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Legal News
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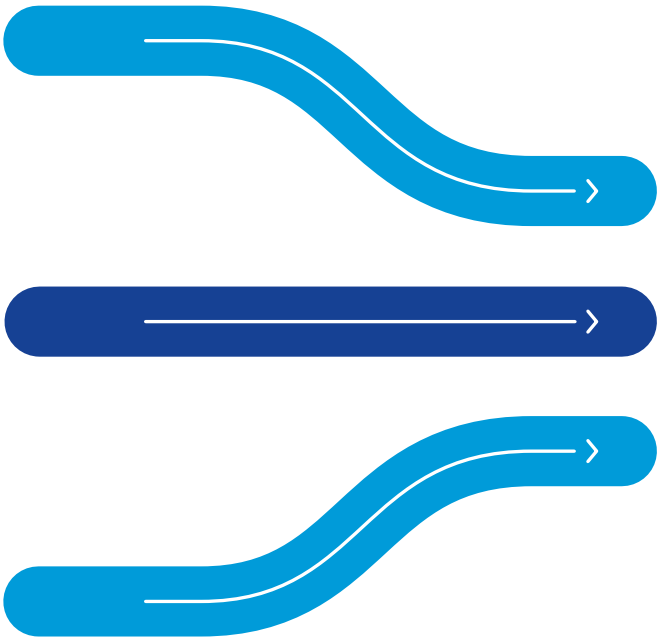
Central- and Eastern Europe



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New hope for foreign land investors in Latvia

According to a ruling of the ECJ the Latvian land privatization law is incompatible with European Law

Since a legislative reform in 2017, foreign investors who plan to acquire agricultural land in Latvia are faced with a hurdle that is difficult to overcome: they must demonstrate an advanced knowledge of the Latvian language at level B2 of the European Frame of Reference. This applies both if a single investor wants to acquire land, as well as for the sole or majority shareholder of a company. Without proof of the required language skills, the land cannot be acquired.

However, according to the Latvian Land Privatization Law, which is still in force, this regulation only applies to EU foreigners but not to Latvian citizens.

In view of this obvious discrimination, it is no surprise that the European Court of Justice in a decision dated 11 June 2020 established that the current Latvian regulation violates European law, in particular freedom of establishment.

Initially, this decision is relevant only for the specific legal dispute. However, the Latvian legislator will be forced to adjust the land privatization law so that it complies with European law. Otherwise, there is a threat of further infringement proceedings by the Commission against Latvia or similar disputes to the one already decided.

As long as no reform has still been carried out, it is recommended that investors in current approval procedures for the purchase of agricultural land should specifically draw the attention of those involved from public authorities to the new ruling. This is necessary in order to enforce any claims for damages later on.

Source:
1 „Par zemes privatizāciju lauku apvidos“ (Law on the privatisation of land in rural areas).

2 ECJ, ruling from 11 June 2020, C-206/19.

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More favourable rules for consumers

Guarantee and warranty rules for consumers to be tightened and the power of control by consumer protection authorities to be extended

The core aspect of the amendments, which will take effect from 1 January 2021, is that the mandatory guarantee period for newly purchased durable consumer goods (for example: mobile phones, tablets, alarms, doors and solar systems) will be set in line with the value of the goods instead of the former one-year mandatory guarantee period.

So for goods valued at between 10 and 100 thousand HUF (approximately between 28 and 280 EUR) the mandatory guarantee will be one year, up to 250 thousand HUF (approximately 700 EUR) two years, and in the case of products with a value of more than 250 thousand HUF three years.

Further simplification brings the possibility of issuance of electronic guarantee cards. Even an electronic invoice can be considered as an electronic guarantee card and instead of sending the electronic guarantee card directly to the consumer an indication of the download location will be enough.

According to the new rules consumers can exercise their rights to repair not only at indicated repairers but also at the seller company's seat, branch and subsidiary. In the course of this only presentation of a guarantee card can be required: return of the original packaging is no longer necessary.

In the case of guarantees and warranties the procedure for correcting defective products will be amended. As a general rule, companies should strive to carry out the repair within 15 days. If this is not possible, the company must inform the consumer about the foreseeable duration of the repair and replacement. If the product is to be repaired the guarantee period is extended by the duration of the repair. The new rules also regulate the procedure for mandatory replacement due to a failed repair.

Replacement is mandatory if a product fails again after three repairs, or if a defec-

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tive product cannot be repaired within thirty days after raising a claim, or if non-repairability becomes apparent at the time of the first repair.

In order to protect consumers more effectively, consumer protection authorities will have more power of control from 22 August 2020. In that connection the new term “supply chain” will be introduced. According to this an authority is entitled to carry out inspections – even on-the-spot checks – of all economic operators who play a direct role in the production, storage, placing on the market and use of consumer products and they will also be entitled to impose significant fines.

Source:
Government Decree No. 270/2020. (VI. 12.)

ITM Decree No. 18/2020. (VI. 12.)

Act LXVII of 2020 on amendments of the Act CLV of 1997 on Consumer Protection

Lithuanian Supreme Court rules on dismissal by employer

For the first time since the introduction of Article 59 of the Labour Code, the Supreme Court is dealing with this type of dismissal.

Termination of an employment contract at the employer's initiative under Article 59 of the Labour Code (DK) – one of the grounds for dismissal of an employee provided for by the DK – was introduced in 2017 when a new DK entered into force.

So far, cases involving workers made redundant on this basis have only been heard in the lower courts. Now, for the first time, the Supreme Court, Lithuania's highest instance, has dealt with the conditions for this type of employment contract termination at the initiative of the employer.

In principle, Article 59 DK enables employers to terminate an employment contract more flexibly: short notice (three working days) and relatively high severance pay (6 average monthly salaries); at the same time the reasons may be different from those for ordinary termination, as long as not discriminatory.

The Supreme Court confirmed that the employer's notice must state the reason for termination of the employment contract. This may be related to the employee's personality, conduct at work, qualifications, employer's reputation, and so on. Although at the employer's discretion, the reason must be real. In the event of a dispute about the legality of the dismissal, the burden of proof as to the existence of the reason lies with the employer. For example, if an employment contract is terminated due to the employee's unlawfulness or inappropriate behaviour, the employer must prove the employee's previous behaviour by means of the standard bonus pater familias.

Source:
Judgment of the Lithuanian Supreme Court of 25 June 2020 in civil case No e3K-3-199-701/2020

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New regulations in the field of company incorporation and change of registered headquarters

New rules on the sole shareholder in a limited liability company, registration of multiple HQs at the same address, neighbours' approval for registration of HQ

As of July 5 2020, new regulations are in force regarding commercial companies.

First and foremost, prior to July 5 2020, a natural or legal person could become sole shareholder only in one limited liability company. Moreover, a limited liability company could not have as sole shareholder another limited liability company that was made up of one single person.

As of July 5 2020, these restrictions were lifted so that from now on, there are no legal obstacles for a legal or natural person to become sole shareholder in several limited liability companies or for a limited liability company held by a single person to become the sole shareholder in another limited liability company. As a consequence of this simplification, we believe that the process of registering a company will improve.

Besides, multiple companies could not register their HQ at the same address. This restriction was complicating incorporation of a company or a change of its HQ.

The new rules will eliminate this condition, thus allowing registration of multiple company HQs at the same address.

In addition, when registering the HQ of a company in a residential building, the neighbours had to give their written approval, even though the company was not conducting any activities at the HQ. With the new regulation, this provision is repealed and as of July 5 2020, and if the director of a company gives a sworn affidavit that there are no activities being conducted at that HQ, the neighbours' written approval will no longer be necessary for registering the company or changing its HQ.

Source: Law no. 102/2020 for the modification and completion of Law no. 31/1990

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May an employee refuse to come back to the office after working from home?

Employees refuse to come back to the office after working from home. What can employers do?

The anti-COVID-law in Poland allows employers to send employees home, temporarily working from home during the epidemic, even if employees have no teleworking agreement in place. Many firms used this opportunity to ensure burden-free operation during the epidemic. But after most of the COVID restrictions were already lifted, many employees still decline invitations to come back to the office.

The anti-COVID-law stipulates no maximum deadline as to how long the home office order may stay in force. This means that the employer is entitled to decide unilaterally on this issue in the scope of its general authority to issue orders and directives to employees. Should an employee refuse to obey, the employer is even entitled to terminate the employment on the ground of violation of a direct employer's order. However, this kind of misconduct should not be treated as a very serious offence, as far as the employee carries out their working duties properly. Indeed, termination on that basis could be difficult to defend in the labour court.

The employer's right to demand a return to the office after working from home should be considered in the context of a simultaneous duty to provide safe working conditions in the workplace. Recently, the Polish Government issued special safety conditions for offices – these should be treated as mandatory safety and occupational rules during the epidemic. These rules stipulate detailed minimum distances, disinfection measures and mandatory wearing of masks in certain situations.

According to Article 210 of the Polish Labor Code, an employee who discovers that those rules are not being obeyed in the office may refuse to commence work, on the ground of breach of labour protection provisions. Moreover, refusal may not lead to adverse treatment of that employee. This means that an employee may even terminate their employment contract with immediate effect.

So both contracting parties should seek to organize a return to the office from

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working at home in an amicable and stepwise way, e.g. by partial presence at the office or by introduction of working shifts.

And what to do if you suppose that employees at home office waste their working time for private purposes, while using company laptops or mobile phones?

The employer is allowed to check company e-mails only if it introduces e-mail monitoring at least two weeks in advance. In smaller companies of up to 50 employees it is enough to introduce monitoring in an announcement addressed to all employees, while in larger companies the so-called working regulations must be amended accordingly. However, even after properly introducing an e-mail monitoring scheme, an employer is still barred from breaching the privacy of employee correspondence.

Source:

Act amending special regulations connected with combating and counteracting COVID 19 – dated 31 March 2020 (J.L. of 2020, item 568 as amended)

Labour Code – Act of 26 June 1974 (J.L. of 2019, item 1040 as amended)

Pre-emption right for share deals - company must provide information to municipality

Court decides that municipality may request documents to check whether a pre-emption right exists

Under German law, a municipality has a pre-emption right to purchase land under certain conditions. This is intended to give the municipality the opportunity to influence the development of its territory. The municipality can thereby pursue various objectives, such as protecting its citizens from rising rents.

However, this pre-emption right basically only applies to the classic direct purchase of land. For this reason, so-called share deals frequently occur in practice. In such cases, it is not the property itself that is sold, but shares in the company that owns the property. This means that only the owner of the company changes, but not the owner of the property. The property continues to belong to the company. In this way, the pre-emption right of the municipality is not triggered. Share deals are mainly used for the acquisition of land by investors.

The Neukölln District Office in Berlin became aware of such a share deal in April 2019 and therefore requested the documents relating to this transaction. The municipality wanted to check whether the share deal was a mere circumvention, and this was done against the following background: If, after reviewing the documents, it turned out that the share deal was only a circumvention, the municipal pre-emptive right would become applicable again.

Already in 2012 the BGH decided that a purchase of land by share deal does not trigger a pre-emptive right, unless the transaction can be equated to a purchase in the sense of the pre-emptive right due to its similarity. However, this only applied to the pre-emptive right under civil law. In order to be able to check whether this was the case in the individual case, the municipality may demand the documents on the priority from the purchaser.

The construction law also allows for this request for information. There are no objections to this with regard to a "secrecy interest" of the company. It was to be assumed that the municipality would protect such interests.

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Outlook: So far only a preliminary decision has been made in the first instance. However, the VG Berlin follows the case law of the BGH in its decision and extends it to the municipal right to information. It therefore seems likely that the view of the VG Berlin will be confirmed in later decisions.

Source: VG Berlin 19 L 566.19

New Law “On circulation of medicines” comes into legal force in November

The new Law introduces changes covering all spheres of medicine circulation

On 19 May a new version of the Law “On circulation of medicines” was published (hereinafter – “Law”).

The main amendments are:

1. Registration (confirmation of medicine registration)

Medicines will be allowed to be sold and used in Belarus not only after state registration (confirmation of state registration), but also after registration (confirmation of state registration) within the framework of the Eurasian Economic Union.

The national registration procedure continues to apply only for medicines that will be released into circulation exclusively in Belarus.

The new version allows for a conditional state registration (confirmation of registration) procedure for original medicines for medical treatment, preventive care and diagnosis of life-threatening and disabling diseases as well as medical products for treatment of orphan (rare) diseases in the absence of effective methods of medical care.

When undergoing this procedure a one-year registration certificate is issued when a medical product is registered in Belarus for the first time. Confirmation of conditional state registration should be carried out annually.

The conditional registration procedure is established by the Government.

2. Introduction of Good Pharmacy Practices in the sphere of medicine circulation

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The new edition lists Good Pharmacy Practices in the field of circulation of medicines and establishes their distribution at all stages (processes) of medicine circulation. The list includes both Good Pharmacy Practices approved by the Belarusian Ministry of Healthcare and Practices approved at the Eurasian Economic Union level.

3. Grounds for suspension and termination of a medicine's registration certificate

New grounds for suspension of a medicine's registration certificate for up to 6 months are: refusal by the holder of a medicine's registration certificate to:

- perform obligations related to pharmaceutical supervision;
- carry out clinical trials (tests) assigned by the Ministry of Health;
- inspect industrial manufacture of a medicine against compliance with the requirements of Good Manufacturing Practice when a medicine is recognized as one of poor quality.

At the same time, the list of grounds excludes disclosure of the fact of exceeding the stated price of the medicine in the contract for supply.

The Law states that a medicine's registration certificate must be terminated if a court finds a violation of the rights of the intellectual property rights holder.

The Law comes into legal force from 20 November 2020.

Source: National legal internet portal of the Republic of Belarus (NLIP)
19.05.2020, 2/2732

How will the amendment to the Civil Code change the Czech residential property market?

On 1 July 2020, an amendment to the Civil Code will come into force which both property developers and apartment owners are well-advised to give their attention, as it will modify the co-ownership of apartments in significant ways. Other changes affect the right of first refusal of co-owners (which will be heavily curtailed) or apartment leases (which may newly include clauses on contractual penalties, if only in a limited scope).

Apartment co-ownership

The majority of changes brought by the amendment to the Civil Code concerns the co-ownership of apartments; in what follows, we want to mention the most important ones.

Changes to the owner's declaration will become much easier and straightforward to implement. To date, such a change presupposed a written agreement among the affected unit owners, the written consent of a majority of votes of all unit owners in the building, as well as a decision taken by the general assembly of the Homeowners' Association. The latter is being entirely done entirely away with, and in certain cases, it will suffice to obtain a majority of votes of all unit owners for the change of the owner's declaration (e.g. if the change concerns common areas within the house that do not affect the relative size of the shares in these common areas).

The amendment also addresses the short-term accommodation of third parties. Unit owners must newly inform the building manager beforehand of any commercial or other activities that will be carried out in the apartment and are apt to disturb the regular peace and order in the building for a non-negligible time period. In this respect, we ought to mention a change of the terms for the court-ordered sale of a unit in response to a breach of obligations by the unit owner which substantially curtails or frustrates the exercise of rights by other unit owners in the building. In particular, it is no longer necessary to first present an enforceable court decision in which the unit owner was ordered to discharge its obligations.

The amendment also specifies with greater precision the categories of debt which passes to a transferee along with the apartment unit itself. Arrears in management fees, owed payments for performances in connection with the use of the apartment (i.e., utilities and services), and advance payments towards such services all pass unto the transferee along with the apartment unit.

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Restricted right of first refusal of co-owners of notional shares

The amendment turns the clock back on the rules for co-owners' rights of first refusal to the legal state of affairs that existed after 1 January 2014. In other words, a statutory preferential purchase option will only apply in special cases in which the co-ownership came into existence independent of the co-owners' will (e.g. in the case of a last will and testament). This essentially abolishes the right of first refusal (the aforementioned extraordinary exemptions notwithstanding), which should make it much easier to transfer, in particular, fractional ownership titles to garage space when selling one's apartment. After the re-introduction of the right of first refusal for the welfare of co-owners of shares in real property on 1 January 2018, such transactions became essentially an unsolvable puzzle.

Contractual penalties and apartment leases

Current law expressly forbids parties from agreeing on contractual penalties in apartment leases to secure the tenant's obligations. The amendment lifts this prohibition, but the allowable amount of such contractual penalties will be severely limited, and where they are agreed, the security deposit will be affected. Specifically, the right to demand payment of a contractual penalty will be limited to an amount equal to three times the monthly rent – including, however, the deposit. If the deposit itself is already in this maximum amount, there is no room left to agree on a contractual penalty. Given that the landlord can use the deposit so as to immediately satisfy their claims vis-a-vis the tenant, it will be more advantageous for landlords to agree on a higher deposit rather than on a contractual penalty, which may have to be collected in court if the tenant fails to pay voluntarily.

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