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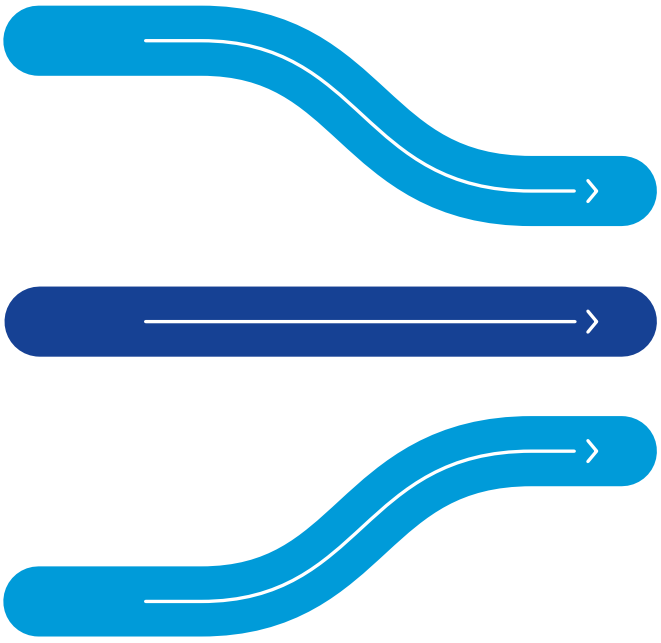
Legal News
June 2022

Central- and Eastern Europe



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Transparency Register - transition period expires at the end of June

Companies operating in Germany must register by 30 June 2022.

The Transparency Register was upgraded to a full register already in August 2021. As a consequence, almost all legal entities in Germany are obliged to register themselves and their beneficial owners in the Transparency Register.

Until July 2021, such legal entities were exempt from the registration obligation whose beneficial owners were derived from other public registers - in particular the Commercial Register. However, this exemption has been deleted, so that almost all companies are now obliged to register in the Transparency Register in addition to their registration in the Commercial Register.

The transitional period for this expires on 30 June 2022. Those who do not register until after that date may face fines.

The obligation applies to

- Legal entities
- Registered partnerships
- Foreign legal entities in connection with real estate business.

The information submitted to the Transparency Register must be updated on an ongoing basis as soon as changes occur, e.g. in the participation structure of the beneficial owners.

If you have not yet completed your registration and need assistance in doing so, or if you have any additional questions, please do not hesitate to contact us.

Source: Money Laundering Act

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New Share Repurchase Law adopted in Latvia

As of 3 May 2022 a new Share Repurchase Law is in force with many changes introduced

The law was developed at the initiative of the Ministry of Finance and the Financial and Capital Market Commission (FCMC) to improve minority shareholder rights protection. At the same time, the draft law aimed to revise and make the current regulation of the Financial Instruments Market Law on share repurchase offers more comprehensible and to eliminate inconsistencies with Directive 2004/25/EC on takeover bids. To achieve this, the opinion of the FCMC and Latvian Chamber of Commerce and Industry on the draft law was requested.

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As a result, the law as adopted aims to protect the interests of shareholders in connection with a share repurchase offer or a request to repurchase shares in a joint stock company whose shares are listed on a regulated market, as well as to ensure supervision of share repurchases.

Among other changes, the law eliminates shortcomings associated with application of the current regulatory framework; sets the number of voting rights for a mandatory offer and the procedure for receiving a permit from the FCMC; changes and clarifies exemptions from making a mandatory bid; changes and clarifies restrictions in the case of non-submission of a mandatory offer (including the issue of an offer); provides for a procedure to determine a responsible person for submitting the offer; clarifies shares to be disposed of within the offer; defines the widest possible circle for shareholders entitled to refer to the offer; sets deadline and procedure for submission of the offer; sets an obligation to submit the offer before reorganizing a company, as a result of which all shares are excluded from the regulated market; simplifies and clarifies procedures for exclusion of shares from the regulated market.

Additionally, the law touches upon many different issues related to remuneration for shares, voluntary share repurchase offer, competing offer, prohibition on disrupting the offer, exemption of the offer from sale of shares and restrictions on voting rights, the procedure for making an offer, final share repurchase, shareholder's request to the controlling person to repurchase shares, shareholder's request to the company to repurchase shares if the

shareholders' meeting decides to exclude the shares from the regulated market and include them in the multilateral trading facility, and a shareholder's request to the company to repurchase shares if the shares are forcibly excluded from the regulated market.

Source: Share Repurchase Law, adopted on 31 March 2022..

Public procurement procedures in Hungary: force majeure due to war

Recommendation by the Public Procurement Authority to mitigate the risks of war in public works contracts

The Russian-Ukrainian war is having a serious economic impact on the construction industry, e.g. increase in the price of building materials. The Public Procurement Authority has issued a recommendation on the solutions that parties can apply in public procurement procedures in the event of force majeure caused by war.

If the time limit for submission of tenders/participation has not yet expired, the contracting authority may amend the notice or the documents, the time limit or withdraw the notice before the expiry of the time limit. If the amendments are not effective, the notice may be withdrawn before expiry without giving any reason. After expiry, the contracting authority may withdraw from the procedure if it is unable to perform the contract due to unforeseeable circumstances beyond its control occurring after expiry or if there is a right to withdraw from or to terminate the contract. However, withdrawal solely for reasons of force majeure, without further examination, is not possible.

If the result has been announced but the contract has not yet been concluded, either party may be released from the obligation to contract, if – due to unforeseeable circumstances beyond the control of the parties occurring after the summary has been sent – that party would not be able to conclude or perform the contract or if there is a right to withdraw from or to terminate the contract. Even in this case, it is not enough to invoke force majeure alone; a direct causal connection is required.

In cases of concluded works contracts, e.g. in the event of an increase in the price of building materials or transport costs, the value of the contract may be amended by up to 15% of the initial contract value. If the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen, the contract value may be adjusted up to 50% of the initial value. In both cases the modification must not alter the overall nature of the contract and the mere fact of war without causal connection is not a sufficient ground of reliance.

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For procedures under preparation, the contracting authority has the right to clearly set out in the draft contract any future changes to the conditions. Thus, the changed conditions will automatically become part of the contract. However, the modifications must not alter the general nature of the contract.

The contracting authority must **document** the entire process in all cases.

Source:
Recommendation by the National Federation of Contractors and the Public Procurement Authority to mitigate the business risks of the Russian-Ukrainian war (23.03.2022)
Act CXLIII of 2015 on Public Procurement

Many employment contracts become partially null and void

As of 1 July 2022, statutory daily allowances can only be reduced to the level provided for in a collective agreement.

In Lithuania, employers are required by law to pay daily allowances for business trips. These statutory daily allowances could previously be reduced by up to 50% in a collective agreement or in an individual employment contract - which was very often used.

However, by 1 July 2022, reduction of statutory daily allowances must be laid down in a collective agreement or, in the absence of such an agreement, in a local legal act of the employer company.

Concrete amounts must be specified in the collective agreement or in the company's local legal act, i.e. it is not sufficient to state that the daily allowance can be reduced "by up to" 50% if necessary. The reduced amount must be clear and should not be changeable spontaneously by a separate order of the managing director.

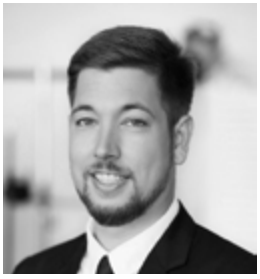
However, differentiation is possible according to objective criteria. For example, it can be stipulated that for business trips to Germany the employee is paid 50% of the daily allowance stipulated by law (i.e. 50% of EUR 62), whereas for business trips to Poland the employee is paid 60% (i.e. 60% of EUR 48).

This shows that the new regulations not only entail greater complexity and advance planning for employers, but also a variety of structuring options.

Information and consultation procedures provided for in the Lithuanian Labour Code (i.e. with participation of a works council, if applicable) must be followed in determining daily allowances, so all necessary measures should already be initiated now to ensure that the changes are implemented by 30 June 2022.

Should the employer fail to make the changes in time, existing clauses in the employment contract will become ineffective and the employer will be obliged to pay the employee the full statutory daily allowance for each day of a business trip. This poses an enormous cost risk, especially for companies that provide temporary employment services or post employees for other reasons over long periods.

Source: Government Decision No. 277 of 30 March 2022 amending Government Decision No. 526 of the Council of Ministers of 29 April 2004 "On the Payment of Daily Allowances and Other Expenses for Official Travel".



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New measures to control foreign investments in Romanian companies

For security and public order reasons, non-EU foreign investors must obtain authorisation for investments in Romania

Foreign investors are defined as persons who have or intend to invest in Romania. They may be:

1. natural persons who are not nationals of an EU state;
2. legal persons established outside the EU;
3. legal persons which have their registered office in an EU state and where control is exercised by one of the persons referred to at 1. or 2. or by an unincorporated entity registered in a non-EU state;
4. trustees of unincorporated entities where the trustees are covered by point 1. or 2. or where the entity is registered in a non-EU state.

Foreign direct investment creates or maintains a link between the investor and the investee company and allows the investor to exercise control over the company.

New investment either concerns expansion of capacity/ diversification/ a fundamental change in the production of an existing enterprise or the launch of a new one.

The following investments require authorisation:

a. if concerning one of the following fields of activity: security of citizens and the community, security of borders, energy security, transport security, security of vital resource supply systems, security of information and communication systems, security of financial, tax, banking and insurance activities, security of production and distribution of arms, ammunition, explosives and toxic substances, industrial security, disaster, agricultural and environmental protection, protection of state-owned privatisation operations and

b. which have a value over 2 000 000 EUR.

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By way of exception, investments that pose a risk to security and public order require authorisation even when they do not exceed the above mentioned value.

Furthermore, when establishing a new company, authorisation will only be required when the investment is effectively undertaken but not at the time of establishment.

The following acts constitute contraventions:

a. intentionally providing inaccurate, incomplete or misleading information;

b. intentionally or negligently implementing an unauthorised investment or in breach of commitments made.

These acts are punishable by a fine of up to 10% of total worldwide turnover in the financial year preceding the sanction. In the case of new enterprises that have not yet registered their turnover, the fine ranges from 10 000 000-50 000 000 lei (approximately 2 025-10 122 EUR).

Source:

Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments in the Union;

Emergency Government Ordinance No. 46/2022;

Competition Law No. 21/1996;

Supreme Council of National Defence Decision No. 73/2012.

Can a Foreign Company be Sued in Slovakia?

Nowadays, it is not uncommon that companies do business with partners based outside their home country, including in Slovakia. Of course, virtually nobody thinks of the rules dealing with settlement of potential legal disputes with a business partner. While it may seem like a minor issue with no real significance to the overall contract negotiations, often the opposite proves to be the case.

If you are an EU-based entrepreneur, the basic rule is that if your business partner (who is also based in the EU) wants to sue you, they have to do it in the courts of your own country (seat-of-the-defendant rule) – a principle anchored in EU Regulation No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation). This means that the party being sued (defendant) normally has the "advantage" of being in their "home" environment in court proceedings. The rule is logical and intuitive.

However, what is not so intuitive is that there are alternative ways of establishing the jurisdiction of the courts. This can have a huge impact on a legal dispute arising out of business cooperation, and it can even mean that you lose the whole case. For this reason, the best advice would be to approach a professional and experienced law firm before closing any international business deal.

A major factor which can shift the jurisdiction of courts is agreement between the parties on jurisdiction (also called "prorogation of jurisdiction"). If parties conclude a contract including such an agreement, this normally has the effect that only the courts of the specified country (Member State), or specified court/s of that country will have jurisdiction over legal issues. The agreement can, however, be made in other forms, for example via electronic communication, so one has to be careful about this. Therefore, paying due attention to drafting an agreement on jurisdiction can be of considerable help in a potential legal dispute.

Another jurisdiction-altering factor according to the Brussels Regulation is the place of performance of the contract. In business relations a company can be sued in the courts where the obligation is to be performed. For example, in sales of goods the place of performance is the place where the goods were (or should have been) delivered. And in cases of provision of services the place of performance is the place where the services were (or should have been) provided. For instance, a German-based company providing construction services at a building site in Slovakia can be sued in the Slovak courts by the client who ordered the services.

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Special attention needs to be paid to the rules governing the exclusive jurisdiction of courts since the seat-of-the-defendant rule will not apply in cases such as these. First, if rights in rem or tenancies of immovable property are to be settled in court proceedings, then the courts of the country where the property is situated will have jurisdiction. Second, if the validity of patents, trademarks, designs, or other similar rights are the object of a dispute, then the courts of the country in which registration has been applied for will have jurisdiction. And there are even more rules on exclusive jurisdiction in the Brussels Regulation.

For entrepreneurs based outside of the EU might the situation be even more difficult. In their cross-border commercial activities, numerous other jurisdictional factors might come to play a role. As for Slovakia, Act No. 97/1963 Coll. on Private and Procedural International Law (PPIL Act) is the key legal document. Surprisingly, besides the rules included in the Brussels Regulation, one can also find there some rules which go further away from the seat-of-the-defendant rule.

A lawsuit filed in a Slovak court might be targeted against a foreign company which does not have its seat (or a branch) in Slovakia, but it has certain assets there (e.g., shares or some other interest in a Slovak-based company). According to Section 37 of the PPIL Act, such a lawsuit will meet the jurisdiction criteria and a Slovak court might be competent to hear the case (unless some other jurisdictional rules are applicable in that case).

It follows that the importance of jurisdictional rules should not be underestimated. Whether you are negotiating the terms of your commercial contract, or whether you have been involved in a legal dispute over an existing contract, a professional approach by experienced lawyers is strongly advised. With a growing number of cases where the jurisdiction of the courts is a major topic, we know this can be a real turning point in achieving success.

Source: EU Regulation No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Slovak Act No. 97/1963 Coll. on Private and Procedural International Law

New Act on Medical Devices

The President has signed the Act on Medical Devices, coming into force on 26.05.2022

After nearly two years of legislative work - we have a new law on medical devices. It enters into force exactly one year after the application of Regulation (EU) 2017/745 of the European Parliament and of the Council on Medical Devices. Of course, the regulation applies directly, but in the explanatory memorandum of the bill you can read about the areas that are left to the Member States and their regulatory authorities.

These issues include principles for advertising medical devices, introduction of provisions regulating the possibility of reprocessing and further use of single-use medical devices, and the definition of requirements concerning the languages in which documents relating to marketing of medical devices are to be drawn up. The new law also introduces information obligations for entrepreneurs operating in the medical device market. These obligations are accompanied by a system of administrative penalties.

As we recall, in the still-existing Act the word 'advertising' does not appear at all, and promotion of medical devices was mentioned in a single paragraph in Article 8. Meanwhile, in the new Act, advertising is regulated by a whole separate Chapter 12 (Articles 54 to 61). The obligations of an entrepreneur running a medical device advertisement include keeping samples of advertisements and information about the places where they are distributed for a period of 2 years from the end of the calendar year in which the advertisement was displayed.

It is interesting to note the use of the term "lay person", inter alia in the context of the addressee of a medical device advertisement. The Act uses this wording in the wake of Regulation 2017/745, where the definition of lay person is contained.

Under the new law, reprocessing single-use devices is allowed in Poland. However, this is only strictly in accordance with the rules set out in Regulation 2017/745. It is further provided that the President of URPL, in the event of a breach of the EU provisions on reprocessing, will issue an administrative decision to withdraw from the market (or from use) reprocessed single-use devices,

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if this is justified by the need to ensure public health protection and patient safety.

An important novelty is also the list of distributors of medical devices, systems or treatment sets, maintained by the President of URPL (the so-called list of distributors). A distributor who makes a medical device available in Poland for the first time, submits an application to the President of URPL for an access code and password to the list of distributors. Then the distributor enters on this list, among others, the Basic UDI-DI code of the product according to the Eudamed database, and other data, according to the label.

Time will tell how the market – with the experience of pandemics and war - will cope with implementing the new procedures.

Source: Act of 7 April 2022 on Medical Devices (parliamentary print No. 1764)

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