



FRANCE

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## CEE LEGAL NEWSLETTER

### LEGAL NEWS FOR INVESTORS AND ENTREPRENEURS

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### FRANCE

#### LEGAL NEWS

##### OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

#### **NEW LAW: ACPR publishes a "Fintech Charter" for financial sector start-ups**

The "*Autorité de contrôle prudentiel et de résolution*" (ACPR) has adopted a charter for fintech start-ups to help provide them with a better understanding of the regulatory framework for their activity, in particular when reviewing their application for an operating license .

The main points:

- First of all, when the financial project requires authorization, it must be submitted to the ACPR's Authorizations Department, which is in charge of approvals and other related authorizations (takeovers, restructurings, changes of management, etc.). The charter specifies that, in order to facilitate understanding and initial exchanges, the presentation of the fintech should include information concerning eight elements: a presentation of the company, its intended governance and shareholding structure; a presentation of the intended activity; a financial flow chart showing the bank or payment accounts through which funds will transit; if the company has already identified essential services that will be outsourced, the main functions concerned and the names of the prospective service providers; a draft three-year business plan; the structure and financing of the project; a summary of the systems for internal control, anti-money laundering and combating the financing of terrorism (AML/CFT), as well as the heads of the key functions, if already known; the proposed timetable for submitting the application to the ACPR and for carrying out the project as a whole.
- Secondly, it is specified that the time period for examining applications runs from receipt of the complete application for authorization or registration, i.e. from receipt of all the information necessary for the decision. The period of investigation "allows the ACPR to finalize its analysis, to obtain the opinions of other authorities when required (AMF or Banque de France) and to draft the memorandum that will be sent to the members of the ACPR's supervisory board sufficiently in advance of the meeting so that they have enough time to read it and reach a decision on the application for approval".
- Finally, the project leader is informed of the decision of the ACPR's supervisory board within two days by electronic means. On expiry of the legal time limit for review, in the absence of any decision, the ACPR shall be deemed to have rejected the application for approval. (Conversely, regarding applications for registration, in the event of a lack of response from the ACPR within the time limit for review, the applicant shall be deemed to have been duly registered).

### **FOCUS: COVID-19: New "Fixed Consolidation Costs" aid for December and January**

A new addition to the range of aids to help companies severely affected by the health crisis cover their fixed costs, the "Fixed Consolidation Costs" aid, is intended for companies in sectors 1 and 2 and covers part of their costs for the months of December 2021 and January 2022 (the so-called "eligible" period). The aid is monthly but is paid every two months.

- **Eligibility**

Natural and legal persons that come within the scope of French tax law and carry out an economic activity are eligible for the new aid provided that (Decree 2022-111 art. 1, I):

- they were created before January 1, 2019;
- they were not in compulsory liquidation on March 1, 2020;
- their main activity falls within sector 1 or 2 (the sectors of activity most affected by the health crisis and defined by schedules 1 and 2 of Decree 2020-371 of 30 March 2020 as it stands on 30 June 2021).

Associations subject to commercial taxes or which employ at least one employee, together with owners of historical monuments that are open to the general public are excluded from the benefit of "consolidation" aid (Decree 2022-111 art. 1, I-al. 1).

- **Loss of turnover**

The aforementioned companies must show that they lost at least 50% of their sales (or net revenue) excluding tax during the eligible month compared to the same month in 2019 (Decree 2022-111 art. 1, I-3° and art. 3).

- **Requirement of a negative EBITDA**

Their gross operating surplus for consolidated fixed costs during the eligible month must be negative (Decree 2022-111 art. 1, I-4°). This EBITDA is calculated or verified, for each eligible period, by a chartered accountant or an auditor based on the company's profit and loss general account or balance sheet (Decree 2022-111 art. 2, II and art. 4, II).

- **Amount of "consolidation" aid**

The amount of aid is calculated for the eligible period; it is capped for the period from January 1, 2021 to January 31, 2022 at 12 million euros at company or group level and this ceiling takes into account all "Covid" aid paid with the authorization of the European Commission (Decree 2022-111 art. 2, III).

- **Subsequent control**

In companies that have benefited from the "fixed consolidation costs" aid and whose annual financial statements are certified, the auditor must, at the close of these accounts, verify and certify the company's net result over the entire eligible period (Decree 2022-111 art. 5).

If it appears that the net result is greater than the sum of the consolidated EBITDA for the period, the company must send the auditor's certificate to the Direction générale des finances publiques within three months of its signature, and the authorities may recover the sum unduly paid. The other companies receiving aid (i.e., those whose annual financial statements are not certified) will have to carry out the same verification within three months of the approval of the accounts and, if necessary, inform the tax authorities. Failure to comply with these obligations places the company at risk of having to repay the whole of the aid received.

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## HUNGARY

### LEGAL NEWS

#### OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

##### **AMENDMENT: Transactions under the Agricultural and Forestry Land Act**

As of 1 January 2022, new provisions came into force affecting transactions in agricultural land and forests. In accordance with the existing provisions of Act CXXII of 2013 on Transactions in Agricultural and Forestry Land, the purchaser of agricultural or forestry land has to pledge not to transfer the use of the land to another person and not to change the use of the land for a period of 5 years from the acquisition date. According to the new provisions, in the event that ownership of such land is assigned to a close relative, the pledge made by the assignor will remain binding on the assignee (close relative). Furthermore, the parties to sales or leases of agricultural or forestry lands will henceforth need to apply for authorization directly to the agricultural authorities and no longer to the public notary, as in the past. The agricultural administrative body can refuse to approve the contract for such lands, if it considers that the value of the consideration is disproportionate.

##### **AMENDMENT: Labour Code provisions related to remote working**

The new rules regarding remote working will soon enter into force when the decree on state of emergency resulting from the pandemic will be revoked. The definition of remote working is to be expanded to include the situation where an employee works from home, i.e. the provisions of the Labour Code related to remote working will apply indifferently to all situations where an employee works totally or partially remotely from a place that is different from the employer's site. Also, the employment contract shall expressly provide that the employee will work remotely. Unless stipulated otherwise by the parties, the employer's right to give instructions only covers the right to give tasks to the employee; and the employee will only work at the employer's site for up to one-third of his/her working days. If an employee performs his/her work on an IT device, the employer is obliged to inform the employee in writing about the relevant health and safety rules, and the employee is free to choose his/her place of work in line with those rules. The employer still has the option (but not the obligation) to provide employees with a tax-free lump sum as compensation for increased utility costs due to remote working.

##### **NEW LAW: Digital Nomad Decree**

Governmental Decree n° 1516/2021 (VII.29.) introduces a new residency permit for digital nomads in Hungary. The so-called 'White Card' is to be available as of 2022 to third-country nationals (which excludes EU citizens or stateless persons) who, among other conditions, hold a valid employment contract outside of Hungary or have a share in a company which makes profits in a country other than Hungary, and who use advanced digital technology to perform their work or manage their business from Hungary. The applicant cannot work for profit while staying in Hungary or hold a share in any company located in Hungary.

In addition, this residence permit does not allow its holder to sponsor a residence permit for another family member. The White Card is valid for up to one year and can be extended once for a period of one year for the same purpose, meaning that a person who stays for more than two years is no longer considered a digital nomad.

### **FOCUS: AMENDMENT OF THE CIVIL CODE**

Important modifications affecting company rules have been made to the Hungarian Civil Code – Act V of 2013 on the Civil Code.

- **Provision of capital contribution in cash**

One of the most important new changes relates to the *provision of a capital contribution in cash*. From 1 January 2022, when creating a private limited liability company, if a member decides not to pay the entire amount of the cash contribution when the company is founded, he/she can opt to cover all or part of the remaining contribution from dividends due at the end of the financial year. The Civil Code also now stipulates that, if the full amount of the cash contribution is not provided by the end of the second, entire fiscal year (12-month period) following the company's incorporation, the member must provide the unpaid cash contribution within three months of approving the accounts for that same fiscal year.

- **Additional payments**

As of 1 January 2022, the rules on additional payments ("*pótbefizetés*") have been removed from the provisions on private limited liability companies and moved to the general rules for business associations. As a result, all unlisted companies (private limited liability companies, general partnerships, limited partnerships and private limited companies ('*korlátolt felelősségű társaságok, közkereseti társaságok, betéti társaságok, zártkörűen működő részvénytársaságok*')) can now require their members or shareholders to make an additional payment, if the company incurs losses but wishes to remain viable and if the company's articles of association allow the company's governing body to make such decisions. It is worth noting that companies with a single shareholder also have the option of imposing additional payments without having to amend their articles of association beforehand. In addition, any unused funds thus received by the company no longer have to be repaid to the contributors but may be retained as reserves. The company will thus not have to decide upon an additional new payment as a result of each economic event that adversely impacts its liquidity.

- **Conflict of interest**

According to the new provisions, if an executive officer has a *conflict of interest*, his/her mandate will no longer be terminated immediately by law. In the future, companies will have the option to make specific provision in their articles of association for the legal consequences of this eventuality.

- **Legal entities may be supervisory board members**

The newly introduced rule allows *legal entities to become supervisory board members*. In such a situation, the legal person must appoint a natural person to perform the supervisory board member's duties on its behalf. The designated person is then also subject to the rules applicable to supervisory board members.

- **Dissolution without legal successor**

Henceforth, in order to decide upon a *dissolution without any legal successor*, a majority of at least three-quarters of a legal person's members or founders will be required, regardless of the form of that legal person (whilst the previous legislation provided for different voting proportions for each company form).

- **Limited liability company shares**

From January, members of *private limited liability companies* may have more than one share in the same company. However, even if a member has more than one share, it shall be considered as one member vis-à-vis the company and the connected voting rights shall be taken together for calculation purposes.

Finally, it is also worth mentioning that provisions have been removed from the Civil Code regarding the proportion of ordinary and other shares of limited companies. Accordingly, it is now conceivable for a private limited company to have a shareholding model where each shareholder can hold some preferential shares, despite the obvious disadvantage that some of the shareholders may not have preferential rights to dividends.

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### BULGARIA

#### LEGAL NEWS

##### OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

#### **AMENDMENT: Reduced VAT for restaurants, travel, and books until the end of 2022**

The reduced VAT rate of 9% (instead of 20%) remains in effect until 31 December 2022 for restaurants, tourism and sport services, books, and baby products, according to a recent amendment of the VAT Act. The preferential tax rate was first introduced in 2020 as part of the support measures to mitigate the negative effect of Covid-19. It is intended as a temporary tax incentive (other than for hotels, camping and other guest accommodation services, for which it will remain reduced without any limit in time).

#### **AMENDMENT: GDPR-related changes to the BULSTAT Register**

The unified national administrative register BULSTAT will no longer include the personal civil registration number of individuals (such as entrepreneurs, lawyers, accountants, etc.). As of 4 January 2022, each eligible person will be assigned a separate 9-digit code by the administration, instead of the personal civil registration number – the unique 10-digit code defined for each Bulgarian citizen, which is essential for any communication with the authorities (much like the social security number in France). Until recently, it has been easily accessible online on several public databases, such as the BULSTAT register, and thus vulnerable to fraud. The change is intended to bring the register into compliance with the GDPR, particularly in light of recent hacks of the BULSTAT database, affecting the personal data of millions of Bulgarians.

#### **NEW LAW: Digital Content, Services and Sale of Goods Act**

A new law on digital content, services and products with digital components enters into effect as from 1 January 2022. It implements EU Directives 2019/770 and 2019/771 as part of the EU initiative to adapt consumer protection rules to the particularities of digital products and services. The law imposes a set of requirements for all providers of digital content, digital services, and goods with digital elements, including online shops and digital platforms, which have become increasingly popular. It will also apply to social platforms and other digital products and services provided free of charge in exchange for the user's personal data. This is a new concept that recognizes the value of personal data shared by users and extends the consumer protection rules to cover such digital products and services. The law also introduces objective compliance requirements to be satisfied by the digital products and services – i.e., a standard of legitimate expectations regarding the quality and use of digital products or services, which allows for more efficient consumer protection. In brief, merchants and providers of products or services that come within the scope of the law will now need to consider not only the general consumer protection rules, but also the new law as an additional set of requirements and adapt their general terms and conditions for sale/use accordingly.



### **FOCUS: MAJOR STRUCTURAL CHANGES UNDER WAY TO REORGANISE THE STATE ADMINISTRATION**

The change promised by the government upon its inauguration is under way. The great restructuring commenced with a re-allocation of funding and responsibilities as between government ministries, in order to promote transparency and accountability in December 2021. A set of legislative amendments initiated in January 2022 aspires to address the challenge of rendering the state administration more efficient and less vulnerable to corruption. Unsurprisingly, the imminent effect of the process is a temporary disruption of the functioning of state systems and conflicting news items, depending on the media source. We set out below the major pending changes that should be monitored by prudent investors when planning and executing their projects in Bulgaria.

- **New Ministry of Innovation and Growth**

The key government unit for investors considering projects in Bulgaria is the new Ministry of Innovation and Growth, which was created with the task of streamlining the management of approximately 3 billion euros of EU funds and promoting sustainable long-term investments with high added value. It has been set up by re-allocating responsibilities and certain divisions from the former Ministry of Economy (now renamed the Ministry of Economy and Industry) and several other government agencies in charge of EU projects and funding, including the Bulgarian Investment Agency (which is the primary point of contact for investors), the Bulgarian Bank for Development and the Fund managing the financial instruments, all of which used to be part of the Ministry of Finance). The standard round of introductory meetings with business and industry associations has already been completed by the new Minister, an entrepreneur who is keen to apply skills and experience acquired in the private sector when steering piloting the state administration into a more progressive and efficient mode of operation. One of the most recent initiatives in this regard is a program to promote energy-efficiency investments aimed at SME within the framework of the "Innovation and Competitiveness" Operational Programme, with a budget of approximately 35 million euros, which is scheduled to be launched in March 2022.

- **Long-Term Strategy for Large-Scale Infrastructure Projects**

The Ministry of Regional Development and Public Works has announced, as its priority, the implementation of a 4-year road renovation program i.e., a commitment to long-term planning and transparency, which is a welcome change from the previous fire-fighting approach of the former administration. It will allow for more efficient allocation of public funds and will provide entrepreneurs with better visibility on the projects that might be announced for tender. With respect to construction, the Ministry will follow the tradition of initiating changes to the main zoning and construction law. The Spatial Development Act most recently underwent a major revision in February 2021 and set the groundwork for creating centralized registers of zoning and construction permits for the benefit of both entrepreneurs and the general public. The new administration intends to build on this, in order to accelerate the digitalization of the investment and construction procedure with a view to making it more efficient and less cumbersome for investors.

- **National Registry Agency Project**

A major restructuring of the agencies in charge of civil and company registration, property transactions, land registry, and special liens is being considered, with a view to creating a new state agency as the central registration structure reporting to the Council of Ministers, which will combine:

- the Registry Agency, which is in charge of the Trade Register and the Real Estate Register, currently at the Ministry of Justice;
- the Land Registry Agency at the Ministry of Regional Development and Public Works;
- the Civil Registration and Administrative Services General Directorate – the administration in charge of civil registration (e.g., births, marriages, etc.) and the national database on the Bulgarian population – at the Ministry of Regional Development and Public Works;
- the Central Register of Special Liens at the Ministry of Justice.

The objective is to improve registration and mitigate the risks of conflicting records by creating a single point of contact. At present, a real estate transaction requires separate checks in all of the registers listed above and discrepancies sometimes arise due to the lack of efficient information exchange between administrations.

Initially, the reform was meant to be introduced as part of the legislative package for the 2022 state budget. This has been delayed because of the political crisis in 2021, which made it impossible to adopt the budget in time for the start of 2022. Hence, it is now being given priority by Parliament, with the objective of having it approved as soon as possible. However, the government's attempt to speed up structural reform using such procedural manoeuvres has backfired – the lack of proper public consultation on the proposed major amendments of several key laws (including the Code of Civil Procedure) has resulted in an outpouring of strong public opposition. The government accordingly reconsidered and withdrew the offending texts from the bill for the 2022 State Budget in early February 2022, announcing that it would apply the standard procedures to these legislative amendments and carry out the necessary public consultation.

In summary, the reorganisation of state administration is likely to continue at all levels and at varying speeds throughout 2022, the first year of the mandate for the new government that came into power on a promise to continue change. For investors and entrepreneurs, this might prove to be an advantage, since new appointees tend, as a rule, to be more proactive and progressive. Considering the new government's widely advertised commitment to transparency and accountability, it is shaping up to be a promising year, despite the challenges inherited from the past.

### ROMANIA

#### LEGAL NEWS

##### OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

#### **NEW LAW ALERT: Prevention and restructuring of companies in difficulty**

The draft law transposing European Directive 2019/1023 on the prevention and restructuring of companies in difficulty aims to modernize Romanian law on companies in difficulty.

- **Early warning: the preventive stage.**

If a company is late or in arrears with the payment of its debts or taxes, the entrepreneur will receive a notification from the authorities informing it of the consequences of its situation. The notification will describe the various stages of financial difficulties, together with possible options for their resolution and the option of contacting a specialized agent.

- **Restructuring agreement: amicable restructuring solutions.**

With effect from a certain threshold of difficulty, entrepreneurs have extrajudicial restructuring solutions at their disposal. The company's shareholders agree on a restructuring plan for the company and the company's creditors must agree to this plan. The restructuring agreement includes debt relief and rescheduling. In addition, the agreement may contain provisions concerning the operational and strategic restructuring of the company. The major change implemented by this Directive involves the emphasis on the preventive stage of the procedure for companies in difficulty with increased focus on preliminary and amicable negotiations with creditors.

- **The introduction of "Eximbank" public financing**

As part of the support measures to mitigate the impact of the COVID-19 pandemic, the legislator introduced, in 2022, loans with subsidized interest rates to facilitate access to financing for SME companies which lack liquidity because of the health crisis. The loan is denominated in lei and administered by "EximBank" on behalf of the public authority. The funds are to be used by the borrower for investments and/or to support its ongoing operations. It can be contracted directly with "Eximbank" or through commercial banks.

To qualify for such a loan, a company is to meet certain eligibility criteria. In particular, it must:

- have a turnover of more than 20 million lei (approximately 4 million euro);
- not be in any financial difficulty as at 31 December 2019 and not be subject to any collective liquidation proceedings;
- not be subject to any major incidents regarding unpaid debts;
- not be party to any ongoing legal proceedings;
- not operate in certain sensitive areas such as the manufacture or sale of arms.

- **Status of foreigners: the new concept of a “digital nomad”**

The Romanian legislator amended the law on foreigners at the beginning of the year by introducing the concept of a “digital nomad”. A digital nomad is a person residing outside the Romanian territory or one who performs his work contract at a distance, i.e. outside Romania. Such a person may work in an unspecified number of fields, provided that their activity is carried out online, and the concept covers, in particular, the activities of consultant, blogger and programmer. Pursuant to this new amendment, with effect from 14 January 2022, a digital nomad will be able to apply for a long-term visa in order to stay in Romania or travel there, provided they (i) have an employment contract with a company located outside Romania (ii) have income pursuant to the employment contract (iii) and carry out their activity remotely outside the territory via the internet.

**FOCUS: Discussions on Romania's accession to the OECD**

On 18 January 2022, the Economic and Financial Affairs Council confirmed the requirement to transpose the new provisions of the Organization for Economic Cooperation and Development (OECD) into European Union law by 1 January 2023. Meanwhile, negotiations for Romania's accession to the OECD seem to be accelerating. In recent years, one of the main obstacles in the talks has been the country's difficulty in complying with normative fiscal requirements. However, Romania has recently made progress concerning the legality of its tax legislation, notably through the new taxation of profits and capital gains.

Recent developments, though, raise concerns that this might not be enough to establish that Romania has a sufficiently stable and strong market economy to join the OECD. According to the latest OECD report on Romania, "Making Dispute Resolution More Effective," released on 25 May 2021, Romania complies with less than half of the 14 minimum standards, although it has managed to close a number of loopholes identified by the OECD. For example, the OECD found that, although Romania has a well-developed network of tax treaties and is a party to the Convention on the Elimination of Double Taxation on the Adjustment of Profits of Associated Enterprises, about one-third of the treaties do not contain a provision for the implementation of a mutual agreement to eliminate double taxation. In addition, one-quarter of treaties do not provide for a time limit for requesting the elimination of any such double taxation. The OECD also noted that Romania does not have a comprehensive plan prevent the risks of base erosion and profit shifting related to the existing tax treaties that goes beyond the aforementioned multilateral Convention.

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### CROATIA

#### LEGAL NEWS

#### OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

##### **AMENDMENT: Minimum Wage**

The minimum wage regulations in Croatia have been significantly amended by the Minimum Wage Act, which came into force on 1 December 2021. This Act requires that only the gross amount of the minimum wage is contained in the employment contract, while it used to be possible to include the net amount (i.e., without any mention of deductible taxes and social security charges). The amount of the minimum wage applicable in Croatia from 1 January to 31 December 2022 is fixed as a gross amount of HRK 4,687.50 (approximately EUR 622), which represents an increase of around 9% compared to the 2021 level pursuant to the Decree on the amount of the minimum wage for 2022. Also, the statutory allowance for difficult working conditions is to be paid in addition to the minimum wage – it should no longer be defined as included within it. For employers, the amendment allows for better long-term budget planning even though it entails a slight increase in employment costs.

##### **NEW LAW: Membership Fee for the Croatian Chamber of Commerce no longer mandatory for all entrepreneurs**

According to the newly enacted Croatian Chamber of Commerce Act that came into force on 4 January 2022, membership of the Croatian Chamber of Commerce shall continue to be mandatory for all legal entities engaged in economic activity which have their registered office in Croatia. However, entrepreneurs who qualify as small entrepreneurs (i.e., legal entities which do not exceed two of the following three criteria:

- total assets less than or equal to HRK 7,500,000 (approximately EUR 996,000),
- total revenue less than or equal to HRK 15,000,000 (approximately EUR 1,992,000) and
- no more than 50 employees,)

are no longer obliged to pay a membership fee to the Croatian Chamber of Commerce.

While the membership fee is not very high (ranging from approximately EUR 20 to approximately EUR 528 per month depending on the size of the company), the waiver of this fee is considered to be a positive step towards reducing the overall administrative burden on entrepreneurs in Croatia.

### **NEW LAW ALERT: Preparations for the adoption of the Euro Act**

On 17 January 2022, the Croatian government presented a bill for the Act on the Introduction of the Euro as the Official Currency in the Republic of Croatia, scheduled to be adopted in April 2022. The text is expected to remain in essentially the same form as proposed by the government after public consultation and envisages the adoption of the euro as the official currency of Croatia with effect from 1 January 2023, provided that the formal announcement of accession to the euro area occurs by mid-2022. The preparatory work will require amendment of at least 46 Acts and 72 Regulations, in order to bring them into compliance, within a short period of time – namely by 15 July 2022. This represents a significant challenge for the government and the administrative departments in charge of implementing the roadmap.



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### SERBIA

#### LEGAL NEWS

##### OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

#### **AMENDMENT: Company Law and Law on Registration in the Business Registers Agency**

Serbian public administration aims to improve the process of company registration and alleviate the related formalities by promoting the use of electronic systems. The objective is to accelerate the registration process, while significantly decreasing the amount of paper filed and used by the public administration. According to a legal amendment with effect from May 2023, all applications to register a company in Serbia must be filed exclusively in electronic form with the Serbian Business Registers Agency. Hence, it will no longer be possible to submit such applications on paper with the agency – as has been the standard practice until recently. During the transition period, paper filings will remain available as an alternative.

#### **AMENDMENT: Taxes and social contributions on employee salaries**

As of 1 January 2022, an amendment to the Personal Income Tax Law and the Law on the Contributions for Compulsory Social Security introduced several incentives designed to help employers and encourage them to hire new employees. The amount of salary exempt from income tax has been increased from 18,300 RSD (approximately 156 EUR) to 19,300 RSD (approximately 164 EUR) whilst the contribution to pension and disability insurance has decreased by 0.5 % (from 25.5% to 25%) with the objective of alleviating the financial burden for employers. Several new tax incentives have also been introduced, and the validity of certain existing measures is extended in order to apply to newly hired employees.

#### **NEW LAW: Law on the processing of company documents and archives**

The new law imposes a number of obligations on companies regarding the processing of business documentation and keeping of company archives. In fact, while the obligations mirror previously existing requirements in various laws, the sanctions for non-compliance introduced by the new law are considerably higher. Hence, companies are encouraged to adapt their documentation process and to bring it in line with the rules. For example, companies are required to have in place a rulebook regarding the processing of business documentation and company archives; there should also be a designated employee in charge of these activities who will serve as a point of contact for the supervisory authorities. Companies are also required to notify the authorities about the status of their compliance and to submit certain documents. The incentives to comply with the new law are proving very effective – the large number of notifications filed by companies has resulted in the administration being overwhelmed at present.

### FOCUS: ELECTRONIC INVOICING MANDATORY AS OF 2022

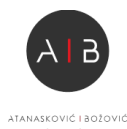
One of the major changes to corporate activity in Serbia in 2022 will be the mandatory introduction of electronic invoicing for certain types of entities. A new Law on Electronic Invoicing (the “Law”) adopted in May 2021 requires that throughout 2022 companies in Serbia adapt their invoices to comply with its requirements. The transition period has already been extended by amendment to the Law in order to take account of the substantial workload required in order for companies to re-arrange their operations as per the new rules – certain obligations are to enter into effect in May and July 2022, while others have been postponed until January 2023.

The Law introduces an electronic invoicing system for all activities regarding the issuing, sending, accepting, processing, and storing of invoices. It will apply to the public sector (state authorities and public companies), as well as certain legal entities in the private sector (e.g. companies registered in the VAT system). Hence, all invoices pertaining to transactions with such legal entities are to be in electronic form only. For other private legal entities, electronic invoicing remains optional.

Electronic invoicing will be processed by a special digital invoicing system managed by a designated department of the Ministry of Finance. Access to and use of this system with respect to the issuing, exchange, storage, and processing of electronic invoices will be provided free of charge to eligible legal entities. Such entities can also assign the processing of the electronic invoices to information intermediaries – companies that are licensed by the Ministry of Finance to provide such services.

The Law provides which information is to be included in each electronic invoice, as well as the format of the document. Electronic invoices are to be issued in line with Serbian electronic invoicing standards, which are generally aligned with the respective European standards. The Law also defines delivery and acceptance of the electronic invoice – it is deemed to be delivered when issued, while rules differ regarding acceptance, depending on whether the recipient is in the public or private sector. If a legal entity in the public sector does not expressly accept or reject an electronic invoice within a prescribed period of time, that invoice is deemed to be accepted. On the contrary, in the absence of any statement from a private sector entity, the invoice is deemed to be rejected.

There are already indications that the Law is likely to create conflicting court practice in certain areas of its application, as it is yet to be seen how it will be implemented, as legal entities struggle to comply with the new rules.



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### About D'ORNANO PARTNERS

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