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Legal News
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Central- and Eastern Europe

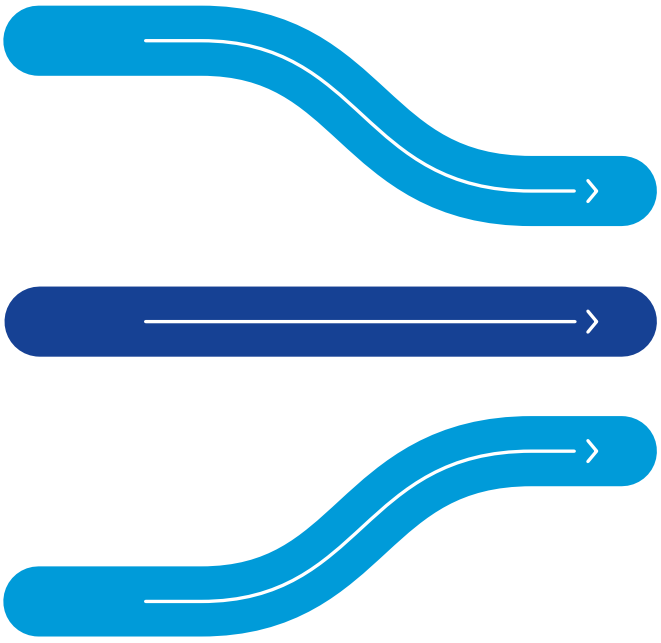

Table of contents

Wage payment in cash no longer possible

Amendments to the Labour Code stipulate that wage-related payments must be made only to the employee's account.

On 1 January 2022, amendments to the Lithuanian Labour Code entered into force. These stipulate that wages and other employment-related payments, as well as daily allowances and reimbursements of travel expenses, must be paid by bank transfer to the employee's payment account. The Labour Code provides only one exception: for seafarers, who are subject to the wage payment procedure laid down in Lithuania's Law on Merchant Shipping.

These amendments remove any possibility of paying employment-related benefits in cash or to the account of another person (e.g. family member, friend). If the employee does not provide the employer with a personal bank account into which wages should be paid, the employer will be entitled to deposit wages and other employment-related payments due to the employee in the organization's account until the employee provides payment account details.

These amendments to the Labour Code are a continuation of legislative measures to increase wage transparency, prevent discrimination, reduce the shadow economy and protect workers' rights. It should be noted that already in 2019 amendments to the Labour Code entered into force, requiring job advertisements to indicate the salary and to indicate the proposed amount of the basic salary or the amount of the fixed part of the salary and/or the range of the amount. Employers may also indicate in job advertisements the amount of any bonuses to be paid, but these bonuses must be clearly distinguished from the basic salary.

The Labour Inspectorate, as part of its supervisory role, has observed a decreasing trend of violations of the mandatory requirement to indicate salaries in job advertisements, which also shows that indicating salaries in job advertisements is not a problem for businesses, but on the contrary, acts as a positive competitive advantage in attracting the best talent.

Source: Law Amending Article 139 of the Labor Code of the Republic of Lithuania, TAR, 08/07/2021, No. 15520.

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Commercial rent reduction during Corona-lockdown

A rent reduction is possible during the lockdown; the amount depends on the individual case.

When many shops were forced to close due to government orders in autumn 2020 and spring 2021, some tenants of commercial properties did not pay their rent in full. The Federal Supreme Court (BGH) has now ruled that the tenants were generally entitled to a rent reduction in this case. The amount by which the rent can be reduced depends on the circumstances of each individual case.

The tenants concerned are entitled to a rent reduction due to a " interference with the basis of the contract" (§ 313 BGB; in many countries referred to as force majeur).

The BGH considers that the interests between tenant and landlord are not to be divided 50/50 in a general way. Rather, it must be examined to what extent the tenant can be expected to continue paying the rent in the individual case. In particular, the following factors must be taken into account:

- Duration and extent of the disadvantages for the tenant
- Compensatory measures which the tenant has taken or could have taken (e.g. online business)
- Receipt of state compensation payments (except for pure loans)
- Benefits of a business insurance policy

The previous instance (OLG Dresden) had still assumed a flat-rate rent reduction of 50%. This argumentation is now no longer possible after the current decision of the BGH.

Tenants and landlords are recommended to find amicable solutions based on the guidelines of the BGH.

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New “home office law package” in Hungary

After temporary solutions during the pandemic-related emergency situation the Parliament has finally settled the topic of working from home.

The Parliament has adopted a bill amending the Labor Code, the Labor Protection Act, and the Personal Income Tax Act.

The updated rules on teleworking in the Labor Code will cover both full-time and part-time work from home. According to the law, a regular home office will still require the parties to conclude a so-called “telework contract”. However, the law is more permissive on the content of this, as it only regulates this form of employment as a background law and allows derogations.

In the case of teleworking, the employee may – as a general rule – work only on one-third of working days in the office. The employee may only receive instructions from the employer about the tasks to be performed, but not on the way in which they need to be carried out. The employer may monitor work remotely, via digital tools. The parties may derogate from these rules by mutual agreement in the telework contract. It is important to highlight that the home office will still not automatically mean flexible working hours – but it is possible to stipulate this in the contract.

The Labor Protection Act will distinguish between telework carried out with a computer and telework carried out with other tools. In the case of the former, the employee may choose the workplace individually, taking into account the health and safety requirements set by the employer. The employee may also work with their own work equipment if it has been examined and deemed suitable by the employer via a prior risk assessment.

With regard to teleworking with their own working equipment, in their own home and using their own resources (heating, electricity, Internet etc.), the Personal Income Tax Act has been extended to include a new form of payment which is exempt from personal income tax: the so-called “lump sum cost reimbursement”. Employees, however, are not automatically entitled to receive this amount, as it is payable at the discretion of the employer, up to a maximum of HUF 20 000 (approx. EUR 55) gross monthly in 2022.

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The date of entry into force of the changes is still unknown, as the legislator has linked this to the date of the end of the state of emergency.

In order to ensure the correct interpretation of the new rules and to establish clear, transparent company practice, it is advisable to prepare for the changes now – in the most obvious way by creating a company home office policy.

Source:
Act CXXX of 2021
Act I of 2012
Act XCIII of 1993
Act CXVII of 1995

New year - new reform of compulsory leases

On 1 January 2022, a new law regulating use of land in shared ownership entered into force

The legal relationship between the owner of a land plot and a person owning a property built on the same land-plot has caused many legal uncertainties in the past. Now, this obvious shortcoming of Latvian legislation has been dealt with by introducing the legal concept of a compulsory lease (legal land use right). A compulsory lease puts an end to the “forced lease” relationship prevailing so far and aims at creating a fairer balance between the parties involved.

The compulsory lease will be implemented gradually, starting from January 2022. If there is a valid land lease agreement (or court decision) in force on 1 January 2022, and the exact land plot in use is clear and it does not belong to a public person, the compulsory lease begins on this date. In the absence of an existing agreement or a court ruling, the new regulation will apply as of 1 January 2023.

The law still leaves space for contractual arrangements between the parties, though. This is especially important for the one loophole left by the law: it is still up to the parties to decide on the exact area of the land used for the purposes of the building erected upon it. The new legal arrangement presupposes that the owner of the building is using the entire unit of land on which the building is located, unless otherwise agreed by the parties or determined by a court.

The reform also sets a compulsory lease payment in the amount of 4 % per annum of the cadastral value of the land plot, but not less than EUR 50 a year. At the same time, in order to ensure a balance between the owners of the building and the owner of a land plot, the reform envisages much more active involvement by the owner of the building in taking care of the land plot used.

The compulsory lease ends if the building and land-plot are merged into a one immovable property, or if the building is demolished.

Source: Amendments to the Law “On the Time of Entry into Force and Application of the Introductory, Inheritance Rights and Property Rights Part of the Revised Civil Law of the Republic of Latvia of 1937” adopted on 30 September 2021.

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New tax offence in Romania

New legislative amendment criminalizes non-payment of state taxes within 60 days as from the due date

The Law on preventing and combating tax evasion will be amended following the entry into force of a new Emergency Government Ordinance on 1 March 2022.

The amendment establishes and criminalizes a new tax offence.

An offence is committed in the event of withholding and non-payment – or, as the case may be, collecting and non-payment – of taxes and contributions expressly provided for in the Annex to the Act, within 60 days as from the due date.

Taxes and contributions for which non-payment may lead to committing the offence include:

- tax on dividends paid by a Romanian legal person to a Romanian legal person;
- tax on income from intellectual property rights;
- tax on income from wages and salaries;
- tax on rental income;
- tax on interest income;
- tax on taxable income from liquidation of a legal person or from reduction of share capital;
- tax on dividend income;
- social security and health contributions;
- withholding tax on income earned in Romania by non-residents;
- tax on income from transfer of real estate;
- contributions to the environmental fund.

The penalty is imprisonment from 1 to 5 years or a fine.

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Some provisions supplementing the tax offence are worth mentioning.

That is, several circumstances lead either to a lighter criminal penalty being imposed on the offender or to impediments to initiation and conduct of criminal proceedings against the offender.

The Act stipulates that full coverage of damage in the course of criminal proceedings or trial has the effect of:

- optional imposition of a fine by the court where the damage does not exceed 100 000 EUR;
- mandatory imposition of a fine by the court where the damage is up to 50 000 EUR.

In addition, coverage of the damage, plus 20% of the basis of calculation, plus interest and penalties during criminal proceedings or trial has the effect of triggering the legal provisions on termination of criminal proceedings where a ground for non-punishment arises.

The above provisions do not apply to an offender that has benefited from them in the last 5 years.

Source:
Emergency Government Ordinance No. 130/ 2021;
Law No. 241/ 2005 on preventing and combating tax evasion.

Likelihood of Insolvency and New Directors' Duties

One of the aims of Directive (EU) 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt is to set common standards for directors' duties in case of a likelihood of insolvency of their company as debtor. Based on Article 19 of the Directive, even at this stage the directors are to take into account the interests of creditors, equity holders and other stakeholders and they are to take steps to avoid insolvency.

According to current Slovak legislation a debtor company is obliged to avoid insolvency and in case of its likelihood is obliged to take suitable and proportionate measures to prevent it. In principle, the debtor has to follow its economic development so as to identify at an early stage the risks which could lead to insolvency. Slovak Act No. 7/2005 Coll. on insolvency and restructuring contains a specific reference to the provision of the Commercial Code dealing with the threat of insolvency. This provision operates with over-indebtedness as a definition factor for such a threat.

However, the draft legislative paper for implementation of the Directive into the Slovak legal environment extends the definition of a threat (likelihood) of insolvency to the threat of inability to pay off debts. This is designed as a state where – with regard to all circumstances – it can reasonably be assumed that within the next 12 months the debtor will be insolvent (unable to pay off debts). Considering that the over-indebtedness factor depends largely on the debtor´s way of presenting its economic results, while inability to pay off debts is a matter of plurality of creditors and their claims, clearly the latter insolvency factor can be more pressing for the debtor.

As to the new duties of the directors of a debtor company, it is proposed that once a debtor is listed as a debtor in public registries (e.g., tax or social security authorities), this amounts to an early warning signalling there might be a likelihood of insolvency – the debtor will in that case be obliged to verify it. If the directors of the debtor company do not possess the necessary qualifications (e.g., an economics background), they will be obliged to search for an expert to assess the likelihood of insolvency. The point is that they cannot escape liability just on the ground that they do not have enough expertise to see all the risks. In addition, the draft paper directly provides that in the case of likelihood of insolvency the directors have to take the interests of creditors, equity holders and other affected stakeholders into account.

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The big question naturally arises, namely: Who will be eligible to raise liability claims against the directors based on violation of these duties? The draft paper tends rather to the principle of internal liability of the directors to the company (debtor), not to the creditors. As for the creditors, there might be an interesting task of identifying the directors´ negligence at the early stages leading ultimately to insolvency of the debtor. Such findings could better justify their liability claims. It is clear that according to the new rules the directors will have to pass stricter duty-of-care tests to escape liability.

However, the overall effects of the new legislation will certainly depend on interpretation by the courts. The much-desired outcome of early tackling of financial difficulties by debtor companies and their directors will only be reached when the courts develop transparent and predictable case-law to these rules. Speaking for Slovakia, a strong and enforceable legal ground for assessing the close-to-insolvency liability of directors and subsequent claims by creditors is very welcome.

Do not hesitate to contact our experts in this regard.

Source: Draft legislative paper for implementation of the Directive (EU) 2019/1023 on preventive restructuring frameworks

Yearly Tax Return – Deadline under the Act on Corporate Taxation

Deadline for the submission of the yearly profit tax return prolonged for good

As a measure to support the economy, in the course of the COVID crisis the deadline for submitting the annual tax return under the Corporate Tax Act was extended from the original March 31 to June 30 of the following year. The same applies to the deadline for disclosing the annual financial statements in the Commercial Register. Here, the final deadline is no longer June 30, but September 30. However, the amendments were implemented in such a way that the wording chosen by the legislator does not indicate any limitation of their application to the period of Covid-19 circumstances. Since they have proven workable in practice, the new deadlines will presumably remain permanently.

Source: Corporate Income Tax Act (Bulgarian CIT Act)

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