

CIVIL LAW

Hungarian Supreme Court states that arbitration clauses contained in consumer contracts shall be regarded as unfair

According to Act LXXI of 1994 on Arbitration and Act IV of 1959 on the Hungarian Civil Code ("Civil Code"), a matter can be brought to arbitration if: (i) at least one of the parties is a person professionally engaged in an economic activity, and the legal dispute is in connection with that activity; (ii) the parties may dispose freely over the subject-matter of the proceedings; and (iii) the arbitration was stipulated in an arbitration agreement (arbitration clause).

Establishing an arbitration clause in general terms and conditions ("GTC") requires the satisfaction of strict criteria. Pursuant to the provisions of the Civil Code, and the established practice of the Hungarian courts, any party applying a GTC must explicitly inform its customers of the arbitration clause in the GTC and the customer has to accept the arbitration clause separately.

On 15 October 2013, the Hungarian Supreme Court ("Curia") provided a legal unity resolution on arbitration clauses set out in consumer contracts and GTC without being negotiated individually by the contracting parties. According to the latest trends of the Curia, such clause shall be considered as unfair, given that it may exclude or hinder the consumer's right to take legal action in respect of the underlying contract. The validity of arbitration clauses in consumer contracts can be challenged by the courts ex officio. The recent decision is in line with the provisions of the new Civil Code, entering into force on 15 March 2014, expressly providing that all contractual clauses forcing the consumer only to arbitration as a remedy shall be considered as unfair.

If, despite the unfair term, customers wish to proceed to arbitration, they have the right to do so. In such case, the other contracting party will not be able to argue before the tribunal that the arbitration clause is invalid.

Transitory provisions of the New Civil Code

On 28 October 2013, the Hungarian Parliament adopted Act CLXXVII of 2013 on the transitory and authorising provisions related to the entry into force of the New Civil Code, which will take place on 15 March 2013, the same day as the New Civil Code.

The objective of this Act is to regulate the applicability of the New Civil Code's provisions to the various legal relations existing prior to the entry into force of the New Civil Code, and to authorise the government and the competent ministers to adopt the necessary decrees on the detailed rules connected to the New Civil Code. In addition, it will repeal all laws that are to be regulated by the New Civil Code.

As the rules laid down in this Act are relevant to various subjects covered by the New Civil Code, we will publish further information regarding them in the next editions of our newsletter.

Private and Public Limited Companies under the New Civil Code

Under the new rules, only private limited companies may be established and public limited companies may only be constituted by changing the company's form of operation from private to public limited company. This occurs with the admission and listing of a company's shares on a stock exchange.

With regard to the contributions to be paid by the shareholders, it is important to note that the amount of cash contributions to be paid at the time of the company's establishment has to be of at least 30 per cent of the company's share capital, and in-kind contributions have to be provided within 3 years from the date of the company's registration.

The company may acquire "own shares" (treasury shares) up to 25 percent of its share capital. The shares of legal entities under the company's direct or indirect influence will have to be taken into account when determining the amount of the company's "own shares".

The Companies Act currently in force contains an exhaustive list of the types and classes of shares which can be issued by private and public limited companies. The New Civil Code, however, while regulating all the present types and classes of shares, will provide the possibility to issue other types and classes of shares as long as the content and extent of the rights attached to the new type/class of share are set out in the company's founding document. Nonetheless, additional voting rights can only be attached to the share classes mentioned in the New Civil Code. As to the preferential shares concerning the appointment of executive officers, the new rules do not set a limit regarding the number of members of the board of directors who can be appointed through this preferential right. Moreover, the limit regarding the issuance of redeemable shares will be increased from 10 per cent at present to 20 per cent of the share capital.

The organisational structure of private and public limited companies will not be modified (general assembly, board of directors, supervisory board, audit board and auditor). Some important changes, however, include: there will be no upper limit to the number of members on a board of directors, and the "general assembly conference" (i.e. when the shareholders communicate using telecommunication means) cannot be held if the shareholders holding at least 5 per cent of the voting rights object and request the physical presence of the members.

According to the transitory provisions of the New Civil Code, public and private limited companies must modify their statutes before 15 March 2016 in order to comply with the new provisions. Public limited companies that do not have shares listed on a stock exchange, must obtain their admission to a stock exchange and list their shares before 15 March 2016. Failure to do so will compel companies to change their corporate form, transform or merge with another company. Nonetheless, existing private and public limited companies or those in the

process of incorporation at the time of the entry into force of the New Civil Code shall not be required to alter the ratio of cash and in-kind contributions of their registered capital.

LABOUR LAW

Changes to the Labour Code

The Labour Code has recently been subject to amendments focusing mainly on the calculation of absence fees (*"távolléti díj"* in Hungarian), which attracted great interest in the media, the allocation of holiday leave, wage supplements for working on Sundays and public holidays, and flexible working order (*"kötetlen munkarend"* in Hungarian). Some of those changes entered into force on 1 August 2013, while others will only be effective from 1 January 2014. The main modifications are summarised below.

Absence fee calculation

In the February and April editions of our Newsletter, we informed our readers of the practical problems raised by the calculation method of absence fees introduced by the new Labour Code applicable from 1 January 2013. The main concerns regarding the new absence fee calculation method were that employees remunerated on a monthly basis could receive a salary which is different from the gross amount set out in their employment contracts depending on the date of taking their holidays. The more working days there were in the month in which employees took their holidays, the higher their remuneration. As from 1 August 2013, the calculation method of the absence fee has been modified in such a way that it no longer depends on the number of working days of the month in question and the length of absence.

The allocation of holidays

It has been clarified that the Labour Code provision stating that the annual holiday allocated by employers shall contain at least fourteen consecutive days in a calendar year must be interpreted in such a way that the fourteen consecutive days shall also include week-ends and public holidays.

Further to those modifications, from 1 January 2014, in order to carry forward annual untaken holidays to the following year, employers and employees must enter an agreement every year that would be limited to the extra holidays employees are entitled to, based upon their age (i.e. the basic holidays cannot be carried forward to the next year).

Flexible working order

Prior to the current modification of the Labour Code, flexible working order allowed employees to schedule at least half of their daily working time on a weekly basis.

As from 1 January 2014, the Labour Code will revert to former provisions according to which flexible working order only means that employers provide the right to employees to schedule all of their working hours on their own. The fact that, due to their nature, employees can only perform certain tasks at a specific date or during a specific period does not impact the flexibility of the working order.

The most important consequence of the flexible working order is that employers no longer need to keep registers logging ordinary and extraordinary working hours (and therefore no bonus for

extraordinary work has to be paid) and standby duty (“készenlét” in Hungarian). Only holidays must be registered by the employer.

EU LAW

EU General Court finds likelihood of confusion between company names CORDIA and CORDIO

The European Court of Justice confirmed OHIM’s decision that there was a likelihood of confusion between the word mark CORDIO and the existing Community trade mark CORDIA, both applied for in respect of services in class 42, related to services provided by persons in relation to the theoretical and practical aspects of complex fields of activities, i.e. various IT services in the case at hand (Daniela Singer v OHIM, Case T-388/12, 16 October 2013).

On 14 July 2010, Hungarian company CORDIA, the leading residential property developer in Hungary, filed with the Office for Harmonisation in the Internal Market (OHIM) a notice of opposition to registration of the community trade mark CORDIO which was published in Community Trade Marks Bulletin of 14 June 2010. On 14 July 2011, the OHIM refused registration of the trade mark CORDIO in the opposition proceedings brought by the proprietor of the word mark CORDIA, and thereafter dismissed the appeal lodged by the company CORDIO, finding that there was therefore a likelihood of confusion between the marks at issue, despite the fact that the services were directed at professionals with an above-average degree of attentiveness. CORDIO decided to bring an action against the decision of the Board of Appeal of OHIM before the General Court of justice.

After recalling that a likelihood of confusion implies in particular some interdependence between the similarity of the trademarks and the similarity of the goods and services concerned, the Third Chamber of the General Court stated that “the services covered by the two marks are in part identical”, “the signs (...) are visually and aurally highly similar (...) even for the professionals who constitute the relevant public for some of the services referred to by the mark applied for” and therefore concluded that there was a likelihood of confusion. CORDIA is therefore entitled to exclusive further use of its registered community trade mark in the European Union for the services covered by class 42.

TAX LAW

Foreign number plates in Hungary - Volume 2

Due to the relatively high car registration taxes in Hungary, many Hungarian individuals have decided to register their cars in other EU member countries, or even outside of the EU. To try to stop this type of tax evasion, strict regulations were introduced on the use of foreign-registered cars by Hungarian residents, establishing that, in the case of an investigation, the legal title of the use must be certified on the spot. Failure to do so may result in a fine of up to HUF 800.000 being applied.

The Hungarian legal background and the applied measures were challenged several times, reaching the European Court of Justice. As published in previous issues, in one of these cases (C-182/12) a judgment of the European Court established that employees of companies registered in non-EU countries may legally use such cars, even for private use, if authorisation for such private use is established in the driver’s employment contract.

In its most recent decision in October, the European Court of Justice established that it is contradictory to European Union law that no differentiation is made by Hungarian authorities in the amount of the applied fines in cases in which the driver is not able to certify at all the legal title of use, and when the legal title is certified only later, not right on the spot.

Based on the above decision, lower penalties or even no penalties could be applied in cases where the required underlying documentation is submitted in the course of the procedure. Only a minority of Hungarian courts currently interpret the text in this way, but this decision should help make the application of lower or no penalties more mainstream.

Changing transfer tax regulations for the transfer of real estate holdings

Based on the bill submitted to Parliament in October, as of 1 January 2014 the currently effective legislation regarding the scope of exemption from transfer tax applicable to "real estate holding companies" would be amended.

Currently, a company is considered as a real estate holding company if it owns either Hungarian real estate or shares of a company that owns such real estate, irrespectively of the value of the latter. In accordance with current provisions, however, the acquisition of shares in a real estate holding company is subject to transfer tax, only if the main registered activity of the acquired company is the organisation of construction projects or other real estate utilisation activities.

As of 1 January 2014, according to the bill, if more than 75% of shares in a real estate holding company are acquired, such acquisition would be subject to transfer tax irrespectively of the company's registered main activity.

However, the proposed bill also narrows the definition of a "real estate holding company". As of 1 January 2014, only the following companies will be considered as real estate holding companies: (1) companies in which the book value of real estates listed among its balance sheet assets exceeds 75% of the book value of its total assets (excluding cash equivalents and cash receivables), or (2) the company has a direct or indirect participation of at least 75% in a company that meets criterion (1) (i.e. in a domestic real estate company).

Free cash withdrawals as of February 2014

The Parliament adopted the bill on free cash withdrawals for individuals, which will become applicable as of 1 February 2014. The decision is one in the row over the decrease of households' overhead expenses, providing cost-free cash withdrawals for Hungarian individuals twice in a month, up to a total amount of HUF 150,000. The allowance is available only for those residents who register at their bank by 20 January 2014.

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