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Legal Newsletter

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Compulsory dematerialisation of shares in commercial companies and partnerships



A draft amendment of the Commercial Companies Code provides for an obligatory dematerialisation of shares in all joint-stock companies and limited joint-stock partnerships.

At the beginning of 2017, the Minister of Justice put forward a draft amendment of the Commercial Companies Code¹, which provides for a total dematerialization of shares in commercial companies and partnerships. Clearly, the above-mentioned issue refers only to companies, whose shareholding may take the form of shares, i.e. it refers to joint-stock companies and limited joint-stock partnerships. Until now, the dematerialisation obligation applied only to public companies. Under the currently binding regulations, public companies are those wherein at least one share has been dematerialised. It should be emphasised that up to the present moment the dematerialisation obligation has not applied to all shares issued by a public company. Subject to dematerialisation have been only those shares that were to be traded as part of public offering, those that were to be admitted to trading within a regulated market or introduced to a multilateral trading facility.

According to authors of the bill, a need for a change has resulted from the existing construction of bearer shares, which prevents identification of a person authorised under those shares. An absence of ability to identify a holder of a share may facilitate possible abusive practices on the

part of shareholders, e.g. money laundering. However, the bill does not provide for cancellation of provisions concerning bearer shares. Nevertheless, after the proposed amendments are introduced, the said shares will lose their main characteristic, i.e. anonymity. In practice, this will lead to loss of significance of such shares in economic transactions. Another advantage to be brought about by the planned amendments is an increase of safety and efficiency of transactions by limiting the risk of share loss.

Under the amended provisions, it will not be possible to hold shares in the form of a document. Moreover, in accordance with assumptions for the bill, the issuers will be required to maintain an electronic register of shareholders. The said register will be held by entities that so far have kept securities accounts for dematerialised shares. Thus, as a rule, these will be brokerage houses and banks that offer brokerage services. In respect of one company, one register will be maintained. A relevant entity will be chosen in a resolution of the general meeting of shareholders, whereunder a company will be required to conclude with a selected entity an agreement for maintain the shareholders' register. The register is to be open to the company and the shareholders. Entries in the register will be amended at a request from the company or a person, to whom an entry pertains (e.g., share acquirer or seller).

¹Bill of 27.1.2017 on Amendment of the Commercial Companies Code and the Act on European Economic Interest Grouping and the European Private Company with justification.

Another vital regulation is a provision, whereunder a transfer of a dematerialised share or establishment a limited right in rem thereon is dependent on making relevant entry in the register of shareholders. The entry is to determine an acquirer or a pledgee, or a user, as well as the shares that constituted the object of a certain act in law.

At a request of an acquirer or a pledgee, or a user, a registrar will issue registered certificates as documents confirming rights under a dematerialised share in the shareholders' register. Following the issuance of a registered certificate, a disposal of shares will be blocked within the period of the certificate's validity. Shares will be blocked by an entity that maintains the shareholders' register.

As an alternative to the shareholders' register may serve dematerialising shares in non-public companies by registering them in the National Depository for Securities (Krajowy Depozyt Papierów Wartościowych S.A.). Until now this option has been available only to public companies. Information on shareholders registered with the National Depository for Securities will be available to the company.

As assumed by the bill, the planned amendment is to enter into force on 1 July 2018. Shares in paper form will be valid until 1 July 2021, but only within the scope they will be used to prove to the company rights deriving from shares. At present the draft amendment is subject to evaluation.



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Recent changes in the Consumer Credit Act

The Act on Mortgage Credit and the Supervision over the Mortgage Brokers and Agents, passed on 23 March 2017, not only does introduce new regulations for the entities that offer in any way mortgage credit contracts to consumers or that at any stage intermediate in the process of concluding mortgage contracts, but also amends the Consumer Credit Act. Amendments introduced by the new act will also affect lending institutions and consumer credit intermediaries, including those that offer credits other than mortgage ones. New regulations will enter into force on 22 July 2017.

Lending institutions as regulated entities

In accordance with the amended provisions, lending institutions will be subject to registration in the register of lending institutions maintained by the Polish Financial Supervision Authority (KNF). A newly established lending institution will be able to take up its activity after being entered in the above-mentioned register. On the other hand, lending institutions conducting business in the field of granting or promising to grant a consumer credit on the day of the amendment's entry into force, have to comply with the new requirements within 6 months of the date of amendment's entry into force (i.e. until 22 January 2018). Within this period, these entities may continue pursuing their activities on the basis of the existing rules. A failure to be entered in the register maintained by the KNF within the stipulated 6 months will result in the necessity to cease

the activity. Therefore, it is crucial for those entities to file a relevant application with the KNF by the above deadline.

With reference to newly created lending institutions, the act imposes on the KNF an obligation to consider an application for entry in the register of lending institutions within

14 days of its submission. On the other hand, a deadline for processing applications for registration submitted by the existing lending institutions is 6 months from the date of submission or supplementing.

Subject to entry in the register is information such as: business name of a lending institution, its registered office and address, KRS (National Business Register) and NIP (Polish tax identification) numbers, as well as the names and PESEL (the Polish residence identification) numbers of members of the board. The supervisory body examines whether other statutory requirements for conducting lending activities are met, in particular whether the company was equipped with the required minimum share capital (PLN 200,000) and whether members of the board, supervisory board, audit committee or a registered proxy holder have not previously been legally convicted for an offense against the credibility of documents, property, economic transactions, money and securities or treasury offences.

Changes in information submitted to the register of lending institutions should be reported to the KNF no later than



within 7 days of their occurrence.

The amended consumer credit act provides that the KNF is required to immediately remove a lending institution from the registry if it no longer complies with statutory requirements. Regardless of the above, the lender, which carries out credit intermediation activity without the required entry in the register of lending institutions, is liable to a fine of up to PLN 500,000.

Supervision over consumer credit intermediaries

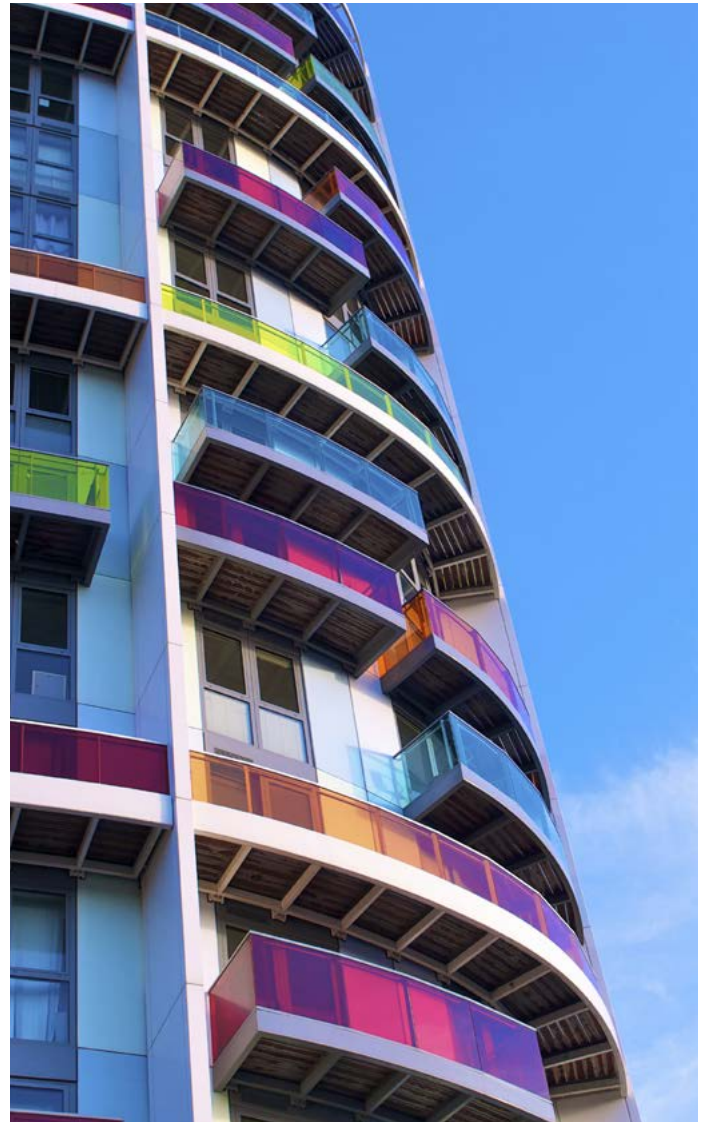
On 22 July 2017, credit intermediaries within the meaning of the consumer credit act (thus, not only mortgage brokers), will be required to register in the register of credit intermediaries maintained by the KNF.

New provisions have also introduced requirements for credit intermediaries themselves. From now on, they can only be: (i) natural persons who have not been validly convicted of an offence against credibility of documents, property, economic transactions, money and securities trading, or treasury offences (ii) legal persons whose members meet the above conditions (iii) companies without legal personality whose partners meet the co condition stated above.

Entry to the register is made at the request of an intermediary, and the credit intermediation activity may be started only from the date of entry in the register.

Just like lending institutions, credit intermediaries operating in the field of consumer credit services before the date of the amendment's entry into force may continue their activity without being registered with the credit intermediaries register for no longer than 6 months from the date of the amendment's entry into force (i.e. until 22 January 2018).

An important new measure is a sanction for conducting consumer credit intermediation activity without the required entry in the register. Persons or entities that fail to meet this requirement are subject to a fine of up to PLN 100,000.



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Statutory transformation of the perpetual usufruct right to a residential property into ownership - main assumptions underlying the governmental bill

For several months now, works have been carried out over a bill on transformation of the right of perpetual usufruct to land developed for residential purposes into the ownership title to land (the "Bill"). First, the Bill was to enter into force on 1 January 2017, however, giving regard to significant legal and social consequences of the regulation, the Bill was extensively consulted and commented, in particular with and by local governments. Works over the Bill have not been completed yet, however, the Ministry for Infrastructure and Development (the "Ministry") that is responsible for the Bill, not long ago found it feasible for the Bill to enter into force on 1 July 2017 or at least no later than 1 January 2018.

Worth reminding is the fact that State-owned lands located, as a rule, within the city limits, and lands owned by local government units or their associations may grant, under the agreement, the right of perpetual usufruct to natural and legal persons. As a rule, rights vested in a perpetual usufructuary do not differ from those vested in the owner. The above stems from the fact that a perpetual usufructuary may use the land to the exclusion of other persons and within those limits may dispose of the right held. Since the right of perpetual usufruct is granted for the period of 99 years, it is sometimes called "temporary ownership". In addition, the right of perpetual usufruct instigates an obligation of payment of an annual fee to the owner of property given into perpetual usufruct.

Under the currently binding regulations, perpetual usufructuaries of real property are authorised to transform the right they hold into the ownership title. However, for the purposes of transformation of shares in the right of perpetual usufruct to real property, consent of owners of all the premises is required.

Due to the above, originally the Bill focused on transformation of shares in the right of perpetual usufruct to land developed for residential purposes, where such shares were connected with the right of separate ownership title to premises, or with a share in ownership title to multi-residential buildings, where at least half of separated and not separated premises are flats. According to the Ministry, the Bill is to eliminate



all problems connected with extensive procedures of obtaining consents of premises owners and the related conflicts. In the course of legislative works, the scope of the Bill was extended in such a way as to apply also to detached houses developed on land held in perpetual usufruct.

The main assumption underlying the Bill is that a transformation of the right of perpetual usufruct to land developed for residential purposes into the ownership title to land will, by virtue of law, take place on the day determined in the act – the Ministry assumed that the effective date would have been 1 July 2017. Under the Bill, land developed for residential purposes is land property developed with a building or buildings that on 1 July 2017 are used, in full or in part, for satisfaction of residential needs, such building(s) being also multi-residential one(s) where at least one flat constituted on that date an object of a separate ownership title. In accordance with a previous wording of the Bill, subject to transformation was also to be land, whereon garages or parking places are located. However, the Ministry gave up the transformation of such land as, according to the Ministry, frequently they are not designated for residential but rather business purposes.



The right of perpetual usufruct will not be transformed for free. In accordance with the Bill, a transformation fee will be payable for the transformation of the right of perpetual usufruct into the ownership title to land. The fee will be payable in annual instalments within time limits and in the amounts analogous to those applicable to perpetual usufruct, yet it will be capable of adjustment. Still, the Bill provides for a differentiation of the total fee. Under the Bill, natural and legal persons that on 1 July 2017 did not run their business activity in or on the land, a building or residential premises will pay the transformation fee for 20 years. In other cases, i.e. where business activity is run, the fee will be payable for the period of 33 years. In accordance with assumptions underlying the Bill, the obligation to pay the fee will be transferred to each subsequent acquirer of the real property.

As it has been mentioned above, a transformation of the right of perpetual usufruct into the ownership title is to take place by the operation of law, however, the ownership title deriving from such a transformation will be disclosed in land and mortgage registers and in the record of lands and buildings under a certificate on transformation issued by competent authorities. Widely criticised is the time limit, within which the authorities may issue the certificate. The time limit, within which a proper authority may issue a certificate ex officio is as long as 12 months, while where the certificate is issued at the owner's request – 4 months. Developers assert that such time limits may delay the transfer of ownership title to newly built flats to their owners.

Finally, it is worth mentioning that in the course of legislative works, a proposal was put forward to supplement the Bill with regulations concerning foreigners. Where a foreigner within the meaning of the Act of 24 March 1920 on Acquisition of Real Property by Foreigners is involved, a transformation of the right of perpetual usufruct to land developed for residential purposes into the ownership title to such land requires

obtaining a permit of the minister proper for internal affairs, issued in accordance with that act. In the new version of the Bill, the regulation on foreigners was abandoned.

In the course of legislative works, the Bill has been subject to numerous arrangements and comments, and the assumed date of passing the Bill has been postponed several times. Time will tell when and in what wording the Bill will be passed, and whether the proposed solutions will prove sufficient and adequate for the implementation of the Ministry's goal, i.e. facilitating the process of transformation of the right of perpetual usufruct into the ownership title.

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New Polish provisions on personal data protection: what we know so far

Partial bill for the beginning

This year in the spring, the Ministry of Digitalisation (the “MD”) made available an initial draft of new regulations referring to personal data protection. Polish provisions are being prepared as part of the procedure of adjusting Polish legal system to the requirements set by the EU general data protection regulation (the so-called “GDPR”). The bill made available is still a “working” draft.

What is the bill about?

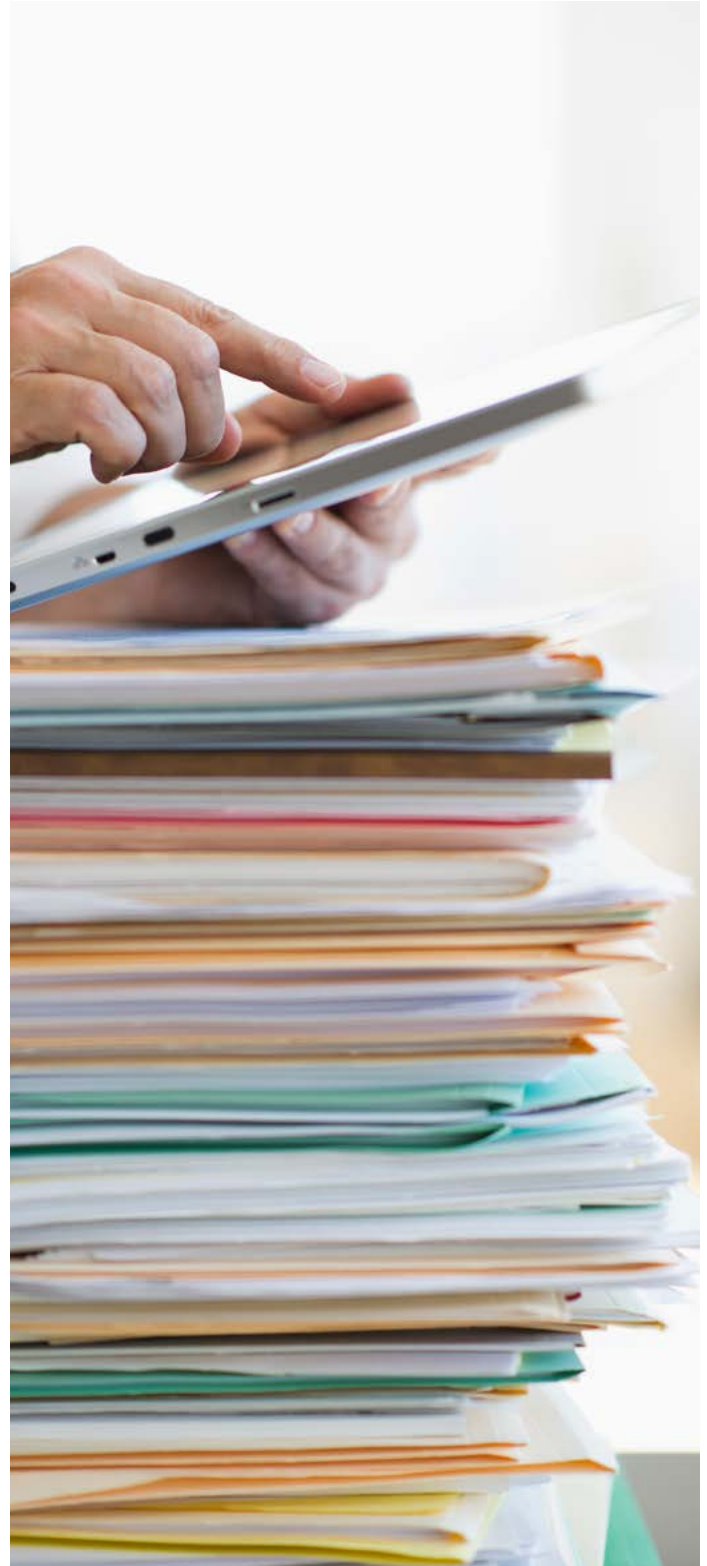
Within the general scope, the bill sets up and defines the tasks of a supervisory authority (at present: the General Inspector for Personal Data Protection) – after a change of the President of the Office for Personal Data Protection.

The author of the bill also takes advantage of the possibility offered by the GDPR to set a lower age limit for granting a child’s consent with reference to information society services at a level other than the one indicated therein – under the bill this limit is lowered from 16 to 13 years of age.

Other matters regulated by the working draft include: accreditation and certification, proceedings in the event of breach of provisions on personal data protection, European administrative cooperation, control proceedings, administrative fines, civil liability, data protection officers.

Most vital provisions of the bill

1. New powers/obligations of the President of the Office for Personal Data Protection (the “OPDP”) in the case of an ascertained breach of provisions
 - issuing decisions e.g. with reference to an acceptance of demands included in a complaint, adjustment of data processing operations to the requirements set by the GDPR, notifying a breach to a person or to a data subject, introduction of a temporary or a total data processing limitation, or a processing ban, data correction or removal, suspension of data transformation to third countries;
 - power to impose administrative penalties up to amounts set by the GDPR (up to EUR 10-20 million or up to 3-4% of turnover). The bill provides for a less severe penalty in the form of a reprimand, but only with reference to a minor breach;
 - considering a complaint within one month – in exceptional cases this period may be extended to two months (at





present proceedings before the General Inspector for Personal Data Protection take up even up to 270 days);

- the President’s decisions are to be immediately enforceable; proceedings in the event of breach of provisions on personal data protection are to be single-instance ones and appealable to an administrative court.
- Worth noticing is the OPDP President’s power to issue temporary instruments.

The OPDP President is to be vested with a power to issue decisions ordering limitation of personal data processing in the course of proceedings. The said measure is aimed at preventing any further breach of law by an entity accused of commitment of such a breach. The above solution gives rise to certain doubts on the part of entrepreneurs due to an inability of appealing it. The resentment is not shared by the MD that holds that the interest of entrepreneurs is protected by regulated conditions to issue such a measure (a breach must be substantiated, it should bring about substantial consequences, whose removal is difficult, and a temporary measure is to set a permissible scope of processing and a time limit, during which limitations apply). According to the MD, in the event of a short time-limit for issuance of a decision as part of the proceedings, it might prove impossible to consider an appeal against such a decision before a date of proceedings’ completion.

- The OPDP President will draw up and make available the so-called good practices of personal data processing (they may include instructions similar to those provided for in 2004 technical regulation on security measures, or recommendations concerning the policies).
2. Lower cash penalties for public entities – up to PLN 100,000.

3. Claims under civil law are to be decided as part of civil proceedings, also as part of proceedings to secure claims, where required. Each statement of claim and judgement is to be notified to the OPDP President.
4. Data Protection Officers (“DPO”)

The most significant provision included in the bill that refers to the current DPOs is the proposed Article 61, in accordance wherewith persons acting as Information Security Administrators (“ADI”) on 24 May 2018 will act as DPOs, but only until 1 September 2018. Until that date, an administrator or data processor must notify the OPDP President whether a current ADI will or not act as a DPO. Where a DPO is appointed after 24 May 2018, an administrator or data processor must notify the appointment to the OPDP President within 14 days.

What we still need to know?

Since the bill is still a working draft, the MD mentions that there are matters with reference to which the author’s decision has not been made yet.

What about penal sanctions?

Since the bill includes no penal provisions, discussions started whether Polish legislator will not impose penal liability for breach of personal data protection regulations. Recently, the MD has clarified the doubts stating that it finds it necessary to implement relevant penal provisions and hence applicable regulations are being drawn up (regulations included in the Personal Data Protection Act and the Penal Code are to be consolidated, and penal liability is to be applicable only with reference to the most serious violations).

Branch-specific provisions?

The document contemplated here is at present the core



of the bill coordinated by the MD. The MD is working on amendments to the Act on the Provision of Electronic Services, Act on Computerisation of Public Entities and Telecommunication Act. Other ministries are responsible for review of provisions governing their specific activities and are working on proposals of amendments (as regards the entity name, but also with reference to substance-related matters: the bill's consistency with the EU regulations is being reviewed), which are next submitted to the MD.

When will works on the bill finish?

According to the MD, at the end of July or generally in the summer the final bill is to be ready. Next the bill will be submitted to inter-ministerial discussions and social consultations. The bill is to encompass the complete Personal Data Protection Act and a set of branch-specific regulations introducing amendments to numerous acts.

Worth reminding is the fact that new legal framework concerning personal data protection will apply from 25 May 2018. Domestic provisions certainly constitute a vital element of the new legal regulation within that field, still it is highly advisable not to wait with implementing the GDPR in the organization until Polish provisions are given their final wording and are formally adopted. Domestic regulations will not determine in a more detailed way the standards, principles or obligations of controllers or processors imposed by the GDPR. Clearly, the GDPR, and in particular its practical application, gives rise to numerous doubts, hence, worth following are recommendations of the Article 29 Working Party and to check right now if the organization is ready to meet new requirements.

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Amendments to the law



New Water Law

Following the second reading of the bill, the Sejm committees are working on new Water Law that implements the Water Framework Directive and proposes numerous new regulations. The bill introduces solutions within the scope of, among others, appointment of a new entity – “Polish Waters” State Aquaculture that, on behalf of the State Treasury, will exercise ownership-based powers in relation to waters and water-related real property owned by the State Treasury; the system of calculating and collecting fees for water services and issuance of water permits.

Counteracting money-laundering and terrorism financing

The long-awaited new Act on Counteracting Money-Laundering and Terrorism Financing is in the process of assessment and public consultations held by the Government Legislation Centre. Provisions implement in the Polish legal system Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and adjust the legal system to international recommendations of the Financial Action Task Force (FATF), recommendations from the evaluators of Moneyval – Committee of Experts on the Evaluation of Anti-Money Laundering and the Financing of Terrorism (established at the Council of Europe). The bill includes several new regulations – it, among others, extends the catalogue of obliged entities, introduces provisions on establishment and operation of the Central Register of Beneficial Owners, determines in detail numerous issues, e.g. the type of information that must be transferred to the General Inspector for Financial Information, and modifies financial penalties for breach of notification obligation. According to the legislator, the act is to enter into force after the lapse of 3 months from its announcement, save for certain provisions that are to enter into force 18 months after their announcement.

Bill on the Electric Vehicle Network and Alternative Fuels

The Government Legislation Centre is holding consultations on the Act on Electric Vehicle Network and Alternative Fuels that implements into the Polish legal system Directive 2014/94/EU of the European Parliament and of the Council of 22 October on development of alternative fuels infrastructure (2014/94/EU Directive). The aim underlying the act is stimulating development of electric vehicle network and the use of alternative fuels (natural gas in the form of LNG and CNG) in the transportation industry by defining legal framework for development of infrastructure for electric vehicle recharging and CNG/LNG refuelling. The bill defines terms related to the alternative fuels market, such as an “electric vehicle” or “vehicle recharging”, specifies types of recharging points and clarifies numerous doubts related to investments in electric vehicle recharging stations. The proposed provisions impose also new obligations on distribution system operators and local government bodies. The bill is expected to enter into force in January 2018.

Individual contribution account for contribution payers

On 29 May 2017 there was published the Act of 11 May 2017 on Amendment of the Act on Social Security System and the Act on Amendment of the Labour Code and Some Other Acts (Dz.U.2017.1027), which introduced an individual contribution account, to which a single payment encompassing all due contributions, i.e. social security and health insurance contributions, as well as contributions towards the Labour Fund, the Guaranteed Employee Benefits Fund and the Temporary Retirement Fund. Giving an individual account number to each contribution payer is to facilitate identification of payments made and to counteract instances of unidentified payments. An individual account number will constitute a new identification number of a contribution payer. Payments will be made by a single transfer. Having received the contributions, the Social Security Agency will distribute them

among individual funds and their operators. In addition, the act provides for amendments with reference to issuance of certificates of absence of arrears in payment of contributions issued by the Social Security Agency. Changed will be also the principles concerning the order of covering contributions due – first covered will be the most overdue ones. First provisions will enter into force on 1 October 2017, subsequent ones – on 1 January 2018.

Bonds

On 22 June 2017 published was the Act on Bonds (Dz.U.2017.1199). The draft legislation authorizes insurance companies and reinsurance undertakings to issue subordinate bonds with quality characteristics defined in the Commission Delegated Regulation (EU) 2015/35 of 10 October 2014. The act entered into force on 23 June 2017.

State Food Safety Authority

The Sejm has started works over a bill on State Food Safety Authority. Under the bill, the newly created Authority will take over all responsibilities of the Veterinarian Inspection, State Authority for Plant Protection and Seeds and the Agricultural and Food Quality Inspection, which will be liquidated. It will also take over certain responsibilities of the State Sanitary Inspection and the Commercial Inspection. The new institution will be subordinated to the Minister of Agriculture. As transpires from the bill justification, consolidated supervision over the food production in Poland is necessary – it is to guarantee high level of security within this scope and to increase food quality. In addition, the consolidation is to contribute towards elimination of unfair practices in food trading (e.g. food adulteration).



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