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IRREGULAR TERMS IN COMMERCIAL RELATIONSHIPS

A new act was passed in April 2008 on irregular terms in commercial relationships¹, which will come into force on 1 January 2009. This act is intended to prevent the use of irregular commercial terms in contracts for the delivery of goods concluded between undertakings where one such undertaking is economically dependent on the other. Economic dependency means “a status where one party to a commercial relationship concludes a contract under terms that are to it irregular as compared to the other party to the commercial relationship because the first party’s possibilities of concluding a contract with other undertakings in the Slovak market are limited by the application of identical or similar irregular commercial terms by other undertakings.”²

The act further defines the terms of commercial contracts that are deemed irregular. An irregular term in a commercial relationship is where the supplier must provide monetary fulfillment

- a) for being added to the customer’s registry of suppliers,
- b) for having its goods added to the assortment sold by the customer and for the operation of electronic equipment,
- c) for use of the customer’s distribution network,
- d) for short-term placement of the its goods in the customer’s shop,
- e) for the customer’s commercial activities, or
- f) for placement of its goods in a certain place in the customer’s shop, including placement of its goods in an exposed location in the customer’s shop at the request of the customer; an exposed location in the customer’s shop is an area delimited by the customer within its shop for storing goods and cannot exceed 5% of the total storage area of the shop.

Monetary fulfillment pursuant to items a) through f) is an irregular term in a commercial relationship if the total amount of the monetary fulfillment is more than 3% of the supplier’s annual receipts for goods sold to the individual customer in the calendar year in which the monetary fulfillment is to be paid. Both the monetary fulfillment and annual receipts are calculated exclusive of value added tax and excise tax.

The following are also deemed irregular terms in a commercial relationship:

- g) customer inspection of the manufacturer’s or supplier’s premises, including requests to analyze and test the goods prior to the expiration date of an official inspection certificate issued by the relevant state inspection authority or accredited party, except where the goods are to be sold to the final customer under the customer’s brand name and the customer assumes manufacturer’s liability, or where the customer carries out inspection at its own expense,

¹ Act No. 172/2008 Coll. on irregular terms in commercial relationships and on amending Slovak National Council Act No. 30/1992 Coll. on the Slovak Chamber of Agriculture and Food Industry, as amended (hereinafter “act”).

² § 2b) of the act.

- h) customer return of the supplier's goods at the expense of the supplier without legal cause,
- i) supplier's obligation to unreasoned exchange of delivered goods at the supplier's expense,
- j) for delivered goods having an expiration date or best by date, a payment due date that exceeds 30 days from the date of delivery of such goods on an invoice issued pursuant to special regulation,
- k) discount on price of goods for payment by the designated due date,
- l) demand of in-kind fulfillment from a party to the commercial relationship after goods have been delivered and accepted,
- m) passing on penalties imposed by inspection authorities on one party to the other without legal grounds,
- n) immediate termination of a repeating fulfillment contract without a notice period and without cause,
- o) making assignment of a claim conditional without the debtor's written substantiation,
- p) exclusion of the right to late interest fees on delinquent monetary obligations,
- q) subsequent discount by customer on price of goods delivered by supplier, at the expense of supplier, without separate written agreement between the customer and supplier on the reason and extent of such discount.

The act explicitly prohibits the parties to a commercial relationship to agree on irregular terms in commercial contracts.

Control and Sanctions

Compliance with the ban on irregular terms in commercial contracts is overseen by the Slovak Agriculture Ministry for contracts where the goods are foodstuffs and the Slovak Economy Ministry for contracts where the goods are not foodstuffs.

If an inspection shows that the parties to a commercial relationship agreed on irregular terms, the relevant ministry will fine the party that benefits from the irregular terms set out in items a) through f) up to SKK 5M (EUR 150,000) and up to SKK 10M (EUR 300,000) for the irregular terms set out in items g) through q).