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## NEW ACT ON INAPPROPRIATE CONDITIONS IN COMMERCIAL RELATIONS

(Act No. 140/2010 Coll. on Inappropriate Conditions in Commercial Relations between Customer and Supplier of Goods being Food)

According to the reasoning report to this Act, this Act eliminates weaknesses of the previous Act on Inappropriate Conditions in Commercial Relations which caused that chain stores concluded contracts containing inappropriate conditions with their suppliers.

The Act applies only to undertakings who are suppliers or customers of goods being foods.

The Act defines two categories of contractual conditions between suppliers and customers that are deemed as inappropriate.

The first type are conditions agreed between customer and supplier for payment of consideration paid by the customer to the supplier (mainly for services provided by the customer to the supplier as for example listing in the registry of suppliers, listing of goods in the registry of goods, use of distribution network of the customer, time limited placing of products etc.). It is, however, considered as inappropriate condition only if such consideration exceeds 3% of the annual proceeds of the supplier for goods sold to a single customer in the year when the consideration was performed.

The second category of inappropriate conditions are conditions that are always prohibited by the Act (payments for services that have not been rendered, return of goods with no justified ground done at supplier's expense, agreement on maturity date longer than 30 days from delivery of invoice, additional reduction of agreed price etc.).

Agreement containing inappropriate conditions is explicitly prohibited by the Act.

The Act establishes possibility for the participants of the commercial relations to agree on code of ethics that may establish criteria for honest and transparent commercial relations that will be binding upon all the parties of the commercial relationship upon accession to it.

The Ministry of Agriculture of the Slovak Republic is empowered by this Act to perform control of inappropriate conditions. The Ministry is authorized to control parties of commercial relations upon its own motion, motion of the party of a commercial relation, motion of a professional association authorized pursuant to its Articles of Association and motion of public self-governing institution. Subject of such control are information, documents and deeds from which agreement and application of inappropriate conditions may be determined.

The Ministry as supervising authority is entitled to impose a fine up to EUR 300,000. Further, the Ministry determines a time period for eliminating inappropriate conditions and imposes obligation to the party of a commercial relation which benefited from inappropriate condition to pay back financial consideration received for goods/services provided on the basis of inappropriate condition.

The Ministry is also entitled to impose disciplinary fine up to EUR 5,000 in case of failure to provide co-operation at control performance.

Pursuant to this Act, parties of commercial relations are obliged to bring their contracts concluded before 1 May 2010 into compliance with the Act no later than by 30 September 2010.

This Act repealed previous Act No. 172/2008 Coll. on Inappropriate Conditions in Commercial Relations.

This Act became effective on 1 May 2010.

Štúrova 4  
811 02 Bratislava, Slovak Republic  
tel.: (421-2) 54 41 44 41  
fax: (421-2) 54 43 45 98  
e-mail: office@cechova.sk  
www.cechova.sk

branch:  
Avenue d'Auderghem 36  
B-1040, Brussels, Belgium  
Tel.: +32 (0) 2 230 32 15  
fax: +32 (0) 2 230 33 47  
e-mail: brussels@cechova.sk  
www.cechova.sk

### **ACT ON CONSUMER LOANS AND OTHER LOANS AND BORROWINGS FOR CONSUMERS**

(Act No. 129/2010 Coll. on Consumer Loans and Other Loans and Credits for Consumers and on Amendment and Supplementation of Certain Acts)

Pursuant to the reasoning report to this Act, this Act fully implements Directive of the European Parliament and of the Council 2008/48/EC on credit agreements for consumers from 23 April 2008 and repealing Council Directive 87/102/EEC.

This Act completely replaces Act No. 258/2001 Coll. on Consumer Loans valid by now.

For the purpose of this Act, consumer loan is a temporary provision of funds on the basis of the agreement on consumer loan in the form of loan, credit, deferred payment or similar financial aid provided by creditor to a consumer. The Act also specifies which loan is not considered to be a consumer loan.

The Act stipulates that consumer is an individual to whom a consumer loan has been provided for other purpose than performance of employment, occupation or undertaking. A creditor is an individual or a legal entity offering or providing loan within the scope of its business activities.

The Act specifies information that has to be included in an advertisement or any consumer loan offer in which interest rate of consumer loan or any numerical data regarding consumer's total costs related to consumer loan are stated.

The Act also specifies information which the creditor or financial agent is obliged to provide to a consumer sufficiently in advance prior to conclusion of agreement and also establishes a form for standard information on consumer loan that form annex to the Act. It also stipulates duties of a creditor when offering consumer loans to a consumer.

The Act establishes special requirements for information that shall be provided to a

consumer in case of provision of consumer loan in form of authorised overdraft.

Also an obligation of the creditor is established to consider with professional care the ability of consumer to repay provided consumer loan.

The Act stipulates requisites of consumer loan agreement for which a written form is required. It determines also consequences of breach of obligations stipulated by the Act when consumer loan is regarded as interest-free and free of charge. The obligation of the creditor to inform consumer about changes in interest rate and the right to withdraw from the loan agreement are also regulated.

The Act regulates also several specific types of consumer loans such as consumer loan for an indefinite term, purpose consumer loan as well as payment of consumer loan before its maturity, assignment of rights from consumer credit, overdraft, and method of calculation of annual percentage rate of costs.

The Act regulates the registry of creditors providing consumer loans that is kept by the National Bank of Slovakia. The Act further determines its administration and terms of registration therein.

The Slovak Trade Inspection carries out the supervision over observance of the Act and is authorised to impose penalties for failure to comply with the Act. Under this Act, fine up to EUR 140,000 may be imposed to a creditor, among other penalties.

In connection with adoption of the Act, also respective provisions of the Civil Code, Trade Licensing Act, Act on Banks, Act on Securities and Investment Services, Act on State Control on Internal Market, Act on Supervision over Financial Market, Act on Consumer Protection, Insurance Act and Act on Financial Intermediation have been amended.

The Act indirectly amended also the Act on Public Procurement pursuant to which the right of entitled person to claim nullity of the

amendment to the agreement, concession agreement or framework agreement ceases to exist after 6 months from publication of the information in the Public Procurement Bulletin.

This Act became effective on the day of its publication, i.e. on 2 April 2010, except for certain provisions which will become effective on 1 June 2010 and 1 January 2011.

#### **GENERAL BASE OF ASSETS FOR CALENDAR YEAR 2009**

(Measure of the Ministry of Employment, Social Affairs and Family No. 164/2010 Coll. by which the Amount of General Base of Assets for the Calendar Year 2009 is Determined)

Pursuant to the provision of Sec. 11 (4) of Act No. 461/2003 Coll. on Social Insurance, the Ministry of Employment, Social Affairs and Family determined the general base of assets for the calendar year 2009 in the amount of EUR 8,934.

This Measure became effective on 30 April 2010.

#### **ACT ON EUROPEAN ARREST WARRANT**

(Act No. 154/2010 Coll. on European Arrest Warrant)

According to the reasoning report to this Act, this Act was adopted due to necessity of wide revision of the former Act on European Arrest Warrant and also reflecting the appraisal note of the Council of the European Union to the transposition of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

This Act regulates the procedure of Slovak authorities during the surrender of persons between Member States, based on the European arrest warrant and the related proceeding.

The Act also defines basic terms and scope of use of the European arrest warrant.

It regulates also issuance of the European arrest warrant, its expiration, request for examination and temporary surrender of the requested person, surrender of the extradited person to the court, surrender with a reservation and also information on not-fulfilment of the time periods.

The Act also regulates the procedure of the Slovak authorities as executing judicial bodies, their jurisdiction, method of preliminary examination of the record, arrest of the person. It also regulates the rights of the requested person, preliminary arrest, extradition arrest, examination of the requested person, execution of the European arrest warrant, decision of the court on execution of the European arrest warrant and refusal to execute the European arrest warrant.

It regulates also time periods related to the European arrest warrant, privileges and immunities and also the principle of speciality.

This Act shall become effective on 1 September 2010.

#### **DOUBLE TAXATION TREATY WITH REPUBLIC OF MACEDONIA**

(Announcement of the Ministry of Foreign Affairs of the Slovak Republic No. 153/2010 Coll. on Conclusion of the Treaty Between the Slovak Republic and Republic of Macedonia on Double Taxation and Preventing the Tax Evasion in the Field of Income and Property Tax)

The Ministry of Foreign Affairs of the Slovak Republic informs by this Announcement on conclusion of the Treaty with the Republic of Macedonia on Double Taxation and Preventing Tax Evasion.

The National Council of the Slovak Republic granted its consent with the Treaty on 1 December 2009 and decides that it represents the international treaty that has priority to acts. The President of the Slovak Republic ratified the Treaty on 14 January 2010.

The Treaty applies to the persons, being resident of one of the contractual states. The Treaty applies to the income and property taxes imposed in any of the contractual states, specified in more details in this Treaty.

It also defines the term of permanent establishment, regulates the profits of the enterprise, interconnected enterprises, dividends, interests, royalties, incomes from the employment and as well as who is considered to be a resident of the contractual state.

The Treaty excludes double taxation and also regulates the principle of equal treatment, settlement of disputes by agreement and exchange of information.

This Treaty became effective on 27 April 2010.

### **ACT ON FOREIGN SERVICE**

(Act No. 151/2010 Coll. on Foreign Service and Amending Certain Acts)

This Act was issued as a special Act to the Act on State Service and to the Act on Performance of Works in Public Interest and regulates the questions of state-employment relation of employees in the foreign services.

This Act regulates state-employment relations and employment relations in connection with performance of foreign service and defines the principles of performance of foreign service, position, establishment and cancellation of representation offices of the Slovak Republic abroad and their activities, as well as diplomatic ranks.

At the same time the Act regulates rights and obligations of the employees in the foreign service and certain specialties of performance of the state service in service office or works in public interest by the employer, being the Ministry of Foreign Affairs of the Slovak Republic.

This Act shall become effective on 1 July 2010.

### **CHANGE OF ENERGY ACT**

(Act No. 142/2010 Coll. Amending and Supplementing Act No. 656/2004 Coll. on Energy and Amending and Supplementing Certain Acts, as amended and Amending and Supplementing Act No. 276/2001 Coll. on Regulation in Network Industries and Amending and Supplementing Certain Acts as amended)

According to the reasoning report to this Act, this Act was adopted in order to reach higher transparency and non-discrimination of the electricity market.

The Act establishes new subject on the electricity market, being the organizer of the short term electricity market. The short time electricity market organizer is a joint stock company established by the transmission

system operator which 100 % owner is the transmission system operator.

It regulates also the way of appointment of the members of its statutory body. It also stipulates its rights and duties including, among others, organisation and evaluation of the short-time electricity market, settlement of discrepancies, administration and collection of measured data and central invoicing.

The Amendment also changes the way of accounting of the discrepancies in the electro-energetic.

Actual entity performing settlement of discrepancies in electro energetic shall finish its activities until 31 December 2010. Organiser of the short-term electricity market shall start its activities on 1 January 2011 at the latest and shall take-over all functions of actual entity performing settlement of discrepancies in electro energetic.

This Act became effective on 1 May 2010.

### **AMENDMENT TO MEDIATION ACT**

(Act No. 141/2010 Coll. Amending and Supplementing Act No. 420/2004 Coll. on Mediation and Amending and Supplementing Certain Acts as amended by Act No. 136/2010 Coll. on Services on the Internal Market and Amending and Supplementing Certain Acts and Amending and Supplementing Act of the Slovak National Council No. 323/1992 Coll. on Notaries and Notary Activities (Notary Order), as amended)

According to the reasoning report the purpose of this Amendment is transposition of the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

This Amendment to the Act on Mediation widens the scope of activities of the mediators by cross-border disputes. It regulates further education of the mediators as well as commencement and termination of mediation.

The Amendment also amends the Notary Order in the part relating to the agreement on commencement of mediation.

This Act shall become effective on 1 July 2010.

### **AMENDMENT TO ACT ON REGULATION OF OWNERSHIP RIGHTS TO LAND**

(Act No. 139/2010 Coll. Amending and Supplementing Act No. 229/1991 Coll. on Regulation of the Ownership Rights to the Land and other Agricultural Property as amended and Amending and Supplementing Certain Acts)

This Amendment regulates allotment of the substitutive plots of land, while determining the scope of real estates which shall not be offered by the Land Office to the entitled person as a substitutive plot of land.

This Act shall become effective on 1 July 2010.

### **ACT ON AIR**

(Act No. 137/2010 Coll. on Air)

According to the reasoning report to this Act, the main reason for preparation of this new Act was duty to transpose to our legal system Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.

By this Act the currently valid Act No. 478/2002 Coll. on Air is being repealed.

This Act regulates the target in the field of air quality, air quality rating and informing the public on air quality as well as the rights and duties of persons during the air protection against penetration with polluting substances by human activity and during the reducing of causes and moderation of results of the air polluting.

It regulates also certifying of expert capability and rights and duties of the authorized person performing assessment activities during execution of the experts' appraisals or partial experts' appraisals, authorized measuring, calibration, exams and inspection of the concordance.

The Act defines main terms such as air, polluting substance, permanent measuring, and operator of the polluting source.

The Act defines what is source of the air pollution, amount of the permitted air pollution, air quality and its targets.

It regulates also measuring of the pollution, measures for reducing the pollution program and integrated program, which are elaborated in the agglomerations, where is impossible to reach accordance with the set amounts of nitrogen oxide and action plan.

The Act stipulates the duties of the operators of big sources, middle sources and small sources of polluting.

The Act regulates also the jurisdiction of the authorities of the state administration of air protection being the Ministry of Environment of the Slovak Republic, Slovak Inspection of Environment, Regional Office of Environment, District Office of Environment and municipalities. It also set their powers during the supervision and their authorization while imposing the fines; for breach of the provisions of this Act may be imposed a fine up to EUR 330,000.

This Act shall become effective on 1 June 2010.

### **IMPLEMENTING DECREE TO CUSTOMS ACT**

(Decree of the Ministry of Finance of the Slovak Republic No. 122/2010 Coll. Amending and Supplementing Decree of the Ministry of Finance of the Slovak Republic No. 419/2006 Coll. Implementing Certain Provisions of Act No. 199/2004 Coll. Customs Act and Amending and Supplementing certain Acts as amended as amended)

This Decree is amending the former Decree issued for implementation of certain provisions of the Customs Act, while replacing in the entire text the former expression "Community" with an expression "European Union".

It also regulates the list of stated data in the explanations to the particular annexes.

This Decree became effective on 1 April 2010.

### **NEW ACT ON PACKAGING**

(Act No. 119/2010 Coll. on Packaging and Amending and Supplementing Certain Acts as amended)

According to the reasoning report to this Act, this was adopted in order to transpose Directive 2004/12/EC of the European Parliament and of the Council of 11 February

2004 amending Directive 94/62/EC on packaging and packaging waste and also to make the existing legal regulation more clear and to remove discrepancies that have arisen during determination of duties of concerned subjects in the process of depositing of the reusable packages.

The Act also takes the requirements of the Directive on Packages and also of the Directive 98/34/EC of the European Parliament and of the Council into consideration.

The new legal regulation concerns in particular the rights and obligations of obliged persons in handling with packaging and in collecting and recovering packaging waste, requirements on the composition, packaging characteristics and marking, reusable packaging returnable deposit issue, competence of state administration bodies for packaging and packaging waste, and liability for breach of obligations stipulated by this Act.

The Act applies to all kinds of packaging introduced to the Slovak market or put into circulation in the Slovak Republic and to packaging waste regardless of the place of origin thereof, the use thereof and material used. Packaging is a product used for containment of goods, their protection, handling, delivery and presentation, from raw material to products, from the producer to the user or the consumer, including non-returnable parts of packaging which meets criteria mentioned in Annex 1 to the Act.

The Act applies primarily to obliged persons who in compliance with the new regulation of the statutory definition shall mean a natural person entrepreneur and legal entity

- a) using packaging for containment of products or filling products in packaging,
- b) introducing packaged products to the market,
- c) introducing packaging to the market, save for packaging producers and importers who deliver unused empty packaging to the obliged persons specified in letter a).

The obliged person shall procure the

collection, recovery and recycling of packaging waste introduced to market or put into circulation (including reusable packaging waste), to ask the Ministry of Environment of the Slovak Republic for registration in the Register of Obligated Persons and Authorized Organizations, to maintain the evidence of packages and waste from them.

The Act also stipulates the requirements on the composition, packaging characteristics and marking. It regulates also deposited reusable packages for beverages, collection and recovery of packaging waste.

The Act regulates also the state authority bodies responsible for compliance with the Act, being the Ministry of Environment of the Slovak Republic, Slovak Inspection of the Environment, Slovak Inspection of Commerce, Regional Office of Environment and District Office of Environment.

It regulates also fines imposed for breach of provisions of this Act, while a fine up to EUR 332,000 may be imposed.

This Act became effective on 1 May 2010.

#### AMENDMENT TO CONSTRUCTION CODE

(Act No. 118/2010 Coll. Amending and Supplementing Act No. 50/1976 Coll. on Zone Planning and Construction Order (Construction Code), as amended)

This Amendment regulates single institutes of the Construction Code, regulation of which was evoked, according to the reasoning report, in relation to PPP project of the road infrastructure construction.

The Amendment defines more exactly which constructions are deemed as constructions for defence of the state.

This Act shall become effective on 1 July 2010.

#### Other significant legal regulations published in the Collection of Laws of the Slovak Republic in April 2010 are as follows:

- Announcement of the Ministry of Economy of the Slovak Republic No. 177/2010 Coll. on Issuance of Edict by which Details on General Conditions for

Classification, Marking and Packaging of Dangerous Substances and Mixtures Are Determined,

- Announcement of the Ministry of Economy of the Slovak Republic No. 176/2010 Coll. on Issuance of Edict by which, the List of no-longer polymers with attached number of the European Community has been published,
- Decree of the Ministry of Economy of the Slovak Republic No. 175/2010 Coll. Determining Details on Data File on Customers or Suppliers of Electricity,
- Decree of the Ministry of Transportation, Post and Telecommunications of the Slovak Republic No. 169/2010 Coll. on Certificate of Registration Part I, Certificate of Registration Part II and on Technical Certificate of the Vehicle,
- Decree of the Statistics Office of the Slovak Republic No. 161/2010 Coll. Issuing the Statistics Classification of the Education Sections,
- Announcement of the Ministry of Economy of the Slovak Republic No. 160/2010 Coll. on Issuance of the Edict Amending and Supplementing the Edict of the Ministry of Economy of the Slovak Republic of 1 March 2005 No. 1/2005 on Provision of Grants in the Competence of the Ministry of Economy of the Slovak Republic, as amended,
- Decree of the Ministry of Environment of the Slovak Republic No. 159/2010 Coll. Amending and Supplementing the Decree of the Ministry of Environment of the Slovak Republic No. 131/2006 Coll., Determining National Emission Caps and Whole Amount of Quotas of Polluting Substances in the Wording of Regulation of the Ministry of Environment of the Slovak Republic No. 203/2008 Coll.,
- Decree of the Ministry of Health of the Slovak Republic No. 158/2010 Coll. on Prerequisites of the Book of Narcotic and Psychotropic Substances,
- Announcement of the Ministry of Agriculture of the Slovak Republic and the Ministry of Health of the Slovak Republic No. 149/2010 Coll. on Issuance of the Edict Amending the Edict of the Ministry of Agriculture of the Slovak Republic and the Ministry of Health of the Slovak Republic of 11 February 2008 No. 04650/2008-OL Issuing the Head of the Food Code of the Slovak Republic regulating Additional Substances in Food,
- Decree of the Ministry of Transportation, Posts and Telecommunications No. 147/2010 Coll. Amending and Supplementing the Decree of the Ministry of Transportation, Posts and Telecommunications No. 529/2009 Coll., Defining the Sections of Highway, Speedways and Roads of I Class with Electronic Toll Collection, as amended,
- Decree of the Ministry of Transportation, Posts and Telecommunications No. 146/2010 Coll., Amending and Supplementing the Decree of the Ministry of Transportation, Posts and Telecommunications No. 547/2009 Coll., Determining the Way of Marking of the Sections of Highway, Speedways Use of Which is Subject to Payment, Specimen of the Label and Way of its Placement on the Motor Vehicle,
- Act No. 145/2010 Coll. Amending and Supplementing Act No. 24/2006 Coll. on Assessment of the Impacts on Environment and Amending and Supplementing Certain Acts as amended and Amending and Supplementing Certain Acts as amended,
- Act No. 144/2010 Coll., Amending and Supplementing Act No. 8/2009 Coll. on Road Traffic and Amending and Supplementing Certain Acts as amended and Amending and Supplementing Certain Acts,
- Act No. 143/2010 Coll. Amending and Supplementing Act No. 238/2006 Coll. on National Nuclear Fund for Discard of the Nuclear Devices and for Disposal with the Burn Out Nuclear Fuel and Radioactive Waste (Act on Nuclear Fund) and Amending and Supplementing Certain Acts, as amended,
- Act No. 138/2010 Coll. on Forrest Reproduction Material,
- Act No. 136/2010 Coll. on Services on the Internal Market and Amending and Supplementing Certain Acts (this Act is subject to Special Edition of the Slovak Financial Law News),

- Act No. 134/2010 Coll. Amending and Supplementing the Act No. 364/2004 Coll. on Waters and Amending and Supplementing Act of the Slovak National Council No. 372/1992 Coll. on Misdemeanours as amended (Water Act),
- Act No. 133/2010 Coll. Amending and Supplementing Act No. 578/2004 Coll. on Providers of the Health Care, Medical Employees, Medical Professional Organizations, and Amending and Supplementing Certain Acts as amended and Amending and Supplementing Certain Acts,
- Act No. 132/2010 Coll., Amending and Supplementing Act No. 355/2007 Coll. on Protection, Support and Development of Public Health and amending and Supplementing Certain Acts as amended and Amending and Supplementing Certain Acts as amended,
- Act No. 131/2010 Coll. on Funerals,
- Decree of the Ministry of Interior of the Slovak Republic No. 130/2010 Coll. Amending and Supplementing the Decree of the Ministry of Interior of the Slovak Republic No. 9/2009 Coll. Implementing Act on Road Traffic and Amending and Supplementing Certain Acts,
- Regulation of the Government of the Slovak Republic No. 128/2010 Coll. Amending and Supplementing Regulation of the Government of the Slovak Republic No. 499/2008 Coll. on Conditions of Provision of Support According to the Program of Rural Development in the Wording of Decree of the Government No. 121/2009 Coll.,
- Regulation of the Government of the Slovak Republic No. 127/2010 Coll. Amending and Supplementing Regulation of the Government of the Slovak Republic No. 20/2009 Coll. on Conditions of Provision of Support in the Agriculture by a Way of Direct Payment as amended,
- Act No. 121/2010 Coll. Amending and Supplementing Act No. 581/2004 Coll. on Health Insurance Companies, Supervision Over the Health Care and Amending and Supplementing Certain Acts as amended and Amending and Supplementing Act No. 580/2004 Coll.

on Health Insurance and Amending and Supplementing Act No. 95/2002 Coll. on Insurance and Amending and Supplementing Certain Acts as amended,

- Act No. 120/2010 Coll. amending and Supplementing Act No. 541/2004 Coll. on Peace Use of the Nuclear Energy (Atomic Act) and Amending and Supplementing Certain Acts as amended,
- Act No. 117/2010 Coll. Amending and Supplementing Act No. 543/2002 Coll. on Protection of the Nature and Country as amended and Amending and Supplementing Act No. 24/2004 Coll. on Assessment of the Impacts on the Environment and Amending and Supplementing Certain Acts as amended.

#### JUDICIAL DECISIONS

In this part are stated quotations from opinions of selected judicial decisions and statements in civil and business matters, which were recently published in From Court Practice journal (in Slovak: Zo súdnej praxe):

#### PUBLIC DEEDS IN VIEW OF THEIR EVIDENCE POWER

(Judgement of the Supreme Court of the Slovak Republic No. 2 Cdo 199/2005, published in the From Court Practice Journal No. 2/2010, No. 14)

Sec 134 of the Civil Procedure Code

Authentic public deed, on authenticity of which no doubts have arisen in the proceeding, may be disposed of its evidence power only, when the party to the proceeding insists information and proposes evidence, proving its non-authenticity.

In case of private deed, formal denial of its authenticity by the second party is sufficient to come out of the duty of proof and burden of proof by the party insisting the information which should have been proved by the private deed.

So, by the public deed the burden of proof remains on the party contesting its authenticity.

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Editor Financial Law News: Mgr. Zuzana Gaálová, [zuzana.gaalova@cechova.sk](mailto:zuzana.gaalova@cechova.sk)

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Advokátska kancelária Čechová & Partners

Združenie advokátov: JUDr. Katarína Čechová (evidenčné číslo v zozname advokátov vedenom Slovenskou advokátskou komorou: 0339/317 831 63) poverená vedením účtovníctva združenia pod IČ DPH SK1020333083, JUDr. Simona Haláková (5503/318 195 41), Mgr. Ing. Michaela Jurková (4286/307 989 57), Mgr. Tomáš Mareta (1601/318 172 11), Mgr. Tomáš Rybár (3988/307 967 76).

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Štúrova 4, 811 02 Bratislava

Slovak Republic

tel: +421 (2) 544 14 441, fax: +421 (2) 544 34 598

e-mail: [office@cechova.sk](mailto:office@cechova.sk), [www.cechova.sk](http://www.cechova.sk)

Branch Office: Avenue d'Auderghem 36

B-1040 Brussels, Belgium

tel.: +32 (0) 2 230 3215, fax: +32 (0) 2 230 3347

e-mail: [brussels@cechova.sk](mailto:brussels@cechova.sk), [www.cechova.sk](http://www.cechova.sk)