well as the names of the parties to such transactions and their beneficiaries. It also provides for the setting up of the General Inspector of Financial Information, which deals with the prevention of money laundering in Poland.

H. LABOR LAW

- *Working Time (Journal of Laws 2001, No. 28, Item 301).* The working time limits, formerly forty-two hours per week, have been reduced. Currently, working time may not exceed eight hours per day and average forty hours in a five-day workweek within an adopted accounting period of not longer than three months. The amendment provides for a transitional period and, until the end of 2002, the maximum weekly limit is forty-one hours per week. The five-day workweek should be treated as an average one, which means that employees may work for six days in one week and for four days in another week, provided that they do not exceed the average of five days per week in an adopted accounting period. A legal holiday falling on a day other than Sunday results in the reduction of the number of working days and hours.
- *Discrimination Ban (Journal of Laws 2001, No. 128, Item 1405).* As of January 1, 2002, an employee who has been discriminated against will have the right to demand compensation

of 4,560 zł. (USD 1,100) from the employer. This amendment of the Labor Code introduced a detailed definition of the rule against discrimination at work. This rule applies in particular to recruitment and remuneration policies as well as employees' access to training. Employers will not be able to make specific requirements regarding the age and/or sex of candidates when recruiting new employees.

- *Transfer of Employees—Mandatory Consultations with Trade Unions* (*Journal of Laws 2001, No. 128, Item 1405*). As of January 1, 2002, an employer is obliged to consult with trade unions operating in the company concerning the transfer of employees at least thirty days prior to such transfer. A transfer made without consultations with trade unions' will be valid. However, managers who fail to comply with the above provisions will be personally liable for a fine or the penalty of restricted freedom.

I. IMMIGRATION TO POLAND

- *Amends. to the Act on Foreigners* (*Journal of Laws 2001, No. 28, Item 301*). As of July 1, 2001, amendments to the Act on Foreigners came into force in Poland. As a general rule, Visitor and Working Visas may be issued for a period of up to three months and may be extended for an additional three months. Residents of countries with which Poland has a non-visa movement treaty may remain for ninety days with a valid passport and then obtain a visa for an additional ninety days.

A Temporary Residency Card is required for any stay in excess of six months. A foreigner has to prove the existence of circumstances to justify his residency in Poland. A Temporary Residency Card may be issued for a period of up to two years and may be extended for subsequent periods of up to two years. The total period of stay on the basis of Temporary Residency Cards is not limited.

A Permanent Residency Card may be granted to a foreigner who, immediately before submitting an application, has resided in Poland for at least five years on the basis of a Visa or Temporary Residency Cards. The advantage of a Permanent Residency Card is that a work permit is not needed.

Strict deadlines for submitting applications to obtain or extend Visas and Residency Cards have been imposed. Such deadlines include: extension of a visa—fourteen days before the expiration of the current visa; issuance or extension of a Temporary Residency Card—forty-five days before the expiration of the current Visa or Temporary Residency Card; issuance of a Permanent Residency Card—sixty days before the expiration of the Temporary Residency Card.

- *Work Permits* (*Journal of Laws 2001, No. 89, Item 973*). As of January 1, 2002, new provisions on work permits for foreign citizens came into force in Poland. According to the Act on Employment and Counteracting Unemployment, a work permit is required if the foreign citizen is to perform work in Poland. The amendment to this act implements a new definition of performance of work by the foreigner. According to this definition, a foreigner is deemed to perform work if he is employed by a Polish company, performs work on the basis of a service agreement, or holds the position of management or board member in a Polish company. According to the new regulation, the Voivodship Employment Office issues the promissory decision on work permits at the Polish company's request. On the basis of this promissory decision, the foreigner next obtains the visa with work permit from the relevant Polish Consulate in the country of his origin. Once in Poland, the Voivodship Employment Office issues, on the basis of the visa with the work permit, the actual work permit, which is the basis for the foreigner to perform work. The regulation on work permits is contrary to EU law. However, it will not have to be changed until Poland joins the EU.

IV. Hungary

A. AMENDMENTS TO THE TAKE-OVER RULES

The Hungarian Parliament pursuant to *Act CXX of 2001 on the Capital Markets* passed new take-over rules, which replaced the *Securities Act (Act CXI of 1996)* as well as the *Amend. of Financial Regulations (Act L of 2001)* in which the take-over rules were incorporated. These new regulations came into effect on January 1, 2001, although these new take-over rules were substantially the same as those coming into effect on July 18, 2001 as per *Act L of 2001 (New Take-over Rules)*. The New Take-over Rules extend the scope of mandatory public offers to those transactions where the take-over of voting rights is carried out indirectly and without the actual transfer of any shares, which procedure was not addressed or specified in the previous take-over rules.

The New Take-over Rules, for the sake of clarity, now define the phrase gaining of influence. Consequently, the gaining of influence means: (1) the acquisition of voting rights exercisable at a shareholders' meeting of a publicly-traded company (including the acquisition of a voting interest by exercising an option right, or a re-purchase right granted for the acquisition of a voting interest, performance of futures contract with respect to an acquisition of any voting interest, or other circumstances not directly aiming at the gaining of influence, especially, inheritance, legal succession, or an agreement among the shareholders of the publicly-traded company effecting a change in the proportion of voting rights); (2) an agreement between a shareholder of a publicly-traded company and other shareholders pursuant to which a shareholder shall have the right to appoint and replace the majority of the officers and supervisory boards members, or the parties to such agreement shall control the publicly-traded company pursuant to so called consented principles; and (3) the harmonized conduct of independent persons having voting interests.

Pursuant to newly introduced reporting rules, the gaining or terminating of influence representing 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, 75, or 90 percent must be reported to the supervision authority and the board of directors of the particular company within two days of its occurrence, with such being announced in the official trade journals or publications. The New Take-over Rules now require a mandatory public offer to be made for all the remaining (outstanding) voting shares and with respect to all shareholders holding voting shares. The New Take-over Rules further qualify the above new requirement by stipulating that in the event that no other shareholder holds more than 10 percent of the voting shares then such mandatory public offer shall kick in once a potential shareholder desires to acquire more than a 25 percent voting interest.

B. CHANGES TO THE COMPETITION LAW

Based on experience gained by the supervising authorities since the enactment of the *Act on the Prohibition of Unfair Market Practices and Restriction of Competition in 1996*, certain legislative changes affecting virtually the entire Competition Act came into effect on February 1, 2001 (modified Competition Act). The modified Competition Act has been further harmonised with the EU legislation on point. This act provides that the so-called hardcore restrictive agreements in relation to price fixing and the division of markets will not escape the effect of the *de minimis* rule (until now, generally a ten percent market share). The modifications relate to the exemption from the general ban on cartel: According to a new section, the respective block exemptions will not apply if, due to the cumulative effect of agreements otherwise to be exempted, the grounds for the exemption are not sustained.

Regarding the merger control rules, a more specific definition of concentration has been set forth, expressly referring to both direct and indirect control. The definition of the significant influencing an undertaking by another entity now also includes the mere *de facto* ability to influence. The amendments, which are in conformity with EU legislation, have corrected a continuously criticised deficiency in the former rules by fixing the maximum amount of a potential fine at 10 percent of the yearly total net income of the undertaking concerned.

C. NEW LEGISLATION TO OPEN UP COMPETITION IN THE TELECOMMUNICATIONS SECTOR

The new Communications Act (Act XL of 2001) was adopted by the Hungarian Parliament effective as of December 23, 2001. Its aim is to open up the telecommunications market by the end of 2001. This act, in accordance with current EU directives and regulations, attempts to provide the framework for the liberalized telecommunications market in Hungary for the next decade. It regulates telecommunication services, frequency management, cable services, and postal services in one unified act, and it also authorizes the relevant ministries to enact further detailed rules (or norms) with respect to approximately twenty regulatory issues.

A new EU-compatible licensing regime has been introduced that removes almost all administrative barriers for entering the market. New service providers need only notify the relevant authority that they intend to commence providing communication services and are permitted to start providing the service after thirty days from the date of such notification. Licences will only be required for construction of telecommunication infrastructures and for utilization of scarce resources (i.e., frequencies and identifiers).

D. LIBERALIZATION OF FOREIGN EXCHANGE REGULATIONS

Pursuant to the total liberalization of the foreign exchange regime, the previous restrictions were repealed, resulting in the Hungarian Forint (HUF) now being freely convertible. *Gov't Decree No. 88/2001 (VI.15.) on the implementation of the Foreign Exchange Act* established that, as of June 16, 2001, a foreign exchange approval would no longer be required for Hungarian nationals, *inter alia*, to: (1) acquire shares or bonds issued by foreign issuers abroad or acquire other foreign marketable instruments, even with the involvement of a foreign dealer, (2) open and keep accounts abroad and keep foreign exchange (or securities) therein, and (3) grant loans to non-Hungarian entities or borrow from foreign entities both in HUF or in other currencies. Further, payments made in Hungary may be effectuated in a foreign currency.

Under these new regulations, foreign entities are free to purchase Hungarian securities and other financial market instruments without the need to fulfil any filing requirements. However, in case of any transfer or currency exchange transaction between Hungarian and non-Hungarian entities, the so-called legal title of the transaction shall be recorded for statistical purposes.

E. AMENDMENTS TO LABOUR CODE

Implementing certain EU directives on labour law, the Hungarian Parliament passed *amend. to Act XXII of 1992 on the Labour Code*. The amendments set out the minimum provisions (or clauses) of a labour contract. Pursuant to the Labour Code Amendments, all

labour contracts must include the names and other important data of the parties, the base salary of the employee, the main duties of the employee, and the place of work. All other conditions of employment may be communicated by the employer to the employee unilaterally for informational purposes.

These amendments have provided further details on Hungary's rules regarding mass layoffs. The amendments regulate both work-time (the eight-hour day) and overtime work and changed the rules on the delegation of employees. Further, in harmony with the rules of the EU, the rules of private international law relating to the applicable law for labour contracts were also changed.

F. NEW ACT ON THE LEGAL PROTECTION ON DESIGNS

On June 12, 2001, the Hungarian Parliament passed *Act XLVIII on the Legal Protection of Designs*. This act is harmonized with Directive 98/71/EC of the European Parliament and of the Council on the legal protection of designs, and the provisions are also in line with those of the Paris Convention for the Protection of Industrial Property and the Agreement on Trade Related Aspects of Intellectual Property. The provisions are also based on the Hague Agreement Concerning the International Deposition of Industrial Designs (1925) and the Locarno Agreement Establishing an International Classification System for Industrial Designs (1968).

In short, the act recognizes the culmination of intellectual property rights. In other words, the design rights will be protected within the framework of both design rights and within copyright law.

G. CHANGES TO THE ADVERTISING ACT

Act LVIII of 1997 on Business Advertising Activities was amended on March 1, 2001. In essence, this amendment adopted the definition and rules regarding misleading advertising set forth in the relevant EU legislation—namely *Directive 84/450/EEC*, as well as the provisions regarding the requirements relating to comparative advertising as per *Directive 97/55/EC*.

Relating to comparative advertising, the amendment sets forth that the trademark owner is not entitled to enforce its exclusive rights pertaining to the trademark if it is presented in a comparative advertisement, provided that the use of the trademark is indispensable for the comparison and such use does not exceed the extent necessary.

One of the most important changes in connection with the advertising of medications is reminder advertising—which contains only the name of the drug and its manufacturer—of over the counter medications. Such advertising of over the counter medications is now allowed within the same block of commercials broadcast on the radio or television.

The prohibition on the advertising of tobacco products entered into force in two stages, as of July 1, 2001 and, with respect to outdoor media, on January 1, 2002. The prohibitions include the indirect advertising of tobacco products, i.e., advertising which can be associated with tobacco products. The prohibition does not include: (1) tobacco advertising aimed at tobacco distributors, (2) the presentation of tobacco products at the point of sale, and (3) the foreign language press published or printed outside Hungary and not primarily aimed at distribution within Hungary. As an exception, in case of world famous international motor sporting events, the Ministry of Economics is authorized by the act to grant individual exemptions from the prohibition.

H. ELECTRONIC SIGNATURE

On September 1, 2001, Hungary's new electronic signature legislation (*Act XXXV of 2001 on E-signature; the E-signature Act*) came into the force. The E-signature Act in essence, implements Directive 1999/93/EC of the European Parliament and of the Council of December 13, 1999 on a community framework for electronic signatures. The primary goal of the E-signature Act is to have electronic signatures deemed equivalent to handwritten signatures in order to acknowledge their legal effect relating to several areas of law. Some areas of the law, however, will be excluded from the scope of the E-Signature Act, for example, family and the law of succession.

I. CHANGES TO INTERNATIONAL PRIVATE LAW ACT

Act CX of 2000, effective as of May 1, 2001, established new rules on the jurisdiction of Hungarian courts and the recognition of foreign judgments by *amending Law-Decree No. 13 of 1979 on International Private Law (Decree)* and *the Code of Civil Procedure*. According to the legislative intent, this act stipulates in greater detail the rules on jurisdiction of Hungarian courts, largely in conformity with the Lugano Convention (1988) regarding which Hungary has expressed intent to ratify.

J. WEB SITES OR LINKS TO HUNGARIAN LEGISLATION

1. General

- Parliament of the Republic of Hungary, at <http://www.mkogy.hu> (last visited Sept. 15, 2002).
- Könyvkereskedelmi Központ Kereskedői Könyvesbolt, at <http://www.complex.hu> (last visited Sept. 15, 2002).
- Online Directory of Hungarian Lawyers, available at <http://www.jogiforum.hu> (last visited Sept. 15, 2002).
- Kis Magyar Törvénytár, at <http://www.sztaki.hu/providers/torvenytar> (last visited Sept. 15, 2002).

2. Legislation to specific fields of law

- Hungarian Patent Office, at <http://www.hpo.hu> (last visited Sept. 15, 2002).
- Hungarian Competition Authority (Gazdasági Versenyhivatal), available at <http://www.gvh.hu> (last visited Sept. 15, 2002).
- Hungarian Financial Supervisory Authority, at <http://www.pszaf.hu> (last visited Sept. 15, 2002).
- Communications Authority of Hungary, at <http://www.hif.hu> (last visited Sept. 15, 2002).
- Parliamentary Commissioner for Data Protection and Freedom of Information, at <http://www.ombudsman.hu/adatved/magyar/index.htm> (last visited Sept. 15, 2002).

V. Romania

A. TRADING COMPANIES

- G.O. No. 24/2001 regarding the Imposition of Micro-enterprises, published in Official Gazette No. 472/17.08.2001. This G.O. establishes regulations that are applicable to micro-enterprises, such as taxation—applying a quota of 1.5 percent against the incomes obtained from any source, and reduction of tax—20 percent when new jobs are created, in order to stimulate

private investment and development of the private sector. Conditions for such micro-enterprises are as follows: That they produce material goods, perform services and/or perform a trading activity, have up to nine employees, have full private capital, and have had income of up to 100,000 Euro. Further, the methodological norms for organizing and keeping account of the micro-enterprises has been adopted by G.O. No. 1880/2001.

- G.O. No. 65/2001 regarding *Setting up and Maintaining Industrial Parks*, published in Official Gazette No. 536/01.09.2001. This G.O. establishes several regulations such as deducting from the taxable profit 20 percent of the value of investments performed in the industrial park, postponing payment of any value added tax on the materials and equipment necessary to create the utility system until the park is completed. The purpose of this normative act is to stimulate economic-social development, encourage technology sharing, promote investing, and capitalize human resources.
- Law No. 332/2001 regarding *the Promotion of Direct Investments with a Significant Impact upon the Economy*, published in Official Gazette No. 356/03.08.2001. This law applies to investments that exceed U.S.\$1,000,000 and investments that contribute to the development and modernization of Romania's economic infrastructure. Direct investments can occur in all fields of activity, except in the financial, banking, insurance and re-insurance sectors. Foreign investors have the right to fully transfer any profit obtained under the hard currency regime of Romania, after payment of taxes and duties. Foreign investors, further, have the right to hard currency transfer any investment amounts obtained after the sale of any investment shares or investment liquidation.

B. BANKING LAW

- G.E.O. No. 137/2001 for *Modification and Completion of Banking Law No. 58/1998*, published in Official Gazette No. 671/24.10.2001. This G.E.O. modifies the existing Banking Law, such as with regard to shareholder x the approval of the National Bank of Romania is required prior to becoming a majority shareholder. Other modifications relate to the organization and management of banking companies and the experience (number of seniority years in the field) of bank managers and administrators.
- G.E.O. No. 138/2001 for *the Modification and Completion of Law No. 83/1998 regarding the Procedure of Bank Bankruptcy*, published in Official Gazette No. 671/24.10.2001. This G.E.O. modifies the existing Completion Law by establishing the categories of credit institutions to which bankruptcy procedures apply. These are: Banks, Romanian legal persons, and Romanian C.E.C. SA.

C. TAXES AND DUTIES

- G.O. No. 7/2001 regarding *Tax on Income*, published in Official Gazette No. 453/03.08.2001. This G.O. institutes a tax on annual global income, which is applicable to Romanian citizens and, in certain circumstances, foreign natural persons. This G.O. establishes special rules in determining income, as well as establishing taxation quotas. Such G.O. became effective on January 1, 2002 and replaces G.O. No. 73/1999 regarding income tax.
- Order No. 268/2001 regarding *Integration of Computer Programming*, published in Official Gazette No. 441/06.08.2001. In compliance with this order's provisions, employees of economic agents whose primary activity is computer programming are exempted from taxation. This exemption from taxation, according to G.E.O. No. 94/2001, will only be applied once on income from salary earned at one's primary work place. Order Nos. 1480/2001 and 4079/2001, published in Official Gazette No. 441/06.08.2001, also established regulations in this area.
- Order No. 1346/2000 for *the Approval of Norms regarding the Restitution of Value Added Tax to natural persons who are not Residents of Romania*, published in Official Gazette No. 8/09.01.2001.-

These norms apply to an application of zero quota against the value added tax for goods purchased during expositions in Romania, as well as from commercial work sent or transported abroad by a natural foreign person.

D. CAPITAL MARKET

- *Rules No. 2/2001 for the Modification of Rules No. 1/2001 for the Completion and Modification of Rules No. 3/1998 regarding the Authorization and Exercise of Securities Inter-mediation, published in the Official Gazette No. 254/17.05.2001.* These rules modify the required minimum registered capital paid, as well as the securities companies' minimum net capitalization.
- *Rules No. 1/2001 for the Completion and Modification of Rules No. 3/1998 regarding the Authorization and Exercising of Securities inter-mediation, published in Official Gazette No. 254/17.05.2001.* These rules establish further requirements in connection with a merger or division of a securities company in accordance with Law No. 31/1990 applicable to trading companies. Securities companies are also required to obtain authorization from the National Securities Commission in order to perform government securities inter-mediation.

E. HUMAN RIGHTS

- *Law No. 544/2001 regarding Free Access to Public Information, published in Official Gazette No. 663/23.10.2001.* This law guarantees a person's right to obtain public information, in compliance with the Romanian Constitution. Public authorities, further, have the obligation to give such information without discrimination to journalists and media representatives.
- *Law No. 123 regarding the Regime of Foreign Persons in Romania published in Official Gazette No. 168/03.04.2001.* The provisions of this law grant protection to foreign persons to the extent guaranteed by the Romanian Constitution, as well as those rights provided for by international treaties of which Romania participates. This law also provides that foreign persons may not establish political parties or any such similar organization, and cannot hold any public, civil, or military office.
- *G.O. No. 508/2001 regarding Access to Compulsory Education in Romania of Children of Workers coming from EU states, published in Official Gazette No. 305/08.06.2001.* The provisions of this decision establish that compulsory education for children of EU workers is gratuitous. In order to enlist in the general compulsory education system, such children must complete a Romanian language course organized by the National Education System.

F. INTELLECTUAL PROPERTY

- *Law No. 624/2001 for the approval of G.O. No. 45/2000 regarding Measures to Preclude the Production and Commercialization of Unauthorized Phonograms, published in Official Gazette No. 727/15.11.2001.* This law establishes that persons who import, produce, reproduce, distribute, or commercialize phonograms must register in the National Register of Phonograms with the Romanian Register for Copyright.

G. REAL ESTATE LAW

- *Law No. 10/2001 regarding the Juridical Regime of Buildings Taken between Mar. 6, 1945 and Dec. 22, 1989, published in Official Gazette No. 75/14.02.2001.* This law establishes that buildings taken by the State during the above mentioned period may be returned to their former owners, or to their heirs, by in-kind or equivalent restitution.

H. ENVIRONMENTAL LAW

- *Law No. 462/2001 for the approval of G.E.O. No. 236/2000 regarding the Regime of Natural Protected Areas and Conservation of Natural Habitat of Wild Fauna and Flora, published in Official*

Gazette No. 433/02.08.2001. This law protects and conserves the natural habitats of protected areas as well as the flora and fauna, which are increasingly affected by pollution.

- *Law No. 9/2001 for the approval of G.O. No. 24/2000 for accepting the Amend. to the Montreal Protocol regarding the Substances that Drain the Ozone Layer, adopted in Copenhagen on Nov. 25, 1992, published in Official Gazette No. 61/05.02.2001*. This law attempts to harmonize the Romanian Law regarding substances that drain the ozone layer with similar international legislation.

I. OTHER FIELDS

- *Law No. 455/2001 regarding Electronic Signatures, published in Official Gazette No. 429/31.08.2001*. This law provides for electronic signatures and writs in electronic form, and establishes the conditions for certification by electronic signature. No provision of this law, however, limits the autonomy or contractual liberty of the parties.
- *The Nat'l Program of Corruption Prevention, published in Official Gazette No. 728/15.11.2001*. This program establishes preventative corruption norms to reduce fiscal evasion, contraband, and money laundering within the subterranean economy. Such measures help the judicial system and the public administration system by consolidating the authority to prevent and control corruption, as well as to creating a competitive private sector.

J. WEB SITES OR LINKS TO ROMANIAN LEGISLATION

- Central European Free Trade Agreement – Romanian Legislation, *available at* <http://www.cefta.org/memberstates/romania/rolegis/rolegis.htm> (last visited Sept. 15, 2002).
- DscLex, *at* http://www.dscllex.ro/english/legislat_e1.htm (last visited Sept. 15, 2002).
- Government of Romania, *at* <http://www.guv.ro> (last visited Sept. 15, 2002).
- Ministerul Justiției România (Official Gazette, *at* <http://domino2.kappa.ro/mj/superlex.nsf/all/Biblioteca> (last visited Sept. 15, 2002).

VI. Bulgaria

This section outlines the basic commercial and financial legislative acts that were adopted or amended and supplemented in year 2001 by the National Assembly of the Republic of Bulgaria and promulgated in the State Gazette.¹ The results of such survey are considered to be of interest not only to legal professionals and government officials, but also to international business entities, financial institutions, and other investors operating or intending to commence operations in the Republic of Bulgaria.

This section is based on the preliminary outline of the Central European Law Committee Yearly Report and includes sections on telecommunications, energy and energy efficiency, e-commerce, audit and accounting, competition and anti-trust, international treaties, avoidance of double taxation and foreign investment regime, human rights, regime for certification and legalization of foreign documents, taxation, and real estate.

The newly adopted amendments to the regulatory framework as described herein below, reflect the development of Bulgaria's market economy and provide information on progress in market liberalization and competition, macroeconomic stabilization, privatization, infrastructure and legal reform. Bulgaria, being one of the countries seeking accession to the

1. The State Gazette is the official bulletin for promulgation of legislative acts, court resolutions, subject to promulgation, notifications to individuals and legal entities, etc.

EU,² aims at the completion of the legal reform in order to harmonize its laws and regulations with the European Community's *acquis communautaire*.

In its 2001 Report on the progress towards accession by each of the candidate countries, dated November 13, 2001, the European Commission came to the conclusion that Bulgaria was very close to being a functioning economy and should be able to cope with competitive pressure and market forces within the EU, provided it continues implementing reform.

A. TELECOMMUNICATIONS AND POSTAL SERVICES

- Laws on Amendment of the Law on Telecommunications (*promulgated in State Gazette, Issue No. 34 of Apr. 6, 2001, effective as of Oct. 7, 2001; State Gazette, Issue No. 42 of Apr. 27, 2001; State Gazette, Issue No. 96 of Nov. 9, 2001; State Gazette, Issue No. 112 of Dec. 29, 2001, effective as of Feb. 5, 2002*). Since its adoption in 1998, the Law on Telecommunications has been amended several times, making good progress in harmonizing with EU regulations governing telecommunications and information technologies. In particular, the Law on Telecommunications settles (1) the legal basis for moving forward to the full liberalization of telecommunications, and (2) provisions of universal service on the territory of the whole country at affordable prices, as well as for the establishment of a free market, fair competition, and non-discriminatory treatment of the operators.

Amendments to the Law on Telecommunications published in *State Gazette, Issue No. 42 of Apr. 27, 2001* set out the precise criteria for determining whether an individual license, class license, or free regime will apply to a particular telecommunication activity. Said amendments also strengthen the legal monopoly of the incumbent Bulgarian Telecommunications Company until the date of full liberalization—December 31, 2002. Amendments to the Law on Telecommunications published in *Issue No. 96 of Nov. 9, 2001* provide consistency between the award of a license for radio and TV broadcasting by the Electronic Media Council and the subsequent issuance of a license for use of radio frequency spectrum by the telecommunications regulator—the State Telecommunications Commission.

The most recent amendments to the Law on Telecommunications provide for the establishment of a Communications Regulation Committee (CRC) as an independent state authority to substitute the former State Telecommunications Commission. Such amendments further provide that the CRC decisions on licensing of telecommunications activities will not require the approval of the Council of Ministers. CRC members will be elected through a quota method by the government, the parliament, and the president and their mandates would be five years.

- Law on Amendment of the Law on Postal Services (*promulgated in State Gazette, Issue No. 112 of Dec. 29, 2001, effective as of Feb. 5, 2002*). By virtue of the amendments to the Law on Telecommunications, the CRC has been granted rights relating to the regulatory functions of the postal services. Pursuant to the newly adopted amendments to the Law on Postal Services the CRC will award licenses to persons intending to provide universal postal services and register persons intending to provide non-universal postal services.

B. ENERGY AND ENERGY EFFICIENCY

- Law on Amendment of the Law on Energy and Energy Efficiency (*promulgated in State Gazette, Issue No. 108 of Dec. 14, 2001*). These newly adopted amendments to the Law on

2. Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part (Ratification Law promulgated in State Gazette, issue No. 33 of Apr. 20, 1993, effective as of Feb. 1, 1995). The Agreement has been promulgated as a separate body to State Gazette, issue No. 61 of July 7, 1995.

Energy and Energy Efficiency provide for establishment of a Ministry of Energy and Energy Resources who will be the legal successor to the State Energy and Energy Resources Agency. The establishment of this new ministry is seen as recognition of the strategic importance of the energy sector, as well as preparation for privatization of the energy sector. The gradual liberalization of the Bulgarian energy market is expected to start in 2002. This will include possibilities for some categories of consumers to negotiate electricity and gas deliveries directly with the producers under certain conditions.

C. E-COMMERCE

- Law on Electronic Document and Digital Signature (*promulgated in State Gazette, Issue No. 34 of Apr. 6, 2001, effective as of Oct. 7, 2001*). On March 22, 2001 the Bulgarian Parliament passed a new *Law on Electronic Document and Digital Signature*. After the Czech Republic, Bulgaria is the second country from the Central and Eastern European region regulating electronic documents and digital signatures, thus creating a basis for development of electronic commerce in the country. This law defines a digital signature as any information, coordinated between the author and the addressee, that discloses the identity of the author, confirms his or her consent to electronic statement, and protects the content of the statement from later changes. Under this law, a digital signature should not be valid for certain documents of legal significance, such as securities, bills of lading, or for documents and transactions requiring a qualified written form. This law also provides for a certification procedure to be applied to the providers of the services.

D. AUDIT AND ACCOUNTING

- Law on Accountancy (*promulgated in State Gazette, issue No. 98 of Nov. 16, 2001, effective as of Jan. 1, 2002*). A new legal framework for accounting and financial reporting came into force on January 1, 2002. The new Law on Accountancy provides more exhaustive regulations and introduces new requirements for maintaining accounting records and for presenting financial information of the enterprises, where such requirements are applicable for all types of organizations: Business companies, public sector entities, non-for-profit organizations. As January 1, 2005, however, any and all enterprises, excluding the ones financed from the state budget, must prepare annual accounts in accordance with the International Accounting Standards (IAS) promulgated by the International Accounting Standards Board (IASB) and approved by the Council of Ministers.

Further, as of January 1, 2003, any and all banks, insurance, investment, and pension companies, as well as issuers of securities must also register with the IAS and must provide their annual accounts for review by independent auditors. Such accounting documentation may be prepared in electronic format in accordance with the provisions of the Law on Electronic Document and Digital Signature.

- Law on Independent Financial Audit (*promulgated in State Gazette, issue No 101 of Nov. 11, 2001, effective as of Jan. 1, 2002*). The Law on Independent Financial Audit sets out the professional standards of the independent financial audit, the legal status of the certified public accountants, and the Institute of Certified Public Accountants all in conformity with the IASB Standards. In principle, a statutory audit can be performed by a Bulgarian certified public accountant, member of the Bulgarian Institute of Certified Public Accountants, or by a specialized auditing company.

E. HUMAN RIGHTS

- European Agreement relating to Persons Participating in Proceedings Before the European Court of Human Rights (*executed on July 3, 2000 in Strasbourg, ratification law promulgated in*

State Gazette, Issue No. 16 of Feb. 20, 2001; promulgated in State Gazette, Issue No. 107 of Dec. 11, 2001, effective as of July 1, 2001). As a signatory to the European Convention on Human Rights and Protocols Nos. 1, 4, 6, and 7 thereto, Bulgaria has agreed to secure certain fundamental rights. As a party to, and therefore being bound by, the provisions of the European Agreement, Bulgaria is obliged to ensure that persons participating in proceedings instituted under the European Convention on Human Rights (agents, advisors, advocates, applicants, delegates, witnesses and experts) enjoy immunity from legal proceedings in respect of their acts before the Court and the European Commission, as well as freedom of correspondence with those organs and freedom to travel for the purpose of attending the proceedings.

F. COMPETITION AND ANTI-TRUST

- Res. No. 44 of the Competition Comm. dated Apr. 10, 2001 relating to block exemption of certain prohibited agreements under the Law on Protection of Competition³ (*issued by the Chairman of the Competition Comm.; Promulgated in State Gazette, Issue No. 44 of May 8, 2001, effective as of June 1, 2001 to May 31, 2010*). Res. No. 44 has been adopted by the Bulgarian Competition Commission in response to the competition rules laid down in articles 81 and 82 of the Treaty establishing the European Community. Article 81 sets out the rules applicable to restrictive agreements, decisions and concentrated practices, while article 82 concerns abuses of dominant positions. The application of competition and anti-trust law by the Bulgarian competition authority is subject to the block exemption regulations as established by Res. No. 44 of Apr. 10, 2001 creating safe harbors for certain categories of agreements.
- Res. No. 2/2001 of the Assoc. Council 23/05/2001 between the European Communities and their Member States, on the one part, and the Republic of Bulgaria, on the other part regarding adoption of rules for the implementation of the State aids provisions under articles 64(1)(iii) and (2) in compliance with article 64(3) of the Europe Agreement establishing an association between the European Communities and their Member States, on the one part, and the Republic of Bulgaria, on the other part and in articles 9(1)(iii) and (2) of Protocol 2 on European Coal and Steel Community products thereto (*issued by the Ministry of Interior; Promulgated in State Gazette, Issue No. 77 of Sept. 4, 2001*). Res. No. 2/2001 of the Assoc. Council introduces the rules for the implementation of EU State Aids regulations. The importance of such rules is arising of the general principle that any public aid which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods is incompatible with the proper functioning of the economy, in so far as it may affect trade. The definition of State aid under the Law on Protection of Competition is quite close to the respective definition of State aid under EU law. Thus, state aid is considered to be aid granted by the State or through State resources in any form whatsoever that distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods, or the performance of certain services.

G. PRIORITY OF INTERNATIONAL TREATIES

- Law on International Treaties of the Republic of Bulgaria (*promulgated in State Gazette, Issue No. 97 of Nov. 13, 2001*). The Bulgarian Constitution of 1991 proclaimed the general prin-

3. It should be noted that under Bulgarian law the resolutions of the Competition Commission are not legislative acts. However, we have addressed the resolution regarding block exemption of certain prohibited agreements due to its importance for the competition in general.

ciple of priority of international treaties to which Bulgaria is a party⁴ over the local regulations. The newly adopted Law on the International Treaties regulates the procedure for ratification of international treaties by the Republic of Bulgaria, as well as performance, termination, and registration rules thereof. The importance of this law finds expression in the implementation of the treaties for protection of foreign investments and especially in agreements aimed at the avoidance of double taxation.

H. TREATIES FOR AVOIDANCE OF DOUBLE TAXATION AND TREATIES FOR PROTECTION OF FOREIGN INVESTMENTS

In 2001, Bulgaria became a party to a number of treaties for avoidance of double taxation entered into with the following countries: Mongolia, Israel, Canada, Syria, Thailand, Slovakia, Ireland, and Cyprus. In 2001, Bulgaria also signed treaties for protection of foreign investments with Mongolia, Syria, the Lebanon, Tunisia, the Netherlands, Slovenia, and Kazakhstan.

I. CERTIFICATION AND LEGALIZATION OF FOREIGN DOCUMENTS REQUIREMENTS

- Convention for Repeal of the Legalization of Official Foreign Documents Requirements (Convention de La Haye du 5 Oct. 1961) (*promulgated in State Gazette, Issue No. 45 of May 11, 2001, effective as of Apr. 30, 2001*). Since April 2001, Bulgaria is bound by the Convention repealing the legalization of official foreign documents requirements. This brought about a significant simplification of the series of formalities that had to be followed and complied with before the utilization of foreign public documents in Bulgaria. The convention repealed the requirements for diplomatic and consular legalization of public documents originating from any country that is party to the Convention, provided that such documents bear a certificate (Apostille) verifying their identity and recognized by all countries parties to the Convention.

J. TAXATION

- Laws on Amendment of the Law on Value Added Tax (*promulgated in State Gazette, Issue No. 102 of Dec. 15, 2000, effective as of Jan. 1, 2001; State Gazette, Issue No. 109 of Dec. 18, 2001, effective as of Jan. 1, 2002*). These last amendments to the Law on Value Added Tax concern operations of travel agents and reflect the provisions of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes—Common system of value added tax: uniform basis of assessment. According to such amendments, travel agent operations and tour operators with respect to services rendered within the territory of the country will also be subject to taxation with value added tax at a rate of 20 percent, effective as of January 1, 2002. However, the Value Added Tax Law provides that travel agents and tour operators are entitled to a 65 percent discount of the tax credit, resulting in a value added tax obligation at a rate of 7 percent. In addition the newly enacted amendments to the Law on Value Added Tax impose 20 percent value added tax rate on pharmaceuticals produced in the country thus removing value added tax exemptions on domestically produced drugs.

4. Under the Constitution, an international treaty becomes binding if the National Assembly ratifies it, it is promulgated in the State Gazette, and it has entered into effect.

- Law on Amendment of the Law on Local Taxes and Charges (*promulgated in State Gazette, Issue No. 109 of Dec. 18, 2001, effective as of Jan. 1, 2002*). A new road tax has been implemented in conformity with requirements set forth by EU legislation for all types of vehicles depending on vehicles' weight. Tax liable persons for payment of road taxes will be any and all owners of vehicles that are registered in Bulgaria. The burden of the property taxes on vehicles will be calculated on the basis of their market value.
- Law on Amendment of the Law on Natural Persons' Income Taxation (*promulgated in State Gazette, Issue No. 110 of Dec. 21, 2001, effective as of Jan. 1, 2002*). The most serious taxation changes appeared in the taxation of personal income, where the effective tax burden was reduced significantly for the high-income profile (7 to 8 percent) and less significantly for the low-income profile (some 2 percent) resulting in personal income taxation of 18 percent to 29 percent depending on one's total income. In addition, this law provided that the income from pension funds would be taxed at a flat rate of 20 percent, if drawn out before retirement. The minimum non-taxable monthly income has been increased from BGN⁵ 100 to BGN 110 and the tax-free minimum annual income is BGN 1320.
- Law on Amendment of the Law on Corporate Income Taxation (*promulgated in State Gazette, Issue No. 110 of Dec. 21, 2001, effective as of Jan. 1, 2002*). The newly adopted amendments to the Law on Corporate Income Taxation introduced 23.5 percent uniform profit tax (10 percent municipal tax, followed by 15 percent state tax on profits minus the amount of municipal tax that has been paid in advance). Under these amendments, companies will be able to deduct 10 percent instead of the current 5 percent of their taxable income for donations made in favor of budget-funded educational and health establishments, cultural institutions, not-for-profit organizations established for public benefit, and the Bulgarian Red Cross.

K. REAL ESTATE

- Law on Cadastre and Real Estate Registry (*promulgated in State Gazette, Issue No. 34 of Apr. 25, 2000, effective as of Jan. 1, 2001*). The adoption of the Law on Cadastre and Real Estate Registry is part of the ongoing process aimed at increasing legal protection of real property and rights therein in the Republic of Bulgaria. This law introduced a requirement for keeping of a cadastre⁶ and separate real estate registry.⁷ Until the adoption of this new law, real estate was registered in the name of its owner (individual or legal entity) and therefore, it was not possible to make inquiries about the status of the estate without specifying the name of owner. Since January 2001, entries are made in the lot of the real estate itself, thus assuring easy and quick access to information.

L. WEB SITES OR LINKS TO BULGARIAN LEGISLATION

- The Constitutional Court of the Republic of Bulgaria, at <http://www.infotel.bg/juen/con-court.htm> (last visited Sept. 15, 2002).
- Sofia Interpreting and Translating Agency, Member of Bulgarian Convention Bureau, at <http://sofita.hypermart.net/products.htm> (last visited Sept. 15, 2002).
- Privatization Agency, at <http://www.privatisation.online.bg/> (last visited Sept. 15, 2002).

5. The abbreviation BGN stands for Bulgarian Lev. BGN 1 = DEM 1.

6. The Cadastre contains data regarding the location, boundaries, and area of the real estate.

7. The Real Estate Registry contains information regarding any and all entries made in the lot of the respective real estate (donations, sales, etc.).

- The Bulgarian Industrial Association and DAGA Publishing house, *available at* <http://www.bia-bg.com/Laws®ulations/> (last visited Sept. 15, 2002) (Note: Requires login name and password).
- Securities and Stock Exchanges Commission, *at* <http://www.ssec.bg/english.html> (last visited Sept. 15, 2002).
- Ministry of Environment and Water, *at* <http://www.moew.government.bg/legislation/legislation.html> (last visited Sept. 15, 2002).
- Bulgarian Foreign Investment Agency, *at* http://www.bfia.org/Business_Law/index.htm (last visited Sept. 15, 2002).
- Ministry of Education and Science, *at* <http://www.minedu.government.bg/legislat.htm> (last visited Sept. 15, 2002).
- Center for Mass Privatization, *at* <http://bulgarianspace.com/cmp/eng/index.htm> (last visited Sept. 15, 2002).
- Bulgarian Chamber of Commerce and Industry, *at* <http://www.bcci.bg/law/> (last visited Sept. 15, 2002).
- Commission for the Protection of Competition, *at* <http://www.cpc.bg/index.htm> (last visited Sept. 15, 2002).
- Bulgarian National Bank, *at* <http://www.bnb.bg/> (last visited Sept. 15, 2002).
- Agency for Small and Medium-sized Enterprises, *at* <http://www.asme.bg/en/leginfo-e.htm> (last visited Sept. 15, 2002).
- CIELA Publishing House, *at* <http://www.ciela.net:8090/> (last visited Sept. 15, 2002).
- SOFITA Sofia Interpreting and Translation Agency, *at* <http://sofita.hypermart.net> (last visited Sept. 15, 2002) (Note: for pay).
- ISI Emerging Markets—Bulgaria, *available at* <http://www.securities.bg> (last visited Sept. 15, 2002) (Note: Requires login name and password).

VII. Croatia

At the beginning of 2001, the Croatian Parliament passed Amendments to the Constitution of Republic of Croatia with respect to the organization and jurisdiction of local self-government entities, which became effective on March 28, 2001 (*Official Gazette* 28/01). The Croatian Parliament then passed the Law on Local Government and Self-Government (*Official Gazette* 33/01), effective as of April 11, 2001, giving broader jurisdiction to the entities of local self-government, mainly counties. Thereafter, the elections for the bodies of local government and self-government took place. The political party HDZ—the Croatian Democratic Union—that lost the elections for the Croatian Parliament on January 3, 2000, surprisingly won the majority of representative votes, itself or in coalition with the rightist parties, in almost half of the counties of Republic of Croatia.

The following are laws relevant to business and financing, which were amended in 2001.

A. LABOUR LAW (OFFICIAL GAZETTE 17/01, 82/01)

The Labour Law, after its latest amendments, regulates the obligatory board-level participation of employees. It prescribes that a company that has a Supervisory Board (SB) must have at least one employee as a SB member if the share of the state or the first purchaser holding the majority ownership (who purchased such share from the portfolio of Republic of Croatia at a price less than 50 percent of nominal share value) is higher than 25 percent. This labour representative in the SB must be appointed and recalled by the works council and must have the same legal status as the other appointed members of SB.

Furthermore, these amendments to the Labour Law prescribe that an employer who does not pay an employee's salary on the date due has to issue a calculation of the salary to

such employee, and that calculation must be an authentic document using the execution procedure established by the court.

B. BANKRUPTCY LAW (OFFICIAL GAZETTE 129/00)

Due to the high insolvency rate of Croatian businesses, amendments to the Bankruptcy Law attempt to influence bankruptcy filings and winding up the businesses by providing no chance for financial recovery.

On December 30, 2000, the Law on Amendments of the Bankruptcy Law became effective. This law has changed the legal position of creditors in the bankruptcy procedure, giving priority to the payments of salaries to the employees of the bankrupt company and the availabilities of titles of the creditors whose claims are secured by court or notary public insurance are limited.

Another change was introduced through article 70. Hereunder, the Central Bureau for Financial Transactions (CBFT) was authorized to submit to the competent commercial courts (according to the court jurisdiction over the seat of incorporation of legal persons) special reports on any legal entity that made no account payments within the previous three months. Moreover, if the commercial court ascertains that the company at stake holds the basic capital amounting to less than HRK 100,000,00 (approximately USD 12,500.00), the commercial court is authorized to publish an announcement in the Official Gazette inviting creditors to initiate bankruptcy proceedings within forty-five days.

C. LAW ON AUDIT OF OWNERSHIP TRANSFORMATION AND PRIVATIZATION (OFFICIAL GAZETTE 44/01)

The Law on Audit of Ownership Transformation and Privatization became effective on May 24, 2001. The purpose of this law is to formalize the rights, obligations, and responsibilities of persons in the bodies of central government and their contractual parties, as well as other persons with whom they jointly acted—including legal successors of such legal persons, participants in the ownership transformation and privatization—starting from the day of execution until the opinion has been given on the mode of execution of the privatization.

According to this law, the deadline for the execution of audit is January 1, 2003. Since the execution of the audit pertains to the legal successors, this has a consequence of legal insecurity, particularly for foreign investors.

D. LAW ON PRIVATIZATION OF CROATIAN TELECOMMUNICATIONS (OFFICIAL GAZETTE 68/01)

The Law on Amendments of Law on Privatization of Croatian Telecommunications became effective on August 4, 2001. These amendments made it possible to sell an additional 16 percent of the telecommunications industry, previously held by the Republic of Croatia, to strategic investors.

E. TAX LAW (OFFICIAL GAZETTE 127/2000)

A number of laws regulating tax issues were amended and implemented during 2001. These new tax regulations include the General Tax Law, Income Tax Law, Profit Tax Law,

and Law on Tax Advising. A unique procedure for calculating taxes was established. Tax rates and tax exemptions also were modified. Furthermore, tax consultancy is now officially regulated by the Republic of Croatia as prescribed by the Law on Tax Advising, requiring education and all conditions to be fulfilled by the people providing such services.

F. PUBLIC PROCUREMENT LAW (OFFICIAL GAZETTE 117/2001)

In its last session in 2001, the Croatian Parliament passed laws in accordance with EU standards—among them the Public Procurement Law and the Domestic Payment Transactions Act, both of which became effective as of January 1, 2002. This law introduced amendments applicable to water, energy, transportation, and telecommunication activities, unless otherwise provided for under law. This law leaves the possibility of choosing between the three legally prescribed modes of procurement: public bidding within an open bidding procedure, bidding upon invitation within a limited procedure of procurement, and by a direct agreement/deal within a negotiating procurement procedure. While the first mentioned procedure represents the basic way of procurement, the consent of the Public Procurement Office is required in the latter two prescribed procedures.

G. DOMESTIC PAYMENT TRANSACTIONS ACT (OFFICIAL GAZETTE 117/2001)

This law significantly modifies payment operations in the Republic of Croatia, since the role of ZAP—the payment operations bureau, as the central institution in domestic payment transactions, —has been abandoned. Accordingly, payment operations are now exercised by banks and the HNB—Croatian National Bank—with the exception of the *Hrvatska poštanska banka*, the Croatian Postal Bank. Entrepreneurs are now allowed to keep accounts in several banks. These accounts, however, must be registered with the accounts registry. This law prescribes that should a bank receive a payment order from an account of its client, in which account there are insufficient funds to make such payment, the bank will be obligated to refer such payment order to another bank with which the entrepreneur concerned also has accounts.

H. ARBITRATION ACT (OFFICIAL GAZETTE 88/2001)

The new Arbitration Law, which became effective as of October 19, 2001, significantly expanded arbitral dispute resolution, with regard to the types of disputes that may be subject to arbitration, as well as to the manner of arbitration. Pursuant to this law, the parties may agree upon either an ad hoc or institutional arbitration and the parties are free to choose the institution of arbitration.

VIII. Serbia

The first year after a revolution is a difficult one as has been the case in Yugoslavia in 2001. A country is slowly re-emerging after being severely suppressed due to more than ten years of war, sanctions, political instability, corruption, and economic chaos. The process of legal reform is slow, but essential to rejoining the global economy. At both the Federal and Republic levels, reforms have taken place in the following sectors: (1) privatization sector in Republic of Serbia, (2) tax reform in Republic of Serbia, (3) judicial system reform in the Republic of Serbia, and (4) Anti-Money Laundering Law passed at the Federal level.

By the end of 2001 or the beginning of 2002 the following laws are likely to be enacted:

- Foreign Investment Law in the Federal Parliament,
- Amendments to the Concession Law in the Serbian Parliament, and
- A new set of anti-corruption laws within the Republic of Serbia.

A. PRIVATIZATION LAW

The Serbian Parliament enacted the new Privatization Law on June 27, 2001. This is the third privatization law enacted in Serbia in the last decade. Due to the economic and political difficulties within the country, the process of privatization in the Republic of Serbia was not completed. At the moment, most socially owned companies are not privatized. Social ownership is a Yugoslav concept somewhat akin to state ownership. This law provides the legal framework for the privatization of socially and state-owned companies.

The Privatization Law creates new entities authorized to regulate the process of privatization. These are: (1) the Privatization Agency, (2) the Share Fund, and (3) the Central Share Registry. The Privatization Agency is empowered to control the subjects of privatization, in addition to the process itself. Shares and assets of socially owned companies can be privatized in one of two ways: (1) the sale of capital—by public tender or by public auction—or (2) the transfer of capital for free—by transfer of shares to employees or by transfer of shares to citizens. Socially owned companies must go through the procedure of privatization within four years. Those companies are entitled to sell 70 percent of the capital that is to be privatized.

B. TAX REFORM

The Serbian Parliament introduced a new set of regulations regarding taxation in March and April 2001. These regulations mark the beginning of a comprehensive taxation reform. The following laws were enacted:

- *The Excise Law (Official Journal No. 22/01)*. This law introduced radical changes in this field. The number and type of duties (affecting oil, cigarettes, and alcohol) are condensed into one. Furthermore, excises (except for the excise on luxury products) are now calculated in absolute amounts, not in percentages, as was the case previously. Some products (salt, some petroleum products, and non-alcoholic beverages) are added to the list of taxed products.
- *Turnover Tax Law (Official Journal No. 22/01)*. This tax reform did not introduce value added tax, which is expected to be enacted no later than the beginning of 2003. The changes that were made in 2001, however, were a necessary step towards introducing value added tax:

Only one tax rate (of 17 percent at the Serbian level, which together with the tax rate of 3 percent of the Federal Turnover Tax Law, results in the total turnover tax rate of 20 percent) was introduced to replace the seven different tax rates.

The scope of the tax exemptions is radically limited and is now slightly broader than provided in the IV Tax Directive of the EU.

- *Income Tax Law (Official Journal No. 24/01)*. The reason for not introducing value added tax in the field of Turnover Tax is the same reason for not introducing synthetic income tax in the field of Income Tax—the lack of computer technology. But although it is the cedular income tax that is still effective, a significant move toward introducing a synthetic turnover tax has been made.

Today the tax base is gross income consisting of: (1) salary earned on the basis of a particular fee, output, and working time; (2) payment compensations; (3) bonuses (for meals, holidays, etc.); and (4) income tax and social contributions owed by the employee.

In the field of Income Tax Law some other changes have been introduced *inter alia*, to lessen the double taxation burden on the distributed profit of companies. The new law provides that the taxation base for dividends is now 50 percent of the paid-off amount.

- *Profit Tax Law (Official Journal No. 25/01)*. In addition to other amendments, the profit tax holiday, which existed for the first five years of a newly established company, has been abolished. The tax assessments for companies with foreign capital participation are also abolished.
- *Financial Transactions Tax Law (Official Journal No. 26/01)*. This law regulates the 0.3 percent tax on companies' payments within the payment system, as well as on set-offs and assignments.
- *Use and Possession of Goods Tax Law (Official Journal No. 26/01)*. This law makes the number of formerly existing duties transparent. Tax is payable on the use and possession of cars, vessels, aircrafts, firearms, and mobile phones.

C. JUDICIAL SYSTEM REFORM

The judicial system of the Republic of Serbia underwent numerous changes at the end of the year. Several laws were adopted: the Law on the Organization of the Court System, the Law on Judges, the Law on the High Commission of the Court System, and the Law on the Public Prosecutors Office.

In the previous structure, the Municipal Court was the court of first instance and the District Court the court of second instance. The reforms introduce a new organization structure whereby Municipal and District Courts share subject-matter jurisdiction as first instance courts, while the Appellate court is introduced as a second instance court. The court of final resort is the Supreme Court. Courts of special jurisdiction are the Commercial Court and the new Administrative Court.

Special sections have been introduced in each court with a higher number of judges, allocated the task to keep up with the court practice, and present new trends to the members of the court.

The Law on Judges confirms the principles of independence and the life tenure of the judiciary and introduces new bodies: the High Personnel Commission and the High Commission of the Court System. The High Personnel Commission is formed within the Supreme Court and is competent to decide on certain issues with respect to the status of judges, namely the termination of a judges' tenure. The High Commission of the Court system recommends candidates for the presidency of the courts, judges, and public prosecutors, which are then elected into the function by the Parliament. The Parliament does not have the power to change the candidates, but just to accept or reject the High Commission's recommendation. The High Commission is composed of five members by duty (the president of the Supreme Court, Public Prosecutor, Minister of justice, and representatives of the Bar Association and the Parliament) and six members, which are elected by the judges.

These new laws should improve the material position of the judges. The remuneration of judges is comparable with the remuneration of the members of the executive branch, which was not the case previously.

D. ANTI-CORRUPTION

The Serbian Government recently adopted four draft anti-corruption bills in order to eliminate corruption and gray economy and implement ongoing reforms: (1) law on the

budget system, (2) tobacco law, (3) law on public procurement, and (4) law on games of chance. A public debate will take place before these laws are introduced to the Parliament.

1. *Tobacco Law*

This law basically defines and provides the terms and conditions for the production, treatment, and trading of tobacco products in the Republic of Serbia. It creates a new institution entitled the Republic Tobacco Administration within the Ministry for Finance and Economy. In general, this law strongly emphasizes the role of the state authorities from the manufacturing phase until the moment the final product reaches the consumer.

A number of new registration duties with the relevant authorities were introduced, such as (1) the registration of agreements on the production of tobacco and relevant reporting duties with the Ministry for Agriculture and (2) the registration of tobacco processors, producers, importers, exporters, transporters, wholesalers, and tobacco brands on the Yugoslav market. The aim of this Tobacco Law is to uniformly regulate the production, processing, and trade of tobacco and tobacco-derived products, to regulate the tax-related issues, and to eliminate tax evasion and illegal tobacco sales.

2. *Law on Public Procurement*

This law provides the basic principles, rules, terms, conditions, and procedures relating to the public supply of goods and services when state authorities, public institutions, and similar entities are ordering. It also provides for the establishment of the Public Supply Administration Office.

3. *Law on Games of Chance*

This law regulates different types of games of chance and the method and terms of their organization. It forbids games of chance that are not provided for in the law. The Republic of Serbia is entitled to organize games of chance and the Republic has the right to transfer this right to legal entities with a registered office in Serbia by concession or subject to approval.

It forbids participation in foreign games of chance, collecting contributions in the Republic of Serbia for games of chance taking place abroad, as well as selling, holding, transferring, publishing, and any other type of presentation of foreign lottery tickets on the territory of the Republic of Serbia. The terms and conditions for participation in games of chance on the Internet will be regulated in more detail by a by-law enacted by the Serbian Government.

This law further classifies games into three groups and defines each of them separately: (1) classic games, (2) special games, and (3) prize winning contests in goods and services. The exclusive right to organize classic games of chance is granted to the State Lottery of Serbia.

E. CONCESSION LAW

A new Concession Law is to be enacted by the end of 2001. Unlike the Foreign Investment Law, which is within the scope of the Federal State, the Concession Law will be enacted at the level of the Republic of Serbia. In the latest draft, the main modifications refer to the concession subject matter, the concession granting procedure and the term of the concession, etc. The new Concession Law extends the subject of concession to other activities, for example, construction and exploitation of electrical power facilities, distri-

bution of heating and electrical power, provision of mail services, and exploitation of thermal springs.

Foreign persons are not granted concessions if they are not founders of enterprises with majority stakeholding under the foreign investment regulations. The new Concession Law extends the period for which the concession may be granted of up to fifty years, instead of the existing thirty. It is expected that the new Concession Law will permit concessions to be granted only on the basis of public biddings or tenders. A concession company must be founded and organized as a limited liability company or joint-stock company.

F. FOREIGN INVESTMENT LAW

The new Foreign Investment Law is anticipated before the end of 2001. This new law should facilitate foreign investment in FR Yugoslavia by liberalizing both the procedure for foreign investment and the fields for prospective foreign investment. The existing restrictions regarding investment in the media and telecommunications sectors are to be removed, so that certain restrictions (i.e., foreign person cannot have majority shareholding) remain only in the fields of manufacturing and the trade of armaments and in restricted zones (national parks, border areas, and such like).

The often-bureaucratic procedures before state bodies for foreign investment will be simplified. The mandatory registration of all forms of investment at the Federal Ministry for Foreign Economic Relations in the current Law (published in Official Journals Nos. 79/94, 15/96, and 29/96) is to be repealed and replaced by a single registration at the Commercial Court. The approval of the Ministry for Foreign Economic Relations is still required prior to the registration at the Commercial Court for foreign investments in special fields and areas (manufacturing and trade of armaments and in restricted zones), where the foreign investor can acquire only a minority shareholding. It is hoped that this newly enacted law will enshrine the principal of national treatment of foreign investors and more streamlined procedures will meet the growing needs of investors into the Yugoslav economy.

G. WEB SITES OR LINKS TO SERBIAN LEGISLATION

- Ministry of Economy and Privatization, at <http://www.mpriv.sr.gov.yu/eng/zakoni/index.asp> (last visited Sept. 15, 2002).

IX. Slovenia

A. CODE OF OBLIGATIONS NO. 83/2001 COLL.

The new Code of Obligations has replaced the Obligations Act of 1978. The old act came into force in ex-Yugoslavia and it was, in principle, not in contradiction with the legal order of Republic Slovenia. The main reason for passage of the new act is that the previous act was from the old country. Thus, the act has to be Slovenian, regulating all obligatory relations that were not necessarily captured in the prior act because of the division of competence or some other reason.

This new act follows the Swiss example. It preserves fundamental concepts in the old Code of Obligations. It, however, regulates obligation law in general—not only questions that were already captured in the former act. In comparison with the old act, the new act contains a chapter on deed of donating, deed of lending, and agreements of partnership.

Agreements on delivery and division of property has been added to the Inheritance Act, and overbeneficiary agreements were also added to the new act. Article 971 of the old Obligations Act, which provides for the securitization of future and conditional liabilities, is still applicable.

B. ACT ON PREVENTION OF MONEY LAUNDRY No. 79/2001 COLL.

This act established disclosure provisions, including which sources of money or property acquired through a criminal offence would be covered, as well as provisions for preventing this kind of treatment. Provisions address the exchange, transmission, acquisition, usage, hiding legal nature, source, location, ownership, disposal rights—everything regarding money or property—that may be derived from laundering or covering illegally acquired property, capital, or transformation of property.

Provisions were established for those handling money or property, such as banks, organizations attending payment, transportation, post offices, exchange offices.

Provisions require the identification of a client and informing the Office of Republic Slovenia thereof to prevent money laundry. Organizations must appoint an agent who is accountable for certain duties including informing the Office of Republic Slovenia. In addition, state bodies, public procurement organizations, review companies, independent revisors, and individuals, practising accounting services and tax advices are bound to provide data and information to such Office, which can be important in discovering money laundry.

C. ACT ON VERIFICATION OF DOCUMENTS IN INTERNATIONAL TRANSACTIONS No. 64/2001 COLL.

This act defines what constitutes verification of public documents issued in the Republic of Slovenia. This act also defines verification for documents issued in foreign countries that will be used in the Republic of Slovenia.

Documents issued in a foreign country may be used in the Republic of Slovenia only after verification by the Ministry of Foreign Affairs or a Consulate of the Republic of Slovenia. To the extent documents are issued by countries that are parties to the Hague Convention, verification may be done by such agencies as are in accordance with article 6.

D. REVIEW ACT No. 11/2001 COLL.

This act regulates accounting—accounting statements, accounting review, and independent expert advice on accounting statements—in accordance with Slovenian accounting standards and performing revision services. This act also regulates the Slovenian Institute for Revision's (Institute) position and its duties, including status for revisors, review companies, empowered valuers, and the decision-making proceeding of the Institute in individual cases. This act established the Institute's method of review and its supervising function. It also assures legal security regarding the Institute's written orders.

E. INDUSTRIAL PROPERTY ACT No. 45/2001 COLL.

This new act has replaced the old Industrial Property Act, which after eight years has turned out to be unsuitable and out-of-date. Passage of this new act was necessary for harmonization with EU directives on trademark.

This act also provides protection of industrial property rights and establishes proceedings for conferring and registering such rights. Industrial property rights that are subject to this act are: Patent, model, trademark, and geographical sign. Industrial property rights can be acquired by filing with the national registration of intellectual property office of the Republic of Slovenia. Industrial property rights can be also acquired through filing a registration with a foreign country, provided such foreign country is a party to and acts in accordance with the Treaty of Madrid on international registration of trademark, which is binding law in Slovenia. The legal effect of industrial property rights is the same under both forms of registrations.

This act also determined the procedure for acquiring rights—the main tasks of the Republic of Slovenia Industrial property office. A chapter of the act also regulates securitization and the process of asserting rights in court. The main goal for passage of this new act is greater security effectiveness, assurance of industrial property rights, and simplification of procedures to acquire such rights.

F. ACT ON CUSTOMS MEASURES BY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS No. 30/2001 COLL.

The purpose of this new act is to regulate customs measures for all intellectual property rights, in case they come across the goods, with which intellectual property rights could be violated. Intellectual property rights can be asserted in the same way as property rights. This act regulates measures that infringe on the intellectual property rights of goods.

G. ACT ON MEDIA No. 35/2001 COLL.

This act defines the rights, liabilities, responsibilities, and the public state's interests in the media. It defines media and programme content and determines what is considered media. Article 4 lists the programme contents that are defined by the public state interest in the media area. General principles were also established that stressed editor's obligations for Slovene language protection and freedom of speech. This act also has a special provision on the protection of plurality and variety in media and it gives special attention to the protection of competition.

H. AMENDING ACTS IN SLOVENIA, YEAR 2001

- *Amend. to Companies Act No. 45/2001 Coll.* The primary purpose of this amendment is to bring Slovenia into harmonization with the European company law. Thus, the Companies Act has been amended to reflect international standards. This amendment regulates company representation. A provision for on-litigation procedures has been included. The first part of the Act's seventh provision has been replaced with provisions for company accounting and annual reporting. Some changes have been made to the minimum capitalization provisions, merger provisions, the management and liability of holding companies, and the status for converting a company. The amendment addresses the validity of legal businesses, European interest economy association, division, as well as mergers and divisions of partnerships.
- *Amend. to Banking Business Act No. 59/2001 Coll.* The main purpose of this amendment is to bring Slovenia into harmonization with the new European Directive—the Consolidated Banking Directive—and to add minor, but necessary, regulation.
- *Amend. to Inheritance Act No. 67/2001 Coll.* This amendment brings two changes: one to the share of the deceased consort and one to the right to inheritance. There are additional

changes regarding property inheritance for a person who had benefit, in social or other public community help, on the grounds of constitutional provision. Essentially, inheritance is limited to the amount of help received. Such limitation is achieved with a mortgage on deceased property to the amount of the help received.

I. MISCELLANEOUS

- *Art. 976 of the Code of Obligations.* This article provides that a debtor may continue to use the pledged assets when, according to the agreement, the creditor allows such use.
- *The Foreign Exchange Act.* This act provides for debt, secured by a pledge (for example), may be denominated in foreign currency. Thus, in business relations between a Slovene and a foreigner, such transaction could be made in foreign currency.

J. WEB SITES OR LINKS TO SLOVENIAN LEGISLATION

- Central European Free Trade Agreement—Slovenia Legislation, *available at* <http://cefta.org/memberstates/slovenia/silegis/silegis.htm> (last visited Sept. 15, 2002).
- National Assembly of the Republic of Slovenia, *at* <http://www.sigov.si/dz/en/aktualno/zakonodaja.html> (last visited Sept. 15, 2002).

X. Bosnia and Herzegovina

Significant legislative activity in Bosnia and Herzegovina was provided by the Office of the High Representative (OHR) using authority given to it by the General Agreement for Peace in Bosnia and Herzegovina and the Conclusions of the Council for Peace Implementation. The OHR was empowered to offer support when necessary, to find solutions for all problems in civil implementation, and, when necessary, to make final decisions towards the purpose of implementing the Peace Agreement throughout the whole territory of Bosnia and Herzegovina.

In 2001, the State of Bosnia and Herzegovina (BiH) and its entities the Federation of Bosnia and Herzegovina (FBiH) and the Republica Srpska (RS) actively enacted legislation to modernise the country's mainly state-owned post-war economy and social structure. The privatization process is most advanced in the banking sector, which privatization process should be complete by the end of 2001.

New legislation, decisions of Parliament, the Government, OHR, the Constitutional Court, and the Security Commission are published in the Official Gazette (Sluzbeni list) in BiH, FBiH, and RS. Important new acts are set forth below in chronological order, first for the BiH then for its entities.

A. COMMERCIAL (E.G., INVESTMENTS) LEGISLATION UPDATE

- *Decision of the Council of Ministers BiH 25/01 (Official Gazette BiH 9/01).* Transfer of authorities from the Ministry for Foreign Trade and Economic Relations of BiH to the Ministry for Treasury of BiH with respect to financial arrangements with the World Bank, the International Monetary Fund, the European Bank for Reconstruction and Development, the European Investment Bank, and with other similar multilateral and bilateral arrangements.

- *Law on Financial Activities, Law on Internal Payments, Law on Insuring of Deposits, Law on Monetary Transactions (Official Gazette RS 12/01)*. This set of laws regulates and modernizes businesses within the financial sector in Republica Srpska. Previously, a law brought out in 1993 during the war regulated the financial sector in Republica Srpska.
- *Law on Banks, updated (Official Gazette RS 18/01)*. This law requires capital census for banks to be increased to 15.000.000 DM, stimulating bank mergers and contributing to the stability in the sector.
- *Law on Microcredit Organizations (Official Gazette RS 19/01)*. Microcredit organizations are defined as nonprofit and nondeposit organizations whose main activity is to offer microcredits. They often have a role of social protection.
- *Law on Cheque, Law on Bills of Exchange (Official Gazette RS 32/01)*. This is a reintroduction of such monetary instruments, which were often misused and later abandoned.
- *Law on Foreign Investment (Official Gazette FBiH 61/01)*. This law regulates the rights, responsibilities, and benefits of foreign investors; forms of foreign investment; procedures for the approval (for investments in the public information and defence sectors); and registration of foreign investment as well as the bodies authorized for the approvals and registration (Federal Ministry of Trade). Profit can be transferred abroad in foreign currency although position of foreign and domestic investors are the same. The *Law on the Policy of Direct Foreign Investment in Bosnia and Herzegovina (Official Gazette BiH 17/98)* should apply to issues that are not regulated by the Law on Foreign Investment.

B. CORPORATE/SECURITIES (INCLUDING COMPETITION/ANTITRUST) LEGISLATION UPDATE

- *Law on Foreign Trade Chamber of Bosnia and Herzegovina (Official Gazette BiH 30/01)*. This law determined the status, membership, authorities, structure, election procedure, financing, and other questions important for the Chamber's work. The Chamber is an independent, nongovernmental, nonpolitical, nonprofit public association of business subjects.
- *Law on Trade Competition (Official Gazette BiH 30/01)*. This law established a Council for Competition (for the BiH) and Offices for Competition and Protection of Customers (for the FBiH and RS). Such entities have the duty to prevent monopolistic behaviour and protect market competition.
- *Regulation of the Conditions and Procedures of Emission of Papers of Value (Official Gazette RS 15/01)*.
- *Regulation on Registry of Emitents of Papers of Value at the Securities Comm. (Official Gazette RS 45/01)*.
- *Regulation on Registration and Transfer of Papers of Value at the Central Registry (Official Gazette RS 45/01, FBiH 6/01)*.
- *Regulation on Conditions of Purchase and Selling of Papers of Value, Securities Comm. FBiH (Official Gazette FBiH 30/01)*. These are the important documents for the establishment of a securities market and modernisation of the economy.
- *Law on Procurement of Goods, Services and Works (Official Gazette RS 20/01)*. This law regulates procurement procedures for the public institutions and companies financed from the budget of the RS.

C. PUBLIC INTEREST (INCLUDING HUMAN RIGHTS RELATED, ANTI CORRUPTION, ANTI-MONEY LAUNDERING) LEGISLATION UPDATE

- *Decision of OHR 81/01—Constitutional Commissions*. Constitutional Commissions of the Parliaments in both BiH entities should temporarily ensure the implementation of the Consti-

tutional Court to secure full protection of vital interests of the constitutional peoples in accordance to the European Convention on Human Rights and Basic Freedoms and to prevent discrimination in the whole territory of BiH.

- *Decision of OHR 89/01—Establishment of Regulatory Agency for Communications.* The Regulatory Agency for Communications was established by merger of two former bodies: the Independent Media Commission and the Regulatory Agency for Telecommunications. Its General Director will be appointed by OHR. This new agency will be responsible for the implementation of sectoral laws and policies, technical control, administration and employment.
- *Decision of OHR 94/01—Establishment of the Independent Judicial Commission.* This commission will support and evaluate work of judicial, prosecutive and government institutions ensuring high ethical and professional standards. It will direct and coordinate reforms and new legislation in the field.
- *Decision of OHR 108/01—Law on Abandoned Flats.* The OHR has made a number of decisions concerning the return of real property in order to increase repatriation of refugees and to ensure full implementation of property laws in the whole BiH.
- *Decision of OHR 112/01—Criminal Procedure.* High Representative has the power to determine which court will have the authority to process particular criminal cases in the first instance.
- *Decision of OHR 116/01—Law on Banks, change.* This decision protects the rights of small savers in the process of bank liquidation, securing deposits of up to 5.000 DM.
- *Law on State Border Authority of Bosnia and Herzegovina (Official Gazette BiH 19/01).* The state border authority is established for the protection of borders and airports as a complement to the whole set of measures to improve border protection.
- *Law on Elections in Bosnia and Herzegovina (Official Gazette BiH 23/01).* This law regulates the election procedure for members of Parliament of Bosnia and Herzegovina and the Presidency of Bosnia and Herzegovina, establishing principles for the elections at all levels in BiH. Adopting of this law is considered an important condition for the entry of Bosnia and Herzegovina into the Council of Europe.
- *Law on Protection of Personal Data (Official Gazette BiH 32/01).* The purpose of this law is to ensure respect of the basic human rights with regard to personal data protection.
- *Law on Personal Identity Card (Official Gazette BiH 32/01).* The aim of this law is to establish identification of all BiH citizens by a Personal Identity Card. Such ID card will be evidence of one's identity, place and date of birth, address, and citizenship. In some cases it could be used for border crossing and identification abroad.
- *Law on Central Data Base and Exchange of Data (Official Gazette BiH 32/01).* This law establishes a main national data base center in Sarajevo. Such center will be the primary facility for personal details of citizens, passports, ID cards, visas, addresses, driving licences, cars, and offenders.
- *Law on Free Access to Information (Official Gazette RS 20/01, FBiH 32/01).* This law holds that information in possession of public bodies is goods of common value. It promotes transparency and responsibility of public bodies with regard to the information necessary for a democratic process. Any person has the right to access this information in accordance with the public interest. Any person can comment and ask for a change of his personal information held by public bodies.
- *Law on Ratification of Agreement between the Federal Republic of Yugoslavia and Republika Srpska for the Establishment of Special Parallel Relations (Official Gazette RS 20/01).* Special parallel relations with FR Yugoslavia and Croatia were allowed by the Peace Agreement signed in Paris on December 14, 1995, but conclusion of this agreement was followed by adverse political opinions.

- *Law on Protection of Slander (Official Gazette RS 37/01)*. This law introduced principles of civil responsibility for slander, instead of the former criminal responsibility. The purpose was to increase freedom of expression and protection of journalists.
- *Law on Cooperation of Republika Srpska with the International Criminal Tribunal in The Hague (Official Gazette RS 52/01)*. This tribunal requires the Republika Srpska to deliver all persons indicted for war crimes held by that entity. Adoption of this law will increase that process.
- *Law on Prevention of Money Laundering (Official Gazette RS 52/01)*. This law introduced a set of anti-money laundering measures including the obligation for banking, financial, and other institutions to register transactions in the amount of 30.000 DM or higher.
- *Law on Protection of Ionisation and Radioactivity (Official Gazette RS 52/01)*. This law prescribes measures for the protection of health and environment of radiation, and conditions for work on sources of radioactivity, security, and control measures.
- *Decision on Special Auditor for FBiH (Official Gazette FBiH 9/01)*. The special auditor will control use of public funds in the entity, its cantons, and municipalities. The special auditor is appointed by the OHR.
- *Law on Special Protection of Witnesses in the Criminal Procedure in FBiH (Official Gazette FBiH 17/01)*. For the purpose of full protection of life and freedom of witnesses and their relatives, this law establishes procedures for their protection in the criminal procedures. A special protection decision for a witness can be made by the judge of the Supreme Court of FBiH.
- *Law on Judicial and Prosecutive Services in FBiH (Official Gazette FBiH 20/01)*. This law establishes new standards for the work of judges and prosecutors insuring their independence, impartiality, and professionalism. It regulates procedures for their appointment, conditions they need to fulfill, and control of their service.

D. MISCELLANEOUS LEGISLATION UPDATE (E.G., BANKING, FOREIGN EXCHANGE REGIME, ENVIRONMENTAL, OTHER EU-RELATED LEGISLATION, INTELLECTUAL PROPERTY, TAXATION, REAL PROPERTY, E-COMMERCE, ETC.)

- *Law on Establishment of Green Card Bureau of Bosnia and Herzegovina (Official Gazette BiH 18/01)*. This Green Card Bureau represents insurance organizations in BiH in the Green Card system as defined by London Agreement.
- *Law on Establishment of the Institute for Standards, Measurement and Intellectual Property in Bosnia and Herzegovina (Official Gazette BiH 19/01)*. This law established the Institute for Standards, Measurement and Intellectual Property in BiH as an independent institution of state administration, regulating its status, authorities, organization and function. In the same time a set of laws regulating the field were adopted—Law on accreditation in BiH, Law on units of measure in BiH, Law on standardization in BiH, and Law on measurement in BiH.
- *Law on Medications (Official Gazette RS 19/01, FBiH 51/01)*. Modernisation of the sector that has been regulated by the law brought out in RS in 1994 during the war.
- *Decision of introduction of INCTOSAI revision standards to Offices of Financial Auditing of Institutions of BiH, FBiH and RS (Official Gazette RS 20/01, FBiH 23/01)*. Introduction of these internationally recognised revision standards will contribute to greater accountability of the public institutions for their work.
- *Decision for the Establishing of General Registry of Financial Account Holders (Official Gazette RS 43/01, FBiH 14/01)*. The purpose of these acts are to create better financial and taxation discipline.
- *Law on Tax Authorities, Law on Income Tax, Law on Tax on Property, Law on Social Security Payments (Official Gazette RS 51/01)*. This set of fiscal laws is intended to improve the function of the taxation system and to stimulate the economy.
- *Law on Association and Foundations (Official Gazette BiH 32/01, RS 52/01)*. According to this law, associations are defined as forms of free cooperation of legal and natural persons for the

purpose of achievement of some common goals, that are not mainly the economy. Foundation is a legal body established for the purpose of management with some property in public interest. Both the associations and foundations have certain custom, tax, and other privileges established by law.

- *Law on Salary Tax, Law on Social Security Payments (Official Gazette FBiH 16/01)*. These laws reduced some categories of salary taxes and social security payments for the purpose of stimulation of economic activities and employment.

E. WEB SITES OR LINKS TO BOSNIAN LEGISLATION.

- JP NIO Službeni list Bosne i Hercegovine, *available at* <http://www.sllist.ba> (last visited Sept. 15, 2002) (the Official Gazette of Bosnia and Herzegovina Web site).

XI. Latvia

This selective list of legislative modifications, which have been enacted and published in the national gazette *Latvijas Vēstnesis (LV)* in the Republic of Latvia in 2001, are generally in the areas of commercial, competition, and investment law, as well as labor, real property, privatization, telecommunication, and administrative procedure law. Furthermore, the majority of these have been adopted mainly due to the obligation undertaken by the government of the Republic of Latvia to harmonize its legislation with the norms of the EU. The specific selective laws adopted during 2001 are the following:

- *Competition Law (adopted on October 4, 2001; LV 151 23.10.01)*. The aim of this law is to remedy deficiencies of the previous Latvian competition law as compared with the EU law in this field, and to remedy the most significant problems that have arisen upon its application in practice in Latvia. One of the main improvements in the new Competition Law is related to definitions of certain terms used in the Competition Law, thereby limiting the possibility that the terms could be improperly extended or limited in their interpretation. The procedure in which cases will be reviewed at the Competition Council is further clarified. Also noteworthy is that the new Competition Law introduces significant changes in the area of company merger control, greatly reducing the threshold criteria for requirement of merger notification to the Competition Council.

The new Competition Law introduces significant novelties in relation to prohibition on the abuse of dominant position as well as prohibition on unfair competition. The clauses of the currently effective law, which set forth the prohibitions on these unfair practices, contain a thorough list of activities that can be qualified as prohibitions on the abuse of dominant position and unfair competition. The new law refers to the items on this list as examples of the abuse of dominant position and unfair competition allowing application of the law also in other cases, as is also stated by the Agreement on Establishment of the European Community.

Perhaps the most significant changes that will be introduced by the new law are related to the supervision of mergers of market participants. The law currently in effect states that market participants who have decided to merge in the forms prescribed by law, must give prior notice thereof to the Competition Council if the aggregate turnover of the merger participants during the preceding financial year was not less than twenty-five million Lats and at least one of the market participants has been in a dominant position in the concrete market prior to the merger. It appears from the current practice that these existing criteria for notification may be too high, arguably allowing for the creation of unfavorable situations

and lack of competition in various sectors of the national economy. For the purpose of avoiding any such tendencies in the future and with the intention of creating more favorable environment for development of small and medium enterprises, and of course to coordinate this provision of the law with the requirements of the EU law, the new law states that market participants who have decided to merge in the forms prescribed by law, must provide notification to the Competition Council to that effect, if at least one of the afore-mentioned criteria exists.

- *Law on Protection of Investors (adopted on November 8, 2001; LV 170 23.11.01.).* The purpose of this law is to establish a certain system for protection of interests of all investors, individuals, and legal entities. This law specifies the general guidelines of such newly established system, as well as the procedure for securing financial funds necessary for its operation and payment of compensation. Compensation will be calculated and paid to an investor for irreversible loss of financial instruments (securities, investment certificates, cash funds, financial futures, non-standard interest futures, interest rates, value and stock swaps, and option transaction instruments) and/or losses caused by non-performed investment service, if the investor submits an application to the Finance and Capital Market Commission, which in accordance with this law is the responsible state authority, which determines the procedure for submission of compensation applications. The system participant, the credit institution or broker's company must submit such application to the Commission within one year after the moment when the investor learns of default, but not later than five years of the default date. The Commission reviews the investor's application within thirty days and takes a positive or a negative decision in respect thereof, as well as notifies the system participant of the amount of compensation to be paid. The system participant must pay the compensation to each investor within three months (in exceptional cases, subject to permission of the Commission within six months) after the date of positive decision by the Commission. However, this law also has specified a range of concrete persons whose compensation applications will not be satisfied, for example, persons related to transactions that have been declared guilty in a criminal case for money laundering, system participants, insurance companies, investment companies or other investors who have declared that they are professional investors, persons incorporated within the same group of companies as the system participant, etc.

This law specifies a quadruple increase in the amounts of compensation within the next seven years. From January 1, 2002 until December 31, 2002, compensation payable to one investor for irreversible loss of financial instruments and/or losses caused by non-performed investment service will be 90 percent, but not in excess of LVL 3,000, from January 1, 2004 until December 31, 2005, it will be 90 percent, but not in excess of LVL 6,000; from January 1, 2006 to December 31, 2007 it will be 90 percent, but not in excess of LVL 9,000; and as from January 1, 2008 it will be 90 percent, but not in excess of LVL 13,000.

Pursuant to the foregoing, this law specifies a system for calculation of the amounts payable by system participants to the compensation payment account in the Bank of Latvia.

This law also specifies requirements with respect to the investor protection obligations of providers of investment services registered abroad. It also specifies that the foreign affiliates of providers of investment services registered in Latvia will join the foreign investor protection system, if required by the respective foreign legislation. In such event, the respective affiliate abroad will not become a system participant in Latvia.

However, it is important to keep in mind that this law will not be applied in the following cases: (1) if the providers of investment services have been acknowledged to be liquidated, insolvent or bankrupt prior to the effective date of this law; (2) if financial instruments have been irreversibly lost prior to the effective date of this law; and (3) if investors have incurred losses due to changes in the prices of financial instruments or they have become non-marketable.

- *Labor Law (adopted on June 20, 2001; LV 105 06.07.01.)*. Latvian legislation in this important legal sphere is outdated and fails to correspond to the general level of the country's development and today's legal employment relations. As to its contents, the new draft labor law has a more definite structure, it is more concrete and clear, and shorter and more understandable than the Labor Law Code, which has been in force since 1972 and has been repeatedly amended in the course of the years.
- *Amends. to the Law on Landbook (adopted on Nov. 11, 1999; LV 386/387 23.11.99.)*. As of July 1, 2001, the State Unified Computerized Land Book began its operation in Latvia, being one of the most advanced land registers in Europe. This massive information database contains information regarding all registered real properties in all twenty-eight land book departments of Latvia. The computerized land book enables a subscriber to obtain varied services through the Internet within a very short period of time, such as legally valid information regarding the owner of the particular real property, its encumbrances and debts. Furthermore, it is possible to receive regular updates regarding changes in respect of the owner or encumbrances of any particular real property or regarding real property transactions performed by any particular person, thus ensuring supervision of any property or person concerned.

The newly established system is of great assistance to everyone having day-to-day work connected with real properties, such as businessmen, notaries, lawyers, as well as any other person who intends to acquire or lease any real property. Furthermore, specialists believe that the new system will create more advantageous conditions for the development of the real property market and mortgage loans.

- *Amends. to the Law on the Lease of Residential Premises (adopted on July 5, 2001; LV 110 20.07.01.)*. This new law introduces important changes into the legal relations between lessors and lessees, grants broader rights to the courts in settling residential premises lease disputes, and introduces responsibilities of municipalities in settling issues relating to leases of residential premises. Several articles of this law are restated and expressed in a clearer wording reducing the possibility to misinterpret provisions of the Law. For example, this law states that no later than within three days after family members of the lessee and other persons have moved into the residential premises, the names and personal identity numbers of such persons must be recorded in the residential premises lease. Thus, the rights and obligations of such persons are legally precisely specified, reducing the possibility of disputes between the lessor and the lessee with regard to the legal status of such persons.

Most of the important changes in this law are in connection with the rights of the lessor to (freely) determine the rent, termination of the right to lease residential premises and eviction of the lessee from residential premises. The procedure for determination of the rent has undergone material changes.

The rent for residential premises has been divided into two parts consisting of: (1) portion of management costs of the residential building, proportionate to the area of the respective leased residential premises and (2) profit.

This law specifies different means of calculation of the rent for residential premises, taking into account whether the residential premises are possessed by the municipality or by the state. If the possessor is the municipality, the rent will be determined in accordance with the procedure specified by the council of the municipality, while the rent for residential premises possessed by the state is determined at an open auction.

This law also introduces a new approach to the definition of the payment for services relating to the use of residential premises; such services are divided into two groups, namely, basic services and supplementary services: (1) basic services are such services which are inseparably linked with the use of residential premises (heating, cold water, sewerage, and removal of household waste) and (2) supplementary services are such services on the supply of which the lessor and the lessee have agreed in the lease (hot water, gas, electricity, garage,

parking, and so forth), and which can be rejected by the lessee upon giving two weeks prior written notice to the lessor.

This law has been supplemented with an article regulating the validity of the lease of residential premises between the lessor and the lessee if the building (residential premises) needs capital repairs. If the building is returned to its legal owner or denationalized, and its owner (lessor) has taken a decision to make capital repairs that cannot be performed while the lessee resides in the building or uses the respective premises, the owner (lessor) may terminate the lease allocating to the lessee and his family members other equivalent residential premises. However, such obligation is subject to restrictions involving the following circumstances: (1) such obligation of the lessor is in force during the first seven years after restitution of his ownership rights or (2) if the residential building (residential premises) is to be rebuilt into a commercial building (commercial premises).

Another novelty introduced in this law is a security deposit mechanism that specifies the right of the lessor to claim security deposit from the lessee and serves as a guarantee that throughout the term of the lease the rights of the lessor will be satisfied.

- *Amends. to Law on Privatization Certificates (adopted on Oct. 11, 2001; LV 164 14.11.01.)*. Since the privatization in the Republic of Latvia has not been completed, with these amendments property compensation vouchers as means of payment for state and municipal objects will be used in cases and manner specified in laws and regulations by December 31 2003, while other vouchers by December 31, 2002.
- *Law on Telecommunications (adopted on Nov. 16, 2001; LV 166 16.11.01.)*. This law sets the basic principles of telecommunication and providing of such services in the Republic of Latvia. The main aims of this law are to promote provision of telecommunication services and healthy competition in telecommunication market, set the legal relationships in provision of telecommunication services and to protect the interests of telecommunication service providers, consumers and operators.
- *Law on Administrative Procedure (adopted on Oct. 25, 2001; LV 164 14.11.01.)*. This law, which will be effective as of July 1, 2003, ensures consideration of basic principles of democratic and judicial state, especially human rights, in all legal public relationships between state and individual person or private legal entity.
- *Web sites or links to Latvian legislation*: World Legal Information Institute, available at <http://www.worldlii.org/catalog/50287.html> (last visited Sept. 15, 2002).

XII. Lithuania

Set forth below is a list of the most important commercial laws and regulations of the Republic of Lithuania that were enacted or took effect in 2001. All the acts are published in the official gazette of the Republic of Lithuania *Vaištybės žinios* (State News). They are also available on the Web site of the Republic of Lithuania Parliament (Seimas) at the address <http://www.lrs.lt>, which also contains translations of major acts into English.

The effective date (July 1, 2001) of the new Civil Code of the Republic of Lithuania adopted by Law No. VIII-1864 dated July 18, 2000, marks the most significant event in the history of Lithuanian law. This new Civil Code is the first complete act of Lithuanian national law that provides for a systematic regulation of civil relations. The Civil Code is designed to adapt the civil law to those essential changes that have recently occurred in the economic, social and political life, to create more favorable environment for the development of business, protection of civil rights and freedoms, to introduce effective remedies for violations of rights, also to harmonize private law of the Republic of Lithuania with international law, primarily, with the EU law, and with other international law documents.

A. THE NEW CIVIL CODE (CONSISTING OF SIX BOOKS)

- The First Book “General Provisions” is intended to regulate private law issues. The majority of legal norms therein embrace general rules applicable concurrently with the norms established in other Books. The First Book provides for the principles of civil law (freedom of contract, inviolability of property, justness, fairness, reasonableness, etc.) and defines the main rules for construction of civil law norms. A separate section is devoted to the issues of international private law, in which a number of international law acts are incorporated. The First Book regulates transactions and their invalidity in a more comprehensive manner as compared to the former Civil Code and introduces more liberal requirements for the form of agreements. It defines the subjects of civil law and introduces longer statute of limitations period (instead of the former period of three years, provides for a ten-year period).
- The Second Book “Persons” is designed to address the general regulation issues in connection with civil legal status of individuals and legal entities as follows: (1) section I is concerned with the legal status of individuals and (2) section II regulates the issues of the civil status of legal entities. The Second Book defines a legal person, the types thereof, the setting-up, reorganization and liquidation procedures, the legal capacity to have rights and obligations, civil liability, and governing bodies of a legal entity. For profit-earning legal entities a general capacity and for non-profit legal entities special capacity is established. Also, the application of the *ultra vires* doctrine to profit-earning persons has been abandoned. Additional guarantees are established to protect the interests of minority shareholders.
- The Third Book “Family Law” specifies in further detail the norms contained in other Books of the Civil Code and provides for specific application of separate civil law institutes to family relations.
- The Fourth Book “Law *in rem*” regulates the ownership and other *in rem* relations.
- The Fifth Book “Inheritance Law” is concerned with legal relations in inheritance.
- The Sixth Book “Obligations Law” regulates general issues of the obligations law, defines separately the peculiarities of contractual and non-contractual obligations, and regulates types of contracts. This Book consists of four sections: (1) section I stipulates general provisions of the obligations law; (2) section II regulates general issues of the contract law and incorporates the principles of international commercial contracts under UNIDROIT; (3) section III governs the obligations arising based on other grounds, managing the affairs of another, unreasonable enrichment and other obligations; and (4) section IV is concerned with legal regulation of separate contract types—beside traditional types of contracts, it introduces such new types as rent, leasing, distribution, factoring, franchise, etc.

B. NEW LAW ON STOCK COMPANIES No. VIII-1835 DATED JULY 13, 2000

This law is designed to improve and update the Lithuanian law of companies and alongside, to completely harmonize it with the Company's Law in the European Community. This law has introduced a new minimal size of the authorized capital of stock companies at 150,000 Litas and the maximum number of shareholders (also founders) in close stock companies at 100. This law has more specifically defined requirements for the bylaws of companies. Under this law, companies are no longer required to reiterate in their bylaws the provisions and to regulate issues that are regulated in sufficient detail under relevant laws. This law provides for a number of new provisions related to: the organization, the rights and obligations of companies, the rights of shareholders, corporate governing bodies, formation and use of reserves, subscription for shares, etc.

C. BELOW FOLLOWS AN OUTLINE OF OTHER MAJOR LEGISLATION OR AMENDMENTS TO THE EXISTING LEGISLATIVE ACTS PASSED IN THE REPUBLIC OF LITHUANIA IN 2001

- *Amends. to the Law on Commercial Banks (Law No. IX-164, Valstybės žinios No. 16).* The amendments to the Law on Commercial Banks are designed to allow foreign natural and legal persons unrestricted participation in the setting up of banks in the Republic of Lithuania. These amendments have also increased the limit of investments that the banks are allowed to make in the shares or capital of other companies.
- *Companies Bankruptcy Law (Law No. IX-216, Valstybės žinios No. 31).* The new Companies Bankruptcy Law passed by the Seimas introduced numerous new provisions and amendments. One of the main criteria for initiating bankruptcy proceedings has been amended to require that bankruptcy proceeding should be initiated under the established procedure when liabilities of the company make half of the value of the company's assets. Also, upon initiation of bankruptcy proceedings against the company or by solving bankruptcy procedure in any other way than litigation, the administrator is to examine the company's transactions concluded during the period no shorter than thirty months until the date of initiation of bankruptcy proceedings, instead of the former one-year term. The administrator is deemed to know about such transactions as of the date the court decides to initiate bankruptcy proceedings. The procedure of examination of transactions is made more strict if the court determines fraudulent bankruptcy. The law removed rehabilitation procedure, which will be governed by a newly adopted companies reorganization law. Pursuant to the new Companies Bankruptcy Law, claims of creditors will be satisfied in two stages, the principal amount of the debt less penalties being paid in the first stage. This law also introduces other novelties and amendments. This law comes into effect as of July 1, 2001.
- *Ratification of the Copyright Treaty of the World Intellectual Property Organization (Law No. IX-212, Valstybės žinios No. 32).* To improve the protection of intellectual property rights in information society, the Seimas ratified the Copyright Treaty of the World Intellectual Property Organization. This treaty was made in 1996 to update copyright protection under the Bern Convention with due regard to the progress of technologies in information society. This treaty governs copyright protection with respect to new ways of using pieces of creative work (public announcement in internet, electronic publishing, etc.) The provisions of this treaty will be mandatory in Lithuania as of the effective date of the treaty.
- *Law on Amending and Supplementing the Insurance Law (Law No. IX-333, Valstybės žinios No. 48).* The amendments and supplements to the Insurance Law specify the cases in which the litigation expenses insurance group risk may be included in any other insurance group as additional risk; allow the insurance companies of foreign countries who are full members of the World Trade Organization to establish their affiliates in the Republic of Lithuania, also allow such insurance companies who have neither subsidiary nor affiliate in the Republic of Lithuania to enter into insurance contracts with natural persons, legal entities, and entities without the rights of a legal person of the Republic of Lithuania for voluntary insurance within the insurance groups listed in the Insurance Law and within the marine cargo (cargo transportation by sea, lakes, rivers, and canals) and air cargo insurance groups. These amendments lifted restrictions on the establishment of insurance companies by foreign entities, also introduced other new provisions.
- *Gambling Law (Law No. IX-325, Valstybės žinios No. 43).* The Gambling Law adopted by the Seimas legalized gambling in the Republic of Lithuania and established the conditions

and procedure for the organization of gambling. The right to organize gambling will be granted to companies operating under this law of the Republic of Lithuania on Stock Companies and having obtained gambling licenses or permits. Under this law, the State Gambling Supervision Committee can issue licenses for the following gambling games: games at the gaming machine saloons, bingo, table games (such as roulette, card, and dice games), totalizators, and betting. This law introduces quite numerous requirements for the companies wishing to organize gambling. This law takes effect as of July 1, 2001.

- *Product Safety Law (new wording) (Law No. LX-427, Valstybės žinios No. 64)*. The new wording of this law passed by the Seimas has been harmonized with the EU Directive 92/59/EEC. In line with the Directive requirements, the application of this law has been modified so as to restrict it only to the products the safety of which is not specifically regulated under other legislation. Also, this law has introduced amended definitions of the terms supply to the market, product, unsafe product, manufacturer, service provider, and expert examination of product safety, supplemented the rights and obligations of the state product safety control institutions, and imposed the liability for violation of this law not only on manufacturers or service providers but also on distributors of products.
- *Rules for Sale of Goods and Provision of Services under Contracts Made by Means of Communication (Order No. 258, Valstybės žinios No. 73)*. These rules approved by order of the Minister of Economy establish requirements for sale of goods and provision of services to buyers (consumers) under contracts made by one or several means of communication. These rules are also applicable to such contracts the offering and acceptance of which is made by different means of communication. These rules establish the requirements for provided information, set out the peculiarities of sale of goods and provision of services and the procedure for abandonment of executed contracts, etc. These rules replaced the previous rules approved by order of the Minister of Economy on January 26, 2001, which lost validity as of July 1, 2001.
- *Law on Packages and Package Waste Handling (Law No. IX-517; Valstybės žinios No. 85)*. This law establishes general requirements for accounting, labeling, collection, use of packages and package waste so as to eliminate adverse impact of packages and package waste on the environment and human health. This law also provides for the rights and responsibilities of manufacturers, importers, sellers, consumers, product users and waste managers in the package and package waste handling process. This law is binding on all manufacturers, importers, manufacturers, sellers, consumers of packages, product users and waste managers. This Law takes effect as of January 1, 2003.
- *Law on Excise Tax (new wording) (Order No. 486; Valstybės žinios No. 88)*. The existing Law on Excise Tax lists eleven goods that are liable to the excise tax. Beside alcohol, tobacco and fuel, the excise tax is currently levied on such products as coffee, electricity, sugar, chocolate, luxury cars, etc. Under the new wording of this law, the excise tax is imposed only on three goods the taxation of which is harmonized throughout the EU and is mandatory under the EU Acquis. Such products include alcohol, processed tobacco and fuel.

For the purposes of the excise tax, the new wording of this law groups alcohol in accordance with the classification provided for under the EU Acquis (beer, wine, other fermented beverages, intermediary products, ethyl alcohol).

Processed tobacco, as an object of the excise tax, is described through definitions of cigarettes, cigars, cigarillos and other smoking tobacco products. Under this law, the excise tax on tobacco products other than cigarettes is charged in Litas per kilogram and,

in accordance with Lithuania's Tax negotiations position, until the day of Lithuania's accession to the EU will have to be made consistent with the minimum rate applicable in the EU (EUR twenty per one kg). For cigarettes, a combined excise tax rate will be introduced, to combine the elements of a specific tax (charged in Litas per 1,000 cigarettes) and of *ad valorem* tax (charged as a percentage of the retail price).

According to the new wording of this law, the excise tax is applicable to fuel products intended for engines and heating, such as petrol, kerosene, gas oil, heavy fuel oil and ore emulsion, also, oil gas and gaseous hydrocarbons (intended for engines).

This law takes effect on July 1, 2002, except for several articles the effective date whereof has been postponed.

D. WEB SITES OR LINKS TO LITHUANIAN LEGISLATION

- The Constitutional Court of the Republic of Lithuania, *available at* http://www.lrkt.lt/links_en.htm (last visited Sept. 15, 2002).
- World Legal Information Institute, *available at* <http://www.austlii.edu.au/links/2268.html> (last visited Sept. 15, 2002).

XIII. Estonia

A. ACTS ADOPTED BY THE RIIGIKOGU

- On June 14, 2000, the *Estonian Central Register of Securities Act* (RT I 2000/57/373).
- On June 14, 2000, the *Alcohol Excise Duty Act* (RT I 2000/58/375).
- On June 19, 2000, the *Tobacco Act* (RT I 2000/59/379).
- On Oct. 18, 2000, the *Heavy Goods Vehicle Tax Act* (RT I 2000/81/515).
- On Oct. 19, 2000, the *new Public Procurement Act* (RT I 2000/84/534).
- On Nov. 14, 2000, the *Value Added Tax Amend. Act* (RT I 2000/89/581).
- On Nov. 15, 2000, the *Public Information Act* (RT I 2000/92/597).
- On Nov. 15, 2000, the *Tourism Act* (RT I 2000/95/607).
- On Nov. 15, 2000, the *Motor Vehicle Excise Duty Act Amendment Act* (RT I 2000/92/599).
- On Nov. 23, 2000, the *Land Tax Act Amendment Act* (RT I 2000/95/612).
- On Dec. 6, 2000, the *new Notaries Act* (RT I 2000/104/684).

B. WEB SITES OR LINKS TO ESTONIAN LEGISLATION

- An Overview of Estonian Law and Web Resources, *available at* <http://www.llrx.com/features/estonian1.htm> (last visited Sept. 15, 2002).

XIV. Cyprus

The legislative developments during 2001 were in large part influenced and directed by Cyprus' continuing efforts to harmonize its legislation in view of its progress towards its scheduled EU accession. Of great significance are the proposed legislations and discussions currently taking place in the parliament and also between the government and the Organization for Economic Cooperation and Development (OECD) and EU regarding Cyprus' fiscal system. The proposed tax reforms are intended to simplify the current system while maintaining the attractiveness of Cyprus as a low taxed financial center while satisfying the OECD and complying with EU practices.

The well-known offshore regime in Cyprus will change as part of the island's accession to the EU, and as a result of agreements with the OECD. Cyprus was excluded from the OECD's June 2000 harmful tax haven blacklist in return for pledging a commitment to amend its tax practices.

The Cyprus government compiled a document, which proposes to eliminate all harmful tax practices in the jurisdiction for submission to the OECD early in 2001. In the report Cyprus pledged that the fiscal regulations governing locally owned companies would also apply to foreign-owned companies operating in Cyprus. This will take effect some time before or around December 31, 2005. The date is flexible depending upon the time-scale of the implementation of other tax reforms currently under consideration.

It had been expected that the OECD would come to an agreement over the proposed tax reforms by mid-2001, but this timetable was affected by the OECD's difficulties with its harmful tax competition initiative.

In late 2001, Cyprus proposed to the EU that it should have a uniform 10 percent rate of corporation tax for onshore and offshore companies alike, but the timing is unclear. If the EU agrees to this rate, Cyprus will have the lowest corporation tax regime in the EU making it one of the most attractive jurisdictions worldwide for international tax planning and structuring.

Set forth below is a selective list of legislation and regulations enacted during the year 2001 and are of interest to the international business and legal community.

A. ACT 30(I) 2001 CONTROL OF STATE AID

This act was enacted to harmonize internal practices with EC treaty and the EC internal market. Under this new law, no state aid is permissible unless the Commissioner previously approves it. State Aid as defined in the law includes any aid granted by the state or through state resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods. Among others the following state aid *can* be approved by the Commissioner: (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; (b) aid to make good the damage caused by natural disasters or exceptional occurrences; and (c) aid to remedy a serious disturbance in the economy.

The following state aid *may* be approved by the Commissioner: (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious unemployment; (b) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest; and (c) aid to promote research, technological progress, culture and heritage conservation where such aid does not affect trading conditions and competition to an extent that it is contrary to the common interest.

Certain provisions of this law do not apply for determining state aid for agriculture, livestock and fisheries, and to businesses owned exclusively directly or indirectly by non-Cypriots, which derive their income from sources outside the Republic of Cyprus (section 28A of the Income Tax Laws), called International Business Companies (previously referred to as Offshore Companies).

B. Act 63(I)/2001

This act regulates the structure, organization, and operation of open-ended collective investment schemes, movable values, bank deposits and other assets, their investment and borrowing policy, their tax regime, and the regulatory power of the capital market committee, and other related matters. The legislation was enacted as a direct consequence of the rapid growth of the capital markets in Cyprus the last few years together with the road taken by Cyprus for accession in the EU. The legislation establishes the legal framework for the regulation of the structure, organization, and operation of the local open-ended collective investment schemes (CIS) (commonly known as mutual funds). Until now the Cyprus legislation provided only for the operation of close-ended collective investment schemes such as the investment companies already listed on the Cyprus Stock Exchange.

The purpose of this legislation is to regulate the legal regime, the operation, the lending and investment policies of such funds, as well as the taxation regime that have their seat and central management in the Republic. The legislation is based in its entirety on the EEC directive 85/611 (20/12/85) as subsequently modified by 88/220/EEC and 95/26/EC that applies now in all the EU countries. The only exception is a transitional provision (art. 146), which allows a looser regulation with regards to the investment policy of the CIS deemed necessary having in mind that the Cyprus capital market is still an emerging market. This deviation will cease once Cyprus becomes a full EC member.

C. Act 64(1)/2001

This act regulates the establishment, structure, responsibilities, power and organization of the Securities Commission and related matters. Under the legislation the Commission has, among others, the responsibility to supervise the operation of the Cyprus Stock Exchange and stock exchange transactions; to grant licenses to financial services companies including investment advisors and brokers; to impose administrative and disciplinary penalties; to exercise the powers and duties granted to it in various related laws including the law related to open ended collective investment schemes; the law regarding insider information; the law regarding mergers and acquisitions; to approve issues of equity or loan capital by listed companies; to grant licenses for the establishment and operation of closed ended investment companies; to conduct audits of listed companies; brokers, investment advisors, other financial services firms, investment companies and collective investment schemes; to supervise and regulate the operation of the stock exchange and the application of legislature; to give the final approval of the prospectus' of an issuer seeking listing after it has been approved by the Stock Exchange Council.

This law allows the Securities Commission to cooperate with similar regulatory authorities in other countries for the exchange of information as deemed necessary in discharging their duties provided that information provided to foreign authorities are covered in these countries by adequate provisions regarding professional confidentiality and secrecy. In addition it imposes a duty to the members of the Commission regarding the observance of secrecy and confidence. With this legislation Cyprus has closed an important legislative gap with regards to the operation of its stock exchange.

