

MARCH 2004

Number III

IN THIS ISSUE:

LABOUR LAW

- Amendment of the representation conditions upon the execution of the collective labour agreements **page two**

PUBLIC PROCUREMENTS

- New amendments to the frame regulation on the public procurements **page two**

FISCAL LAW

- Unconstitutionality of the bail required in the foreclosure appeal matter **page three**

LABOUR LAW

Amendment of the representation conditions upon the execution of the collective labour agreements

The Government Emergency Ordinance No. 9/2004 (published in the Official Gazette No. 246/2004) completes the frame regulation pertaining to the collective labour agreements. The purpose of such amendment is to facilitate the negotiation procedure between the parties and the subsequent registration procedure of the collective labour agreements.

Therefore, the collective labour agreements shall be registered even in case that the representatives of the parties for negotiation that have not signed the collective labour agreement represent less than one third of the number of the company's employees, less that 7% of the total number of employees in the respective branch, respectively less that 5% of the total number of employees in the national economy.

PUBLIC PROCUREMENTS

New amendments to the frame regulation on public procurements

Having the purpose to approve the amendments recently brought by the Government Emergency Ordinance No. 106/2003, the Law No. 35/2004 adjusts, in its turn, the set of rules related to the

manner of expressing the price within the public procurement offer.

Consequently, the former wording of art. 41 par. 6 (final part) of the Government Emergency Ordinance No. 60/2001 providing a derogatory manner in view of updating the price for the import procurements has been removed. It is to be noted that according to the said article, in case of import procurements, the price mentioned in the financial offer may be denominated in hard currency (USD or Euro).

According to the new wording of art. 41 par. 6 (final part), the prices mentioned in the financial offer, in case of public procurements of equipment and services, shall be updated in compliance with the restrictive provisions of art. 41 par. 3¹.

¹ According to art. 41 par. (3): „*In case of agreements whose execution period exceeds 12 months, the contracting parties are entitled, during the execution period of the agreement, to agree the amendment of the clauses related to its price, for the remaining obligations to be fulfilled, through an additional act, only if events harming parties' valid commercial interests occur, which could not have been foreseen when concluding the agreement. The formula for updating the price, applied in view of protecting against inflation must not exceed the price expressed in euro on the date of submitting the offer.*”

FISCAL LAW

Unconstitutionality of the bail required in the foreclosure appeal matter

- Ruling No. 40/2004 of the Constitutional Court concerning the unconstitutionality of art. 164 par. 1, 2 and 3 of the Government Ordinance No. 92/2003 on the Fiscal Procedure Code (the “Fiscal Procedure Code”)

The high level of the bail required for being entitled to file a foreclosure appeal in the matter of budgetary debts gave rise to many criticisms and debates until the present.

Thus, according to art. 164 par. 1, 2 and 3 of the Fiscal Procedure Code, the legal persons could have submitted a foreclosure appeal only should a bail of 20% of the challenged amount had been previously instituted. Failure to prove the putting up of such amount would have lead to the court rejecting the registration of the respective foreclosure appeal.

The exceptions pertaining to the unconstitutionality of these provisions have been referred again to the Constitutional Court. Therefore, the Constitutional Court has reconsidered the rulings previously passed and declared the provisions of art.

164 par. 2 and 3 of the Fiscal Procedure Code as unconstitutional.

In issuing this decision, the Court has retained as grounds that such a high level of the bail represent an obstruction of the free acces to justice in view of defending the citizens’ rights, liberties and legitimate interests. Setting the level of the bail to 20% of the due amount has been also considered as excessive. On the other hand, imposing such an obligation only for the legal persons interferes with the constitutional principle of the citizen’s equality in front of the law.

- Ruling No. 39/2004 of the Constitutional Court concerning the unconstitutionality of art. 83 par. 1 of the Government Emergency Ordinance No. 51/1998 on certain assets’ resolution

On similar grounds as those above described, the Constitutional Court also declared as unconstitutional the provisions of art. 83 par. 1 of the Government Emergency Ordinance No. 51/1998 according to which the debtors may submit a foreclosure appeal against the foreclosure documents issued by the Banking Assets Resolution Authority (AVAB) only after having put up a bail representing 20% of the value of the asset subject to foreclosure.

The report hereto has a strictly informative, selective character; it does not represent legal advice, not treats a specific matter in all its aspects. This report is protected under the regulations pertaining to the copyright and it cannot be reproduced without the prior consent of Popovici & Asociatii. For supplementary information or analysis on specific matters, do not hesitate to contact our lawyers, according to their specialization, by accessing www.popovici-partners.ro.