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CEE LEGAL NEWSLETTER Q1/2024

LEGAL NEWS FOR INVESTORS AND ENTREPRENEURS

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HUNGARY

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

Changes in labour law

Amendments to leave entitlements came into force on 1 January 2024, meaning that the additional leave after a child should also be granted at the time requested by the employee. This means that not only the 7 days of ordinary leave and the parental leave must be granted at the request of the employee, but also the additional leave for the child(ren). It should be noted that the employees must notify their request for parental leave and additional leave for children at least 15 days before the start of the leave.

Furthermore, modifications in rules regarding screen-based work are underway. The previous restriction of no more than 6 hours per day or 75% of the daily working time for screen-related tasks is eliminated, reflecting a more flexible approach.

Another significant alteration taking effect from 1 January is the simplification of documentation upon termination of employment. Instead of issuing six separate documents, employers will now provide a comprehensive employment certificate containing all requisite information, to be issued either in electronic or in paper format.

As of 1 January 2024, employers are mandated to investigate work-related accidents that do not result in incapacity for work. The details of such investigations, along with guidance for completing work accident reports, will be accessible on the Ministry's website, led by the Minister responsible for employment policy.

Starting from 1 February 2024, specific activities, roles, and positions designated by the Minister responsible for employment policy require Occupational Safety and Health (OSH) training. This training may be facilitated through the dissemination of general training themes or by providing training materials via internal electronic networks, negating the necessity for substantive OSH training in these instances.

Furthermore, amendments slated for 1 September 2024 entail mandatory occupational aptitude testing before commencing work and at periodic intervals during the employment tenure. This requirement will only apply in cases specified by law or upon employer directive. However, the implementing regulations outlining mandatory testing scenarios are yet to be finalized.

Changes in Company law

An amendment to company law introduces significant updates in data management and accessibility of company documents. Under the amendment, the Court of Registration maintains electronic records of company data, documents, and non-litigation proceedings using an electronic case management support system.

One crucial change mandates the Court of Registration to ensure the accessibility of the deed of foundation, via the company register. This provision aims to enhance the searchability and expedite consultation of company documents. Consequently, the existing IT solution used for specimen signatures will incorporate a link in the company data section, enabling instant access to the deed of foundation with a single click. This service is available for deeds of foundation and their amendments registered after 1 March 2024, when the amendment took effect.

Furthermore, a provision on data management is included to ensure lawful storage and processing of data, maintaining accurate company register status. In cases where the company register lacks necessary information due to data transfers, the Court of Registration will require the company to report missing data within 60 days upon registration of information via the Business Register Interconnection System (BRIS). Failure to comply will prompt the Court of Registration to initiate a judicial review procedure *ex officio*. This provision addresses practical challenges associated with handling data received through BRIS, emphasizing the court's role in registering such data.

Hungary tightens rules for guest workers

Hungary recently passed the Guest Worker Act, tightening regulations on the employment of foreign workers in the country. Effective from 1 January 2024, the law provides that employers can only hire foreign workers if no Hungarian candidate is available. Guest workers are allowed to stay for a limited period before they must leave the country. The Act introduces new categories such as guest workers and guest investors.

The Act categorizes stays into short-term (up to 90 days within 180 days), temporary (up to 3 years), and long-term stays in Hungary. Foreigners can enter Hungary for short-term stays under conditions outlined in the Schengen Borders Code. Temporary residence permits are granted for various reasons including business, investment, employment as a guest worker, or for study.

Regarding guest workers, the legislation introduces four sub-categories of permits, each corresponding to different types of employment. Notably, the number of guest worker residence permits (one of the four sub-categories) issued annually is capped at 65,000 for 2024.

The Act also introduces the concept of guest investors, allowing third-country nationals to enter Hungary for economic investment purposes.

A significant change is the treatment of workers without tertiary qualifications, who now face limitations in job opportunities, long-term stay permits, and family reunification rights.

To enforce compliance, the Act imposes stricter conditions and penalties on employers hiring third-country nationals.

As Hungary implements the Guest Worker Act, it aims to balance economic needs with domestic employment priorities, while navigating globalization's complexities and safeguarding national interests.

Making sustainability a legal obligation: the new Hungarian ESG Act

Hungarian companies face accelerated environmental, social, and governance reporting obligations under the new ESG Act, reshaping corporate accountability and sustainability measures ahead of EU directives.

As an international law firm advising foreign investors in all business law disciplines, D'Ornano Partners is committed to assisting companies, investors, and other stakeholders in navigating ESG and sustainability challenges under the Hungarian ESG Act. In recent months, the firm developed a specific offering for South Korean clients by creating a Korean Desk, headed by a Korean lawyer, equipped to offer legal support to Korean clients in CEE and SEE, including advice related to the Hungarian ESG issues presented below.

In fact, according to the new act, companies will be required to report on their sustainable operations earlier than is anticipated by the EU and as early as next year for some.

By adopting the ESG Act on 12 December 2023, the Hungarian Government aimed to address two critical issues with one solution, immediately imposing two new reporting obligations on large Hungarian-based companies.

At its core, the act seeks to provide an objective assessment of companies' sustainability efforts. Amendments to the Accounting Act compel businesses to present the non-financial facets of their operations in a standardized format, aligning with EU standards. The sustainability disclosure obligation is of particular significance, mirroring the EU's Corporate Sustainability Reporting Directive.

Additionally, companies must disclose the environmental integrity of their supply chain operations, effectively integrating the EU's Corporate Sustainability Due Diligence Directive into Hungarian law. Companies will have to prepare an ESG strategy, set up an ESG risk management framework, regularly analyse risks, implement proactive and remedial ESG measures internally, implement ESG measures for direct suppliers, evaluate risks among indirect suppliers, and prepare reports on the fulfilment of their ESG obligations.

The ESG Act initially targets large companies of public interest, who will first have to publish their ESG report related to 2024 in 2025 if two of the following three indicators exceed the following thresholds in the previous year: a balance sheet total exceeding HUF 10 billion; a net turnover exceeding HUF 20 billion; or an average number of employees of 500 or more. A year later, in 2026, all large companies will be required to do so, with the threshold for the number of employees reduced to 250. Finally, in 2027, all publicly relevant small- and medium-sized companies, irrespective of balance sheet, annual net turnover, or number of employees, will be obliged to publish their ESG accounts. For international groups, including data on their Hungarian operations in the consolidated EU-wide report will suffice. Companies should have their ESG reporting audited by a registered ESG certifier.

Despite the law's initial applicability to only a handful of Hungarian-headquartered companies, the ripple effects are felt across the business landscape. Large companies are tasked to collect data on emissions, energy use, sources, and waste management from all their subcontractors to obtain an accurate picture of their operations. This poses a significant challenge for many companies as they may not have recorded such data before, lacking complex corporate governance processes.

The legislation provides a framework for reporting obligations, whereas the specifics will be detailed by the newly established ESG Council, overseen by the Minister of National Economy and submitted to the Supervisory Authority for Regulatory Affairs (in Hungarian: "Szabályozott Tevékenységek Felügyeleti Hatósága" or "SZTFH"), appointed as the monitoring and management body. These rules must be published in a decree by July 1. Additional provisions, such as rules for auditors and the authority of the SZTFH to impose fines, will come into effect later, respectively, in 2025 and 2026.

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ROMANIA

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Introduction of a global minimum tax rate of 15%

Law no. 431/2023 introduced a global minimum tax rate of 15% on large multinational and national enterprise groups. Effective from 1 January 2024, this law empowers Romanian authorities to levy supplementary taxes on sizable national and multinational corporations if their effective tax rates in Romania fall below 15%. It transposes into national law EU Council Directive 2022/2523 on ensuring a minimum level of taxation dated 14 December 2022.

To facilitate implementation, methodological norms for applying the legislation are slated for publication by the end of 2024.

Companies subject to the tax

The new provisions target taxpayers headquartered in Romania, part of national or multinational group of companies, with consolidated annual revenues exceeding EUR 750,000,000 in at least two of the preceding four financial years (2020–2023). Certain entities are exempted from these regulations as stipulated by the law.

Materiality threshold exemption

A general exemption based on materiality thresholds applies if the average qualified income of all constituent entities in Romania is below EUR 10 million and profit less than EUR 1 million.

Taxation provisions

The law establishes an additional corporate tax based on alternative rules:

i. Income Inclusion Rule (IIR):

The Income Inclusion Rule (IIR) is set to take effect from January 1, 2024. It applies when the parent company of a national or multinational group is situated in Romania and imposes an additional tax on both the parent company and its subsidiaries taxed at a rate below 15%. Under this rule, the parent company is required to pay an additional amount to ensure that the effective tax rate in each jurisdiction where the group operates is at least 15%.

ii. Undertaxed Profits Rule (UTPR):

The Undertaxed Profits Rule (UTPR), serving as a secondary measure, applies if the ultimate parent company is established in a third country (non-EU) and the Income Inclusion Rule (IIR) hasn't been implemented at the head office level. In such cases, Romanian companies within a Multinational Enterprise (MNE) Group will be subject to an additional tax proportionate to the amount not covered by the IIR at the parent company level. This rule is scheduled for implementation from January 1, 2025.

iii. National Additional Tax

Simultaneously, a national additional tax is established, targeting the excess profit of companies based in Romania that are taxed at a reduced rate, resulting in an effective tax rate below 15%. By opting for this approach, Romanian subsidiaries of multinational groups with foreign parent companies will be liable for the additional tax on their excess profits earned in Romania if their effective tax rate in the country falls below 15%.

Legislative changes concerning the employment of foreign nationals

Emergency Ordinance no. 25/2024 amends and supplements certain legal acts related to foreigners. Published on 22 March 2024, this ordinance follows the abolition of controls at air and sea borders effective from 31 March 2024.

- Foreign nationals staying in Romania are required to declare any changes in their employment status within three days at the local branch of the Romanian Immigration Office that granted them the right of residence.
- Foreign nationals entering Romania for employment purposes will have their right of temporary residence extended upon presenting a full-time individual employment contract within 15 working days of arrival or upon obtaining a new employment permit. The contract must be registered with the general register of employees and demonstrate a salary equivalent to at least the minimum gross salary. Highly qualified workers must receive a salary at least equal to the average gross salary.
- Each foreign national issued an employment or secondment permit and granted an extension of temporary residence or long-term residence will be assigned a personal numeric code by the General Inspectorate for Immigration, included on the residence or employment permit.
- Employers must finalize individual employment contracts within 15 working days of the foreign national's entry or obtaining a new employment permit. Failure to meet this deadline may result in fines ranging from RON 5,000 to 10,000. Employers are not held accountable if the failure to conclude the contract is the fault of the foreign national.
- A new requirement for obtaining employment permits for permanent workers is that the employer must have been actively engaged in the relevant field of activity for at least one year.
- Foreign nationals with valid long-stay visas are also subject to these regulations.

Amendments concerning highly skilled workers

Law no. 28/2024 amending and supplementing certain normative acts in the field of foreigners was published on 5 March 2024. This law introduces significant changes aimed at facilitating the employment and residence of foreigners in Romania.

- A new concept of "short-term mobility" has been introduced.
- Exceptions from the work permit requirement: This includes the designation of a new category named "mobile highly skilled workers". These workers, who are third-country nationals holding

a valid EU Blue Card issued by another EU/EEA member state, can enter Romania and engage in economic activities for up to 90 days within any 180-day period, exempt from the need for a work permit. Additionally, third-country nationals with a valid EU Blue Card issued by another EU member state, having resided there for at least 12 months or having a combined residence of at least six months in the last country of residence, may enter Romania under exceptional rules. They are allowed to work in the country without a work permit or specific work visa. These individuals have the option to apply for an EU Blue Card in Romania within one month of entry. Moreover, their family dependents are exempt from the family reunification procedure and may directly apply for a residence permit.

- Changes have also been made to the definition of a “highly skilled worker”.
- The minimum duration of an employment contract has been adjusted, now allowing for a definite or indefinite term of at least six months, compared to the previous requirement of at least one year.
- Similarly, the minimum monthly salary for highly skilled workers has been revised to align with the level of the average gross salary.
- Furthermore, new conditions have been introduced to the application process for a work permit for highly skilled workers. Employers are now required to demonstrate that the vacant position could not be filled by a Romanian citizen, a citizen of another EU/EEA member state, a citizen of the Swiss Confederation, or a foreign national with long-term residence rights in Romania. This entails providing proof of selection and obtaining an AJOFM certificate, which must be issued no later than 90 days before the submission of the work permit application.
- Moreover, updated qualifications and professional experience requirements have been established. This includes a prerequisite of higher education and a minimum of five years of professional experience in the same field as the education. Additionally, third-country nationals applying for a highly skilled worker's permit, particularly in leadership roles within information and communication technology services or as specialists in the field, must demonstrate at least three years of relevant professional experience in the seven years preceding the work permit application.
- Family reunification applications for dependents of highly skilled workers can now be submitted concurrently with the principal's EU Blue Card application.

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CROATIA

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Regulation of platform work

The latest amendments to the Labour Act entered into force on 1 January 2024 introduced the regulation of work through digital labour platforms.

The distinction is made in the Act between digital labour platforms (natural or legal person providing services at the request of a recipient of the service, by using digital technology, within the framework of work organisation in which natural persons perform work remotely by using electronic means or directly at a certain location) and aggregators (natural or legal person who performs the activity of representation or intermediation for digital work platforms).

Workers performing work using a digital labour platform (platform workers) must thus be employed either by the digital labour platforms or aggregator. In that regard, the digital labour platform and aggregators have the obligation to register themselves in the applicable Croatian register, and as employers of platform workers ensure their statutory guaranteed rights (e.g. informing them of work organisation and automated decision-making processes, appoint an authorised person who will supervise their safety and workload, procuring accident and liability insurance if the platform worker performs work using a vehicle, etc.).

If the platform worker is employed by an aggregator, the Act envisages joint and several liability of both such aggregator and the digital labour platform through which the platform worker performs his/her work. The digital labour platform could be however exempted from liability even in this case, provided that certain conditions are fulfilled.

Fines for non-compliance with the newly adopted platform work rules go as high as EUR 13,270 for legal persons and EUR 1,320 for their responsible persons.

New interest rates in 2024

According to the newly adopted Decision on publishing the interest rate on loans between related persons, in force as of 31 November 2023, the annual interest rate on loans between related persons is set at 3.25%. This interest rate represents the minimum interest rate allowed, i.e. the highest tax-deductible rate that can be charged on loans between domestic and foreign related persons.

Moreover, as of 1 January 2024 the default interest rate on untimely paid taxes and other public duties, charged by the Croatian Tax Authority, is set at 7.50% annually.

SERBIA

LEGAL NEWS

OVERVIEW OF RECENT LEGAL AMENDMENTS AND NEW LAWS AND REGULATIONS

The Open Balkan Unified Labour Market

After more than three years, the leaders of the countries of the Open Balkan initiative signed a visionary decision on the establishment of free access to the labour market in the Western Balkans. Representatives from Serbia, North Macedonia, and Albania convened in January 2024, inaugurating a groundbreaking initiative within the Open Balkan framework: the Unified Labour Market.

This significant event saw the signing of two vital protocols aimed at fostering closer economic ties among member nations. The Protocol on the Implementation of the Agreement on Conditions for Free Access to the Labour Market in the Western Balkans and the Protocol on Connecting the Electronic Identification Schemes of the Western Balkans Citizens lay the groundwork for a free labour market across participating countries.

The official commencement of the unified labour market on 1 March 2024 marked a historic milestone, granting citizens of Serbia, Albania, and North Macedonia enhanced labour mobility across borders. This transformative initiative amplifies opportunities for skilled workers and heralds a new era of economic prosperity for individuals seeking employment opportunities beyond national boundaries.

Individuals from Serbia, Albania, and North Macedonia aiming to secure employment in any of the Open Balkan nations, or those who have already secured employment, are required to obtain an identification number. This can be done through electronic registration in a few straightforward steps. The process involves completing a form on the platform (e-Administration) and providing a valid biometric document. Subsequently, the relevant authorities in the individual's place of residence generate a unique Open Balkan identification number (IDOB) via the e-Administration platform.

Once this IDOB is obtained, the individual can proceed to access the eGovernment portal of the destination country and submit a request for unrestricted labour market access, free of charge. Upon approval from the destination country, the individual is eligible for employment under the same conditions as a local citizen for a period of up to two years. Following this initial period, extensions for stay or work permits may be granted as needed.

In essence, citizens from three named countries now possess the freedom to live and work in any of these three countries, marking a significant leap forward in regional cooperation.

This unified labour market initiative symbolizes a broader vision of strengthening regional integration. By harnessing the collective potential of approximately 11 million employees across the three countries, the Open Balkan initiative aims to mitigate labour shortages and secure the region's economic landscape.

EXPO 2027

In June 2023, Serbia's bid to host EXPO 2027 triumphed, making Belgrade the chosen destination for this prestigious international exhibition. In February 2024, Serbia's Recognition Dossier for EXPO 2027 Belgrade has been presented to the Bureau International des Expositions (BIE) Secretary General, Dimitri S. Kerkentzes by H.E. Ana Hrustanović, the Ambassador of Serbia to France. The approval of the Recognition Dossier by the General Assembly of the BIE will confirm Serbia's status as its Organizer.

The country has declared this project a project of national importance as the Serbian parliament passed the Special Procedures for the Realization of the International Specialized Exhibition EXPO BELGRADE 2027 Act, aimed at expediting contractual processes and public procurement.

Over the years, Serbia has been actively pursuing a foreign investment strategy aimed at attracting and facilitating foreign direct investment across numerous sectors of its economy. Strategic measures such as tax incentives, regulatory simplification, and targeted investment promotion efforts, have made Serbia an inviting business climate for global investors.

Constitutional Court Decision in favour of employed pregnant women and mothers, altering the regulations concerning the calculation of salary compensation during maternity leave and childcare absence

The Decision of the Constitutional Court of Republic of Serbia no. IUz 60/2021 was published on 14 February 2024. This decision found that the provision of Article 13, Paragraph 1 of the Law on Financial Support for Families with Children is not in accordance with the Constitution of the Republic of Serbia. Specifically, the portion of the provision concerning "absence due to complications related to pregnancy maintenance" and "if leave due to complications related to pregnancy maintenance was not used" was deemed unconstitutional.

The law stipulates that the compensation for salary during maternity leave is calculated based on the earnings of the last 18 months preceding the first month of starting the maternity leave. However, according to the contested provision, for women who have experienced complications related to pregnancy maintenance and have started the leave earlier, the compensation base is calculated for the period of 18 months before starting the leave. This results in a significantly earlier period for calculation of salary compensation compared to women without such complications, as it starts earlier than the moment in which the maternity leave begins.

Starting from 14 February 2024, the basis for compensation of salary will be calculated differently. The Paragraph 1 of Article 13 of the Law on Financial Support for Families with Children has been changed and reads: "The basis for compensation of salary, i.e., compensation for maternity leave and leave from work for child care, for individuals from Article 12 of this law, shall be determined based on the sum of monthly bases on which contributions have been paid for earnings character, for the last 18 months preceding the first month of commencement of maternity leave."

Users of rights to whom the decision has been delivered since 19 April 2019, may submit, if they believe their right has been violated, a request for the amendment of the individual act (decision) 6 months from the day of publication of the Court decision, i.e. until 14 August 2024.

Business Registers Agency's application for the preparation and submission of financial reports

Starting from 31 January 2024, individuals have access to Business Registers Agency's application for preparing and filing financial reports for the year 2023.

Additionally, the Agency has introduced an external portal titled "Updating the Obligors' Records," enabling obligors who are submitting financial reports to lodge complaints if discrepancies exist in their records and their data is not up to date.

Unified work permits for foreigners, new issuing procedure

From 1 February 2024, the implementation of a new procedure for issuing a unified permit for temporary residence and work of foreigners in the Republic of Serbia was set to commence. This adjustment is a direct outcome of amendments and supplements to the Law on Employment of Foreigners and the Law on Foreigners.

One of the pivotal developments is the elimination of separate work permits. Instead, there is now a joint permit that allows foreigners to both reside and work in Serbia. Furthermore, the issuance of this permit will now be conducted electronically, marking a novel approach. Processing times are anticipated to reduce significantly from 2 months to just 15 days.

Moreover, the law extended the permit's validity period to three years, from the previous one-year. Additionally, the unified permit will now be a personalized ID equipped with chips, enhancing both security and functionality.

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MONTENEGRO

LEGAL NEWS

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Amendments in tax law

With the aim of bringing the Montenegrin tax framework in line with the EU tax legislation, particularly with the Directive 2009/133/EC of the EU Council, which establishes a unified taxation system for mergers, divisions and partial divisions, asset transfers, and share exchanges involving companies from different EU member states, the National Assembly of Montenegro passed Amendments to the Law on profit tax of legal entities, which came into effect on 1 January 2024.

The amended law specifies the calculation of the corporate income tax base, which includes pre-tax profits as shown in the balance sheet. This calculation must now comply strictly with IAS and IFRS. Additionally, the amendments address the recognition of income or expense resulting from changes in accounting policies, with such adjustments being spread equally over five tax periods. Income from liquidation proceeds of other legal entities will not be included in the CIT base, and the terms for write-offs are further specified.

The definition of taxpayers that are subject to withholding tax has been changed, with the aim of expanding the scope to include legal entities. Additionally, the amendments introduce a new subject of withholding tax – distribution of the liquidation surplus. Permanent establishments are also obligated to pay withholding tax on various payments, including dividends, profit, and liquidation surplus.

Furthermore, amendments prescribe rules for determining the acquisition value of assets in capital gains taxation. The amendments also empower the tax authority to adjust the selling price of assets to the market value if the sale price is lower than market value, particularly in transactions between related or unrelated parties.

The amendments also introduced new amortization rates to better reflect current economic realities. These include reduced rates for buildings, roads, bridges and similar assets, now set at 2.5%, and rate adjustments for other asset groups to ensure a fairer depreciation schedule.

Tax reforms also include an amendment of the real estate transfer tax, applicable from 1 January 2024, which introduces a progressive tax rate depending on the estimated market value of the real estate. Specifically, for an estimated market value of less than EUR 150,000, the tax rate applied is 3%. For an estimated market value over EUR 150,000, the tax rate applied is EUR 4,500 plus 5% of the amount over EUR 150,000.

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