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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

#### COVID-19 AND COMMERCIAL RENTS

The Paris Court of Appeal held that, pursuant to article 1722 of the Civil Code, the period of administrative closure during the first lockdown constituted a material loss of the leased property, thus entitling the tenant to a reduction in the rent due during the period when it was unable to enjoy the leased premises.

The Court of Appeal found the lessee could claim the total, and then partial, loss of the leased property during the first quarter of 2020, on the ground that it was unable to enjoy the premises or use them in accordance with their purpose during this period, regardless of the fact that the lessor was not at fault.

*Court of Appeal, Paris, Section 1, 2<sup>nd</sup> Chamber, 21 April 2022 - n° 21/17272*

#### THE DECREE IMPLEMENTING THE CLIMATE LAW PUTS AN END TO THE SINGLE AWARD CRITERION OF PRICE IN PUBLIC PROCUREMENT

A decree dated 2 May 2022 contains the main provisions for the application of Article 35 of the "Climate Law": the end of the single award criterion of price in public procurement and a new optional ban on bidding for companies that have not yet drawn up a vigilance plan.

The law to combat climate change and strengthen resilience to the effects thereof, known as the "Climate Law" (Law 2021-1104 of 22-8-2021), has amended the Public Procurement Code in order to take more account of the sustainable development objective when awarding public procurement contracts, particularly public works contracts (BPIM 5/21 inf. 330). It thus provides that purchasers must rely on at least one criterion that takes the environmental characteristics of the bid into account (CCP art. L 2152-7, section 1 amended).

Drawing the consequences from these provisions, Decree 2022-767 of 2 May 2022 excludes the possibility for purchasers to select offers based solely on the criterion of price. By no later than 21 August 2026, purchasers will be able to award a contract based solely on the criterion of overall cost, but on condition that that cost also takes the environmental characteristics of the bids into account (CCP art. R 2152-7 amended).

*Decree 2022-767 of 2-5-2022: JO 3 text n° 17*

### **FOCUS: A CO-OWNER MAY ACQUIRE A SERVITUDE GRANTING A RIGHT TO A VIEW BY PRESCRIPTION, EVEN IF OBTAINED UNLAWFULLY**

The co-owner's failure to obtain authorization from the AGM before drilling through the external wall of the co-owned property, which was part of the common areas, and his failure to declare the works under town planning regulations did not prevent the acquisition by prescription of a servitude granting a right to a view over the neighbouring land.

*(Cass. 3e civ. 21-4-2022 n° 21-12.240 FS-B, Synd. copr. Résidence Port des sables c/ Synd. copr. Résidence Le Soleil)*

For the record, article 2258 of the Civil Code provides that: "Acquisitive prescription is a means of acquiring property or a right by means of possession, with no requirement that the person claiming it produce a title and without the possibility of raising an exception based on bad faith against him". The essential condition of acquisitive prescription is therefore possession of the property. In order for possession to be established, both the physical and mental elements must be satisfied. The physical element (*corpus*) is assessed by examining the acts in question and the mental element (*animus*) relates to the possessor's intention to behave as owner. The possession must be effective, i.e. not affected by any of the following defects: equivocation, violence, concealment or discontinuity. Finally, possession must have been continuous over a period of thirty years. In this case, an association of co-owners had made a claim against the association of co-owners of the neighbouring property, asking that they remove the openings made in 1976-1977 in the dividing wall between the two buildings. In this case, one co-owner had, more than 30 years ago, made openings in the wall surrounding the co-ownership, thus creating unlawful views over the neighbouring property that belonged to another association of co-owners. In so doing, he had not complied with the rules concerning views, nor with co-ownership law, since he had not sought the authorization of the AGM, and had not complied with town planning law, since he had not declared the works. These openings had therefore undoubtedly been made in an irregular manner. Did this prevent the acquisition of an easement of view by prescription? The co-owners' association brought proceedings against the co-owner who had made the said openings to close them. The Court of Appeal considered that, as these openings had been made unlawfully, due to the fact that they had never been authorized by the co-owners' association nor been the subject of a prior declaration of works, it was not possible for a servitude of view to have been acquired by prescription. The Court of Appeal consequently ordered the co-owners' association and the co-owner concerned to close the openings and to restore the premises to their original state.

The decision of the Court of Appeal was overturned by the Supreme Court (*Cour de Cassation*) on the grounds that, since the easement of view was continuous and apparent, it could therefore be acquired by a thirty-year period of possession. According to the Third Civil Chamber, the absence of a prior urban planning declaration and the lack of authorization for the drilling work from the co-owners' AGM did not prevent a servitude of view being acquired by prescription. Indeed, as provided for in articles 688 and 689 of the Civil Code, continuous and apparent easements, which include easements of view, are acquired by title or by prescription of 30 years (Cass. 1st civ. 22-2-1965 n° 63-12.786 ; Cass. 3rd civ. 1-2-2018 n° 16-27.532).

Possession presupposes the continuous accomplishment of physical acts, the exercise of the alleged right and the intention of the person who accomplishes them to behave as the holder of this right. It is settled case law that the rules of acquisitive prescription can apply to co-ownerships. Thus, ownership of a common area can be acquired by prescription. Conversely, a co-owners' association can acquire ownership of the private parts of a lot (Cass. 3e civ. 8-10-2015 n° 14-16.071) or that of a neighbouring parcel (Cass. 3e civ. 25-3-2014 n° 11-17.435) by prescription.

The Supreme Court provides new clarification of the provisions: these irregular or unlawful acts did not prevent the acquisition of a servitude over the neighbouring land by means of prescription. The legality or regularity of the act that gave rise to possession is not a condition for acquisition of title by uninterrupted possession. The lack of conformity with the rules of the co-ownership (to which the person performing the works belonged), or the town planning rules, cannot therefore have any effect on the implementation of acquisitive prescription.

**Author: D'ORNANO PARTNERS**

### HUNGARY

#### LEGAL NEWS

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

#### **NEW LAW: Export of cereals subject to a right of first refusal by the State**

According to the recently amended Government Decree n°83/2022 (III.5.) on the notification procedure and related measures for exports of agricultural products of strategic importance for feed and food security, the Hungarian State has a right of first refusal, at market price and up until 14 July 2022, over intended exports from Hungary of raw materials or products of strategic importance for the security of feed or food supplies. (This includes, in particular, exports of wheat, durum wheat, rye, barley, oats, maize, soya beans and sunflower seeds). Cereals exported as seeds, as well as exports in transit from Hungary and humanitarian aid, are all exempt from this new requirement and can continue to be freely exported. Any person or entity planning to sell or export cereals must notify the National Food Chain Safety Office – *Nemzeti Élelmiszerlánc-biztonsági Hivatal* (“NÉBIH”). The notification procedure requires the completion and submission of a specific form to the NÉBIH, which will then check the declarations and forward them to the Ministry of Agriculture. A review will establish whether the sale of the grain abroad poses a risk to the continuity of domestic food and feed supply. After this review, the Minister may choose not to exercise the government’s right to purchase and will then inform the exporter of its decision by email.

#### **NEW LAW: Single-Bid Public Procurements**

On 15 March 2022, Government Decree n°63/2022 (28.II.), on measures to reduce the number of single-bid public procurements, entered into force with the objective of improving competition in the public procurement market. Some contracting authorities will be obliged to conduct preliminary market consultations before launching tenders if their estimated value is above the EU threshold. Under the new Decree, such market consultation is mandatory in certain cases (to be determined by prior publication by the Minister responsible for public procurement), which are most affected by low levels of competition, and for certain specific central contracting authorities (i.e. government-controlled budgetary institutions and wholly state-owned companies) with a high incidence of single-bid procedures. These contracting authorities will also be required to draw up an action plan to reduce the number of single-bid procurements. The preliminary market consultation will have to be published in the dedicated electronic system at least one week before the invitation to tender is sent to the Public Procurement Authority. During the tender process, the contracting authority must publish the subject-matter of the procurement, the draft technical specifications and the main contractual terms and conditions, and must then prepare and publish a summary of the opinions received, its position and any substantive changes made on the basis of those opinions.

### **NEW LAW: Financial support to municipalities to compensate the local business tax relief offered to micro, small and medium-sized enterprises**

For the second year in a row, the Government will compensate municipalities for the reduction in local business tax pursuant to Government Decree n°61/2022 (II.28.) on municipal support for micro, small and medium-sized enterprises. This will apply to 2022 business tax relief, as the local business tax rate was reduced to 1% in 2022. The central budget provides financial aid to municipalities to support the loss of revenue suffered because of the reduction in this local business tax rate. For local and district municipalities with fewer than twenty-five thousand inhabitants, the amount of aid is equal to the amount of the business tax revenue lost, while the amount of aid for municipalities with a population of more than twenty-five thousand inhabitants (other than district municipalities and municipalities in the capital with a population of more than twenty-five thousand inhabitants) will depend on the per capita business tax capacity

### **AMENDMENT: Tenth Amendment to the Fundamental Law of Hungary**

As of 25 May 2022, part of the tenth amendment to the Fundamental Law of Hungary came into force. Pursuant to the new rules, the Government can now declare a “state of danger” in the event of an “armed conflict, war or humanitarian disaster in a neighbouring country”. As soon as this amendment came into force, the Government passed Decree n°180/2022 (V.24.) on the declaration of a state of danger and certain rules that apply in a state of danger in view of the armed conflict or humanitarian disaster in Ukraine and in order to avert the resulting consequences in Hungary. During the period of this declared state of danger in Hungary, a special legal regime will apply, enabling the Government to suspend certain laws, at its discretion and in order to protect the national interest, and thus circumventing control by Parliament.

### **FOCUS: Hungarian government adopts an excess profit tax plan**

The Hungarian government published its decree n°97/2022. (VI.4.) on additional profit taxes on 4 June 2022 (“**Excess Profit Tax Decree**”). Most of the provisions will come into force on 1 July 2022. According to the Minister of Economic Development, these taxes are expected to raise more than 2 billion euros and are intended to help cover price increases due to the war in Ukraine and military expenditure. Multiple sectors are affected by these additional taxes, including in particular the financial, telecommunications, pharmaceutical, retail and airline sectors, together with producers of petroleum products and bioethanol and the energy sector. The Excess Profit Tax Decree also amends certain taxes, including taxes on company vehicles, on certain foods that are deemed to be too sweet or salty and excise duties. In the financial sector, a new tax on banking institutions has been introduced, as well as a supplemental tax on insurance companies, thus resulting in an additional tax on non-life insurance and a new tax on life insurance.

The scope and amount of the financial transaction tax have also been modified. Henceforth, this tax will apply not only to bank transfers, but also to purchases of financial instruments, issued for example by investment companies, commodity exchange companies or credit institutions. Entities providing cross-border financial services in Hungary (such as Wise or Revolut) will now come within the scope of this tax, although securities issued by the State or by the Hungarian Post Office will be excluded.

Companies providing telecommunication services are subject to a new tax calculated on the basis of the net turnover for that fiscal year, which will apply, in most cases, to subsidiaries and affiliated companies.

The Government has introduced an additional tax, for 2022, on top of the already existing retail tax, calculated on the basis of net turnover. This additional tax will, in practice, result in the tax burden being almost doubled. The tax affecting distributors of medicine and milk preparations (other than infant formula) has also been amended. This tax is calculated on that part of the price for the medicine that is financed by social security funds, as compared to the wholesale or retail price. The tax on products with a wholesale price of up to HUF 10,000 (about EUR 26) has been increased to 20%, while that for products with a wholesale price above HUF 10,000 has been increased to 28%.

Most electricity producers are also affected by the Excess Profit Tax Decree, with the exception of producers with an installed capacity of less than 0.5 MW. Accordingly, this also applies to producers of electricity from renewable energy or from waste processing.

As mentioned above, the Excess Profit Decree has also been imposed on the airline sector, including airline companies but also ground-handling companies. The amount of tax levied is HUF 3,900 (approximately 10 euros) per passenger departing from Budapest (excluding transit passengers) and travelling to an EU country or to most other European countries. The tax on travel to other countries is HUF 9,750 (about EUR 25). It is worth noting that one airline, Ryanair, has already passed this cost on to their passengers, since individuals who booked a flight before 4 June for travel in July or thereafter, will have to pay an extra HUF 3,900 (10 euros) per passenger. As a result, an extraordinary consumer protection investigation of Ryanair has been ordered by the Ministry of Justice.

**For more details in French, please see our Client Alert on our website at here: <https://dornano-partners.com/adoption-dun-plan-dimpots-exceptionnels-par-le-gouvernement-hongrois/>.**

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### BULGARIA

#### LEGAL NEWS

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

On 22 June 2022, the current government was voted out of office by a small majority after a no-confidence vote. Hence, a number of key legislative amendments intended for review and approval by the Parliament are likely to be postponed until next autumn. Included among these is a revision of the Public Procurement Act which is intended to counter corruption practices, a major overhaul of the Professional Migration Act aiming to facilitate access to employment in Bulgaria for highly-qualified foreign workers, changes to the Foreigners Act to attract innovative start-ups and the updating of the VAT Act to facilitate food donations. On the other hand, the political crisis will probably also result in the postponement of some highly controversial amendments, such as the pending revision of the Energy Act.

#### **AMENDMENT: Bulgarian citizenship and naturalization rules**

For the last few years, demand for Bulgarian citizenship through naturalization has been steadily increasing, due to the fact that it grants entitlement to an EU passport. Since 2013, wealthy foreign individuals have benefited from a priority regime for acquisition of Bulgarian citizenship, provided they invested at least 500,000 EUR in the country. So-called *golden passports* were introduced to encourage foreign investment and promote job creation. However, due to inadequate implementation of the investments and monitoring of their sustainability, multiple instances of improper use and allegations of money laundering have arisen.

As of April 2022, the route to naturalization through investment is no longer an option. More specifically, any pending procedures to award Bulgarian citizenship on the basis of investments are deemed to have been terminated, which represents a departure from the general rule that any pending procedures are to be completed according to the rules of the previous regime. The wording of the new law does, however, allow the administrative authorities a certain amount of leeway, given that naturalization procedures span a few years, since it provides that only procedures that have not been finalized by 1 April 2022 are affected. Accordingly, if all elements of the procedure have been completed – e.g. the interview, document review and background checks, the authorities may proceed with issuing the final decree on citizenship despite the amendment.

#### **AMENDMENT: Preferential regime for solar plants of up to 5MW**

The Renewable Energy Act has been amended to introduce a preferential regime for the installation and integration in the grid of solar plants installed by end-consumers on rooftops or building facades and/or in areas adjacent to a plot of land where buildings are located, provided that the electricity produced is for their own consumption and that the solar plant's capacity is less than or equal to twice the electrical capacity allocated to the building or to 5 MW. The grid operator must, within 14 days, offer the consumer an addendum to their distribution and access agreement; the signed addendum is a prerequisite for issuing the construction permit for the solar plant. The objective of the



amendment is to respond to the increased interest in solar panels, in order to limit electricity consumption. Another incentive is an exemption from the requirement to obtain approved investment designs for such installations, which has been introduced by means of a specific amendment to the Spatial Development Act.

### **NEW LAW: Energy Efficiency Standards of Heating Installations**

The Ministry of Energy and the Ministry of Regional Development jointly issued two ordinances intended to set out the energy efficiency standards for heating installations and for submitting reports to the central database at the Sustainable Energy Development Agency – Ordinance No. E-РД-04-1 of 5 April 2022 and Ordinance No. E-РД-04-1 of 14 March 2022. The energy efficiency of heating installations has become increasingly important in light of the exacerbating energy crisis and the challenges of restructuring Bulgaria's energy profile in order to make it more sustainable and less dependent on imported resources.

### **FOCUS: Pending amendment of the Energy Act**

Earlier in June 2022, a bill for the amendment of the Energy Act was placed before Parliament in the hope that it would receive rapid approval. In particular, the proposed texts had not been the subject of public discussion, as required by law, and had not been properly coordinated with major stakeholders. Considering that issues of energy sustainability and energy security have become highly sensitive over the last few months, this approach to reform of the energy sector is bound to result in controversy. The key objective of the amendment is to set out a mechanism for expropriating part of the revenue generated by public energy companies from the sale of electricity so that it can be re-allocated to mitigate the negative impact on end-consumers – e.g. by payment of subsidies as compensation for high energy bills, which the government put in place in the autumn of 2021. The bill provides for a centralized support mechanism through redistribution of resources from a designated fund. It should, however, be noted in this regard that some public energy companies will now have to incur substantial costs to comply with recent EU and regulatory requirements, in order to increase energy stability in the wake of the worsening energy crisis.

While on its face the bill is well-intentioned, industry associations warn that it could have a negative impact on renewable energy projects – both on on-going projects as well as new, prospective developments. When the renewable energy law was first introduced by the Bulgarian Parliament, in 2011, the incentives to invest in green energy projects were extremely attractive, with a view to obtaining the 2020 energy targets set by the European Union. The return on such investments promised to outperform almost any other project and understandably resulted in an excess amount of prospective developments, which soon caused massive gridlock and exhausted the available grid connection capacity. Hence, for the better part of the last decade, the authorities have revised and redefined the energy laws in order to curb investor interest, essentially by decreasing the expected revenues from green energy projects. The amendment of the Energy Act under discussion is in line with this trend and, if the proposed recalculation of the revenue mechanism is approved, the return on such green energy investments will become minimal.

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June 2022

By all accounts, the review of the bill will be postponed by at least a few months, until Parliament is once again operational. Fortunately, this additional time will provide legislators with a better overview, as the energy crisis is bound to progress and stakeholders will be able to test various, potential solutions.



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### ROMANIA

#### LEGAL NEWS

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

#### **AMENDMENT: Legislative changes to facilitate infrastructure projects**

Infrastructure projects in Romania represent one of the most important avenues of public spending – the funding ear-marked for public-interest transport projects under the Romanian National Recovery and Resilience Plan alone amounts to 12.7 billion euros, which is to be allocated pursuant to contracts entered into before the end of 2023. Accordingly, the rules relating to such infrastructure projects have been recently amended to facilitate and accelerate the tender and implementation processes pursuant to Emergency Ordinance No. 26/2022 on amending and supplementing certain regulatory acts in the field of public investment (GEO 26/2022).

With respect to public procurement, the amendments give the authorities in charge of public investment tenders broader discretion to bypass publication requirements in order to accelerate negotiations with bidders in the event of urgent, unforeseeable events and to provide for longer timelines for completion in order to take such events into accounts.

The rules concerning the construction of infrastructure projects have also been amended to facilitate the process. Hence (i) the contractor in charge of a project no longer needs to obtain a specific permit to demolish buildings and structures located on expropriated property sites; and (ii) responsibility for relocating utility cables and networks at the construction site is now assigned to the contractor instead of the utility operators. Moreover, administrative deadlines for issuing planning and construction permits for infrastructure projects have been reduced – e.g., planning and construction permits now have to be issued within a period of 15 days.

#### **AMENDMENT: Power grid connection rules amended by the National Energy Regulator**

The Romanian National Energy Regulator has amended the power grid connection rules in line with the provisions of Emergency Ordinance no. 143/2021, which amends the Electricity and Natural Gas Act no. 123/2012 and several regulatory acts according to the framework envisaged by (EU) Directive 2019/944 on common rules for the internal market for electricity. The amendments are contained in three orders issued by the Regulator:

- Order no. 17/2022 regarding grid connection for consumers;
- Order no. 18/2022 on the procedure for connection to low-voltage power grids by domestic consumers; and
- Order no. 19/2022 on the procedure for grid connection by non-domestic/manufacturing and industrial consumers.

The objective of the amendments is to facilitate connection to the grid and accelerate the timeline for its implementation, particularly concerning grid operators' obligation to provide more rapid responses to grid connection inquiries and requests for future consumers.

### **AMENDMENT: Anti-Money Laundering Act**

The Anti-Money Laundering Act has been amended by Emergency Ordinance No. 53/2022 which revises Act No. 129/2019 on preventing and combating money laundering and terrorist financing in order to improve the efficiency of compliance monitoring. The authority in charge – the Romanian National Office for Preventing and Combating Money Laundering will now receive notifications regarding updates on activities regulated by the law by electronic means only.

By 4 July 2022, all legal entities regulated by the anti-money laundering law are required to file their first electronic notification with the National Office for Preventing and Combating Money Laundering, in line with the standard notification form published by the authority pursuant to Order No. 145/2022, which came into effect on 1 June 2022. This requirement applies to a broad scope of individuals and legal entities – e.g., real estate agents and developers, parties to cash transactions where the value exceeds 10,000 euros, art merchants, etc.

### **AMENDMENT: Offshore Oil Exploration Act**

The revision of the offshore exploration rules in Romania has long been the subject of intense debate. With the accelerating energy crisis and the impending need to reconsider the issue of energy procurement, the recent amendment of the Offshore Oil Exploration Act by Act no. 157/2022, amending Act no. 256/2018 on certain measures necessary for the implementation of oil operations by offshore oil perimeter owners, comes as long-awaited good news.

The main objective of the amendment is to facilitate offshore exploration and attract strategic investors to enable Romania to diversify its energy supply and improve national energy security. It should be noted that the scope of the law includes not only offshore explorations, but also a certain category of inland oil exploration sites, namely those sites where exploration occurs at a depth of *more than 3,000 metres* together with the adjacent service areas. Both offshore and deep inland explorations will benefit from the same tax regime.

The amendment revises the tax treatment of the *extra* revenue generated by those entities operating the exploration by alleviating certain tax charges and increasing the threshold for deduction of upstream investments from 30% to 40%.

Nonetheless, the revision revokes the restrictions on the sale of hydrocarbons in Romania with effect from 1 January 2023 despite the controversy which has arisen in recent years surrounding this type of exploration. In principle, the government may impose temporary restrictions on either the price or the volume of such transactions in the future, as necessary, in order to ensure the public interest of protecting domestic consumers and thermal heating power plants.

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### CROATIA

#### LEGAL NEWS

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

#### **AMENDMENT: Online option to create limited liability company to be made available**

As of 1 August 2023, a limited liability company ("*društvo s ograničenom odgovornošću*" or "*d.o.o.*"), a limited liability company with a sole shareholder ("*jednostavno društvo s ograničenom odgovornošću*" or "*j.d.o.o.*") or a branch office in Croatia may be fully incorporated by remote electronic means, according to the newly enacted amendments to the Companies Act and the Court Register Act.

This new option will still require the intervention of a Croatian notary public in the incorporation process – the notary has to execute the necessary documents in electronic form and communicate with the company's shareholders, their representatives and members of the company's governing bodies by electronic means (e.g. by video link). The notary will verify their identity using highly secure means of electronic identification and authentication; he/she may also perform additional identity, and other necessary checks, remotely. Unless specified otherwise, the documents in this process are to be signed by means of a duly authorised electronic signature.

The objective is to facilitate the creation of limited liability companies and branch offices in Croatia, especially by foreign investors. The online option will not apply for more complex companies, e.g. joint stock companies ("*dioničko društvo*" or "*d.d.*"). In order to create such companies, shareholders will either need to be present in person to sign the relevant documents or provide a proxy with express authority to act on their behalf.

#### **AMENDMENT: New Restructuring Mechanisms in the Bankruptcy Act**

Amendments to the Bankruptcy Act entered into force on 31 March 2022, bringing it into line with the provisions of (EU) Directive 2019/1023 of the European Parliament and of the Council of 20 June 2019 (Directive on restructuring and insolvency). One of the most significant changes is the introduction of an early warning mechanism. This provides debtors with access to a clear and transparent system, detecting circumstances that might lead to their imminent insolvency, in order to help them avoid bankruptcy. The possibility of using electronic means of communication to speed up pre-bankruptcy and bankruptcy proceedings has also been introduced, while the maximum duration of pre-bankruptcy proceedings has been reduced from 300 to 120 days (which may be extended to 180 days in exceptional circumstances).

### **NEW LAW: Investment Promotion Act**

The newly adopted Investment Promotion Act, which came into force on 4 June 2022, reaffirms the previously established incentive measures, amounts of aid and the terms and conditions for obtaining such aid, but also introduces reduced levels for certain criteria for the grant of non-refundable financial aid for future beneficiaries. With respect to existing beneficiaries, the new law introduces mechanisms to mitigate the economic and financial consequences of the COVID-19 pandemic by extending the periods for the creation of planned new jobs relating to an investment project, as well as authorising a temporary or permanent reduction in the number of investment project employees at the height of the COVID-19 crisis.



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### SERBIA

#### LEGAL NEWS

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

On 3 April 2022, Serbia held general elections to elect both the President and members of the National Assembly. Consequently, recent legislative activity has been relatively limited.

#### **NEW GUIDELINES: New Instruction for Detecting Rigged Bids in the Public Procurement Procedure**

The Serbian Commission for the Protection of Competition has adopted a new Instruction for detecting rigged bids in the public procurement procedure, based on the OECD Guidelines for Fighting Bid Rigging in Public Procurement and the Notice of the European Commission. The objective is to increase transparency and accountability, in particular by preventing “rigged or falsified offers” (bid-rigging) – an illegal practice where bidders collude to decide the winner, resulting in the elimination of competition on the market and potentially higher prices in public procurement procedures. The provisions contained in the Instruction are now fully aligned with the current legal solutions set out in the Law on Public Procurement and the amendments to the Criminal Code.

#### **NEW RULES: Restrictions on prices for certain commodities**

In response to the accelerating supply crisis triggered by both the pandemic and the war in Ukraine, the Serbian Government has imposed a number of restrictions, aimed at protecting the market from excessive price volatility. Restrictions include a limit on prices for certain commodities (e.g. flour, sugar, oil etc.), a ban on the export of flour and the introduction of maximum retail prices for oil derivatives (diesel and petrol fuels). It is yet to be seen how these measures will affect the market over the long-term.

#### **FOCUS: ELECTRONIC INVOICING WILL BECOME MANDATORY AS FROM 2022**

As of 1 May 2022, the new Taxation Law entered fully into force, on the expiry of the transition period during which companies and entrepreneurs were obliged to bring their business operations into line with requirements. It revokes the previous Law on Fiscal Registers. The main objective of the law is to eliminate the shortcomings of the previous system, and to enable more efficient and improved control by the proper tax authorities of goods delivered and services provided in the retail sector.

All self-employed income tax payers and corporate income tax payers who engage in retail trade are now required to perform their business operations in line with the new Taxation Law. There are some exceptions to this rule, and the Government has drawn up a list of certain business activities which do not need to register retail trade through the electronic fiscal cash devices (e.g. taxi transport services, city and suburban land passenger transport services, legal services etc.). Those services that do not come under the scope of the new Law are regulated by the new Decree, which sets forth those activities for which there is no obligation to record retail trade through an electronic fiscal device.

The new Law also sets out the obligation to introduce and use new electronic fiscal devices, instead of the fiscal registers which were mandatory beforehand. To facilitate the acquisition of the new equipment during the transition period, the Government has provided certain subsidies. Tax receipts are also subject to revised requirements – one of the new features is the introduction of a QR code, which can be scanned by customers to check whether their tax receipt has been issued in accordance with the law.

The tax authorities have already started to verify compliance with the new Taxation Law and to impose penalties for non-compliance. During this first wave of controls, the focus has been on smaller companies and entrepreneurs that were late in implementing the new requirements. Penalties awarded to date have mainly been in the form of fines but have also included suspension of business operations pending compliance with the new rules.



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### UKRAINE

#### LEGAL NEWS

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

On 23 May 2022, the Ukrainian Law “On the Prolongation of Martial Law in Ukraine” No. 2263-IX entered into force. Martial law will apply in Ukraine up until 23 August 2022. The martial law framework aims to balance restrictions and benefits with the purpose of protecting businesses and individuals pursuant to the following principal regulations:

#### **Company Incorporation and Corporate Rights**

Limited liability companies may be incorporated online via a “one-stop-shop” government platform named “Diia”. This registration process will require a duly authorised electronic signature issued by an accredited body. Alternatively, companies may be registered in person with the authorized incorporation body or by correspondence. Temporary restrictions may be introduced on changes to shareholders or to the corporate structure. Promise of Sale agreements may be entered into in order to circumvent limitations on the transfer of rights.

#### **Document Management and Reporting**

Switching to electronic document management is highly encouraged for both state authorities and private companies. Commercial and employment agreements, together with the majority of reports, may be prepared and shared electronically.

While some formalities and requirements for keeping hard copies still apply, most have been significantly reduced. For example, companies may destroy any hardcopies of HR documentation (including timesheets), without serious legal consequences, if keeping such paperwork might endanger employee well-being.

#### **Employment**

Employers may unilaterally change significant working conditions, including salary, in order (i) to prevent or eliminate the consequences of hostilities, or (ii) to prevent circumstances that endanger, or may endanger, individuals’ lives or normal living conditions, unless it is deemed inadvisable for the employee's health or unless the place of work is being transferred to a location where hostilities are active.

If the location of the place of work is affected by hostilities, a company may unilaterally terminate the employment agreement at its own discretion without the need for a two-week notice period (except for employees involved in community service or the maintenance of critical infrastructure).

Employers are entitled to introduce an obligation to work 60 hours per week. During the period of martial law, the only persons who cannot be obliged to work night shifts are (i) pregnant women and women with children under the age of one, and (ii) disabled persons who are medically assessed as unsuitable for such work.

Employers shall take all possible measures to enforce employee rights to receive their salary when due. If it should prove impossible to pay wages due to the occurrence of hostilities, payment may be suspended until the company is once again able to carry out its main activities.

### **Tax audits**

Documentary audits are permitted if:

- conducted at the taxpayer's request;
- in the event of a restructuring, dissolution/liquidation or bankruptcy;
- related to currency control;
- the taxpayer declares a budget refund or a negative VAT value.

On-site audit is permitted, if it relates to:

- tax reporting or compliance with tax invoice requirements;
- an adjustment to Unified Register of Tax Invoices;
- compliance with tax return deadlines;
- issues whether tax returns (calculations) have been submitted in due time or whether agreed amounts of tax liabilities have been paid on time.

The periods for conducting on-site inspections of VAT returns are determined as follows:

- from 21 July 2022 to 20 September 2022 – returns for February - May 2022 will be checked;
- from 21 August 2022 to 20 October 2022 – returns for June - July 2022 will be checked.



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in cooperation with D'ORNANO PARTNERS

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## PARTNERS

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We promote an integrated, multi-disciplinary and cross-border approach, based on our strong capabilities and the synergy between our European offices which work closely together. We provide tailored legal assistance in the following main sectors.

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