The Brief

March 2013

Hungary - Monthly Legal Update

In this issue:

GLN

Gide Loyrette Nouel

Algiers
Tel. +213 (0)21 23 94 94
gln.algiers@gide.com

Beijing
Tel. +86 10 6597 4511
gln.beijing@gide.com

Brussels
Tel. +32 (0)2 231 11 40
gln.brussels@gide.com

Bucharest
Tel. +40 21 223 03 10
gln.bucharest@gide.com

Budapest
Tel. +36 1 411 74 00
gln.budapest@gide.com

Casablanca
Tel. +212 (0)5 22 27 46 28
gln.casablanca@gide.com

Hanoi
Tel. +84 4 3946 2350
gln.hanoi@gide.com

Ho Chi Minh City
Tel. +84 8 3823 8599
gln.hcmc@gide.com

Hong Kong
Tel. +852 2536 9110
gln.hongkong@gide.com

Istanbul
Tel. +90 212 385 04 00
gln.istanbul@gide.com

Kyiv
Tel. +380 44 206 0980
gln.kyiv@gide.com

London
Tel. +44 (0)20 7382 5500
gln.london@gide.com

Moscow
Tel. +7 495 258 31 00
gln.moscow@gide.com

New York
Tel. +1 212 403 6700
gln.newyork@gide.com

Paris
Tel. +33 (0)1 40 75 60 00
info@gide.com

Saint Petersburg
Tel. +7 812 303 6900
gln.saintpetersburg@gide.com

Shanghai
Tel. +86 21 5306 8899
gln.shanghai@gide.com

Tunis
Tel. +216 71 891 993
tunis@gln-a.com

Warsaw
Tel. +48 22 344 00 00
gln.warsaw@gide.com

CIVIL LAW

New Civil Code enters into force in 2014

After a lengthy legislative process, the Hungarian Parliament adopted a new Civil Code on 11 February 2013. The new Civil Code replaces the former one, which was adopted in 1959 and has been modified on several occasions since its entry into force. The new Civil Code enters into force on 15 March 2014. The new code ("**New Civil Code**") consists in the following books: General Provisions, Human as an Entity, Legal Entities, Family Law, Property Law, Contractual Law, Inheritance Law and Closing Provisions. As opposed to the current civil code, the New Civil Code does not only regulate the traditional fields of civil law, but also family law and corporate law that are currently regulated by separate laws.

As regards corporate law, the New Civil Code incorporates only the most substantial rules governing the rights and obligations of companies established in Hungary. Procedural, tax and accounting rules will be regulated in separate laws in the future as well.

Compared with the current corporate regulation, in general, founders of legal entities will be allowed to enjoy a greater contractual freedom under the New Civil Code. It means that the shareholders of the company may - when drafting or amending the deed of foundation - deviate from the rules that govern the relations of the shareholders and the company, and the company's organisation and operation. This principle will not apply in cases where the derogation is explicitly forbidden by the New Civil Code, or it evidently endangers the interest of creditors, employees, the minority shareholders, or it hinders the company's lawful operation.

One of the most significant changes affecting companies is that the minimum share capital required for establishing a limited liability company (in Hungarian: Kft.), i.e. the most commonly used company form in practice, will increase up to HUF 3,000,000 from the current HUF 500,000. Since the transitional provisions of the New Civil Code have not yet been accepted, it is currently uncertain as to whether the Kft.s established before the entry into force of the New Civil Code with a lower share capital will be obliged to increase their share capital, and if so, within what timeframe.

Combating late payment

EU member states will need to amend their national legislation in light of Directive 2011/7/EU of 16 February 2011 on combating late payment in commercial transactions ("**Directive**"). According to the Directive, undertakings must settle their invoices within 60 days, except where they have expressly agreed otherwise and insofar as other terms are not grossly unfair to the creditor. It is also stipulated by the Directive that in the case the contract between two undertakings does not specify any date for payment, the creditor is entitled to receive interest after 30 calendar days.

National legislations should have amended their laws in line with the Directive before 16 March 2013; however, the bill that introduces the required amendments to the Hungarian Civil Code is still before Parliament.

The Hungarian bill aims to introduce a general provision stating that unless otherwise agreed by the parties, invoices must be settled within 30 days from receipt. According to the bill, it will still be allowed to set a deadline of up to 60 days or longer if the parties so agree. However, if the payment deadline exceeds 60 days, it can be challenged and the other party must be able to prove that the challenged payment conditions are justified and balanced. We note that the currently available version of the bill does not contain any transitional provisions, and it is unclear whether the new rules will be applicable to contracts entered into prior to the entry into force of the new laws.

EMPLOYMENT LAW

Reconciliation reached regarding the calculation of absence fees

As noted in the February edition of our Newsletter, the new (and controversial) calculation method for absence fees, as entered into force on 1 January 2013, may result in employees' monthly salary differing from their base salary set out in the employment contract, depending on the date of taking their holidays and the time worked during the given month.

The Ministry of National Economy finally agreed that the monthly remuneration should not depend on whether the employee takes days of paid leave in a given month, and this concept must be consolidated by law. Both employers' and employees' representatives insisted on the fact that the new calculation method creates an uncertain situation for both parties.

Accordingly, an amendment to the contested sections of the Labour Code will soon be drafted, however no draft bill has yet been made publicly available. Once the rules on the calculation of absence fees are adopted, employee remuneration will remain constant every month, excluding of course the differences due to specific working conditions (i.e. extraordinary work, shift work etc.).

Temporary agency work in light of the new Labour Code

In today's rapidly changing labour market, the ability to adapt and readiness for change becomes increasingly important. The concept of "flexicurity" is a recent global approach which refers to both the employers' demand for flexibility and the employees' demand for security.

Temporary agency work has become popular in Hungary and is regarded as one way of providing flexibility to employers, as numerical flexibility is a common reason for using temporary agency workers. However, the security dimension must yet be scrutinized and is subject to several debates. The new Hungarian Labour Code, which entered into force on 1 July 2012, changed significantly the legal environment concerning temporary agency work, in an attempt to provide both dimensions of the "flexicurity" model.

Under the new Labour Code, temporary agency workers can only work for a maximum period of 5 years for the same user company. The periods of prolonged hiring-outs and repeated hiring-outs occurred within 6 months from the termination of the previous one must be also taken into account when calculating the worked period. This rule also applies when the employee is hired out to the same user company, on the basis of a contract concluded with another agency. Should this 5-year-limit be exceeded, the employee cannot be further employed by the same user company. It must be highlighted, however, that in Hungary, the period of hiring-out rarely exceeds 3-4 months.

According to a new rule, if the agency is deleted from the official registry, the legal consequences of an invalid employment contract apply, i.e. the agency is obliged to terminate the employment relationship with immediate effect without delay, and must pay the compensation to which the employee would be entitled in the event of dismissal by the employer. The rules of severance payment must also apply; however, the relevant time taken into account is only the period of the last hiring-out.

According to the previous Labour Code, employers' liability for unlawful dismissal was less burdensome, but this unjustified difference was annulled by the new Labour Code.

In line with the principle of equal treatment, hired-out employees are entitled to the same work and employment conditions as ordinary employees of the user company. However, under certain circumstances this rule may only apply to equal remuneration after a specified period of employment.

When terminating the employment relationship by notice, the notice period is 15 days for both parties. The employment relationship may be terminated due to termination of the hiring-out. In this case, the termination of hiring-out is deemed to be related to the employer's operation, and the agency can refer to this in the reasoning part of the notice. Under the previous legislation, the agency could only dismiss the employee in default of proper employment opportunities, if the attempts for hiring-out were unsuccessful for 30 days.

PUBLIC LAW

Wider range of available products in National Tobacco Stores

On 18 February 2013, the Hungarian Parliament adopted a modification to the controversial Tobacco Act that governs the newly established tobacco distribution system, already highlighted in our previous editions. Initially, the Tobacco Act enabled National Tobacco Stores operated by concessionaires to offer only tobacco, tobacco-related products, and lottery tickets to their customers. Future store operators stated that this restriction would have made it impossible to profitably operate these stores on the long term. The purpose of the recent amendment was therefore to expand the range of products that can be sold in National Tobacco Stores with spirits, energy drinks, coffee, mineral water, soft drinks and newspapers, to create more sustainable sales outlets. However, these products may only be sold in National Tobacco Stores if the store operator notifies the customs authority in advance.

According to the amendment, the concessionaires may open their National Tobacco Stores from 1 May 2013 instead of the originally envisaged opening date (i.e. 1 July 2013), in order to enable customers to get familiar with the new concept and the stores. The only restriction is that the customs authority must be notified accordingly. Those retailers who cannot continue their operation due to the legislative changes may sell their remaining inventory until 16 July 2013.

In order to assign the right of distributing tobacco products in Hungary, a public tender was published on 15 December 2013. More than 15,000 bidders applied until the final deadline (i.e. 22 February 2013 midnight), which means that for metropolitan and other urban areas there may be 4-5 times more applications than available concession rights.

EU COMPETITION LAW

Insurance companies' agreements with car repair shops likely to be found anti-competitive (case C-32/11)

In case C-32/11, the European Court of Justice ("ECJ") analyses an interesting practice used by Hungarian insurance companies.

For several years, Hungarian insurers entered into agreements with car dealers acting as repair shops in the event of accidents, setting the hourly rates of repair works. According to those agreements, the hourly charge to be paid by the insurance company to car dealers for the repair of cars in the event of accidents depended on the number and percentage of insurance contracts the dealer sells for that insurer.

This practice was already found to be anti-competitive by the Hungarian Competition Authority in 2006, given that dealers and insurers were connected in two ways: first, they repair cars insured by the insurers and, secondly, they act as intermediaries on behalf of the latter by offering car insurance to their customers during the sale or repair of vehicles. As a consequence, car insurers were heavily fined by the Hungarian Competition Authority.

Due to subsequent appeals lodged by insurance companies, the case was referred to the ECJ for a preliminary ruling. In its judgment, the ECJ points out that these agreements link two activities that should, in principle, be independent, namely car repair services and car insurance brokerage.

The ECJ ruled that the agreements concerning the price of repairs of insured vehicles concluded between insurance companies and repair shops have an anti-competitive object and are therefore prohibited as they are, by their nature, harmful to the proper functioning of normal competition. The harmful nature must be determined and further analysed for the two markets concerned, namely the car insurance and car repair markets.

State aid granted to Nitrogénművek Zrt. By the Hungarian Development Bank found to be contrary to EU law (case T-387/11)

In 2009, Nitrogénművek Zrt. benefitted from a loan of EUR 88 million granted by the Hungarian Development Bank ("**MFB**"), a State-owned bank. The Hungarian Government approved two guarantees to back the loan in order to rescue Nitrogénművek Zrt. and to preserve the workplace of its employees.

Suspecting a State aid incompatible with the internal market of the European Union, the European Commission started investigations and established that the loan and the bank guarantee constitute illegal aid granted from State resources and must be recovered.

Nitrogénművek Zrt. appealed against the Commission's decision. The General Court of the European Court of Justice dismissed the action initiated by Nitrogénművek Zrt. on grounds that the MFB has a different legal status from that of any other commercial bank. It is 100% owned by the Hungarian State, consequently, its decisions are directly attributable to the Hungarian State.

According to certain sources, Nitorgénművek Zrt. had already reimbursed the loan before its due date.

TAX LAW

Internet cash registers on their way

As a part of the fiscal package announced in 2012, on 15 February 2013 the Hungarian government issued its resolution on the introduction of Internet-enabled cash registers from 1 May 2013. Although the deadline established by the government expires this May, a transitional period is provided, in which the use of old cash registers cannot be penalised by the tax authority.

The length of the transitional period depends on whether the operated cash register is able to record a digital log or not. In the case of cash registers that are unable to record a digital log, the transitional period expires on 30 June 2013, while non-Internet cash registers that are able to record a digital log may be operated until 31 December 2013. We note that the above rules are also applicable for taximeters.

Loss carry-forward

On 5 March 2013, the Hungarian National Tax and Customs Administration published its information newsletter on the interpretation of loss carry-forward restrictions introduced as of 2012. In line with the information newsletter, the restriction that losses may be utilised only up to 50% of the profit before tax of the relevant financial year should not be applied to losses arising before 2004.

In practice, losses relating to the establishment of the company may still be utilised. In accordance with the provisions in force before 2004, losses may have been carried forward without time limitation only if they arose within four years from the establishment of the company. Losses arising thereafter could only be carried forward for a period of five years, thus, in that respect the limitation period has elapsed. ■

Gide Loyrette Nouel
Széchenyi István tér 7-8.
"C" Mag; 4th floor
1051 Budapest - Hungary
Tel. +36 1 411 74 00
Fax +36 1 411 74 40
E-mail: gln.budapest@gide.com

Contacts

François d'Ornano
Partner in charge
ornano@gide.com

Eszter Kamocsay-Berta
Local Partner - Head of Projects Team
kamocsay-berta@gide.com

Ákos Kovách
Senior Associate - Head of Competition & Regulatory Team
kovach@gide.com

For further information:
www.gide.com

GLN
Gide Loyrette Nouel

You can also find this Brief and our other newsletters on our website in the News/Publications section.