

**GOBERT ÉS TÁRSA
ÜGYVÉDI IRODA**

Róbert Károly krt. 70-74.
1134 Budapest, Hungary
Telefon + 36 (1) 270 9900
Telefax + 36 (1) 270 9990
office@gfplegal.com

NEWSLETTER

September 2017

Express legal update

We at BWSP Gobert & Partner believe that it is vital to inform our valued clients and partners about legal novelties as well as about the progression and success stories of our law firm and say thank you for your valued cooperation.

2017 has been an eventful year in the history of our law firm due to several major legal cases and transactions which we handled in Hungary, in the CEE region, worldwide and successfully closed. BWSP Gobert and Partner could prove again its ability to fulfil any task for our clients, including complex, large and multijurisdictional cross-border transactions. We are also proud to inform you that our firm received again several (11) prestigious international awards for our tax and legal services among which are Law Firm of the Year (2) and Tax Advisor of the Year (2).

*Dr. Arne Gobert
Managing Partner*



CONTENTS

- 15 YEARS GOBERT AND PARTNER 1
- SUCCESSFUL CLOSING OF A WORLD-WIDE M&A TRANSACTION 2
- LEGAL SUPPORT FOR A PROMISING IT START-UP 2
- NEW EU LEGISLATION ON DATA PRIVACY 2
- INCREASING OF THE FINE AMOUNTS FOR THE VIOLATION OF MONEY LAUNDERING RULES! 4
- HOW CAN OUR COMPANY BE PROVIDED WITH SEAT SERVICE? 5
- INTERNATIONAL RECOGNITION 6

15 YEARS GOBERT & PARTNER

2017 is a very special year for our law firm due to several reasons. Not only does our firm celebrate its 10th jubilee of being an independent, full service law firm with an integrated tax and advisory practice but also the 15th jubilee of its establishment. Furthermore, we are proud to celebrate 20 years of Gobert legal services in Hungary as well. This is such a remarkable milestone in the history of our law firm that we would like to celebrate it with you, our valued partners and friends. So stay tuned for further announcements towards the end of the year!

FIRM INFO

OUR MAILING ADDRESS:

HUNGARY
1134 BUDAPEST
RÓBERT KÁROLY KRT. 70-74
"B" BUILDING, 8TH FLOOR

OUR WEB-PAGE ADDRESS:

WWW.GOBERTPARTNERS.COM



SUCCESSFUL CLOSING OF A WORLD-WIDE M&A TRANSACTION

BWSP Gobert and Partner proudly announces the successful closing of a world-wide M&A transaction, in which our Hungarian team participated with key-role legal support and central coordination of the professional work in the CEE region.

Our team was engaged to bring to the next level of growth a global market leader company group in designing, developing and manufacturing engineering products and machined components for the automotive sector and besides of operating in the industrial business by producing several products; moreover, having international investments, which further increases their strong brand reputation.

The legal bravura of completing a global share-deal based transaction involving more than 30 entities over 15 countries (i.e. USA, Canada, China, Hong Kong, Italy, Germany, Hungary, Poland etc.) required a smooth cooperation of high-level professionals working devotedly on all legal fields such as corporate, real estate, labour, commercial, litigation, financial and bank law; and also including some special legal areas on environment, competition, IP/IT matters and data protection.

As a result of the legal and tax support throughout this global project – from the planning preparations and DD investigations until the conducting of each national and cross-border procedures – our valued Client could reach their investment objectives the most efficient way of strategic alternatives and the new owner shall benefit from the next phase of growth of the reputable company group. The transaction value was well in excess of a quarter billion USD.

LEGAL SUPPORT FOR A PROMISING IT START-UP

With regard to the work of our office this year we highlight and we are very proud to have been able to take part in the acquisition of a promising Hungarian IT start-up company by a well-known and respected Chinese investor.

Our work included not only the due diligence of the acquired company and transfer of the quota from the previous investors but we also advised and proceeded on the capitalization of the company and changes in the management team. By our legal advising and proceeding in this complex international cross border case we helped our respected Client to create a suitable legal and business environment for the worldwide introduction of their revolutionary development on the field of internet technology.

NEW EU LEGISLATION ON DATA PRIVACY

After a considerably long preparation, the General Data Protection Regulation (commonly known as 'GDPR') enters into effect on 25 May 2018, replacing the 20 years old Data Protection Directive. Since the GDPR is issued as a regulation, instead of a directive, the member states enjoy less room to differ from the regulation, conclusively it will not only harmonize but nearly standardize the laws of data privacy over the territory of the EU.

With the substantial growth of businesses operating cross-border, compliance with diverse regulations have complicated the standard daily operation, causing extra costs to multinational companies, thus international consistency in data protection is essential to businesses, as much as to individuals.

Below we have gathered the key changes to keep in mind in case your company may be affected in the upcoming legislation.

For more information please contact us

BWSP Gobert & Partners Attorneys at Law

Róbert Károly krt. 70-74. "B" Building 8th floor Budapest, Hungary

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E-mail: office@gpflegal.com

Although the GDPR has taken some important steps towards larger security and transparency, the base concepts and principles remained unchanged, hence the already compliant businesses will not have to introduce a whole new practice of data privacy.

Data protection, for many is considered a burdensome set of requirements and the management often calculated with a potential fine as operational expense. Nonetheless, compliance remained the most important objective, accordingly the new regulation intends to change this attitude and make data protection an indispensable business practice. For this very purpose the financial sanction has been increased up to €20 million (from €20,000) or 4% of global annual turnover (greater amount is applied). For minor breaches, the authorities could impose fines up to €10 million or 2% of global annual turnover.

Reacting also to the significantly growing number of internet users, the EU law makers have decided to introduce an age limit to giving consent. From 25 May 2018 all individuals between the age of 13 and 16 must obtain parental consent to process their data, while under the age of 13, no process will be allowed at all. This measure is expected to contribute to a more responsible use of internet by providing safeguard to children unaware of the risks of roaming the digital world.

Another innovation to the present regulation, that additionally to the consensual approval and statutory base, data process by legal interest becomes permitted. According to this, in the absence of consent of the affected person or other authorizing statutory provision, data may be processed if it is necessary to enforce a legal interest of the data controller or a third person.

In terms of prevention, a new principle has emerged, called "privacy by design" that implies compliance with the regulation (upholding data privacy principles, data protection guarantees, technical security etc.), even before data process has started. Proving the performance of this preparatory action will definitely qualify as a mitigating factor upon imposing eventual sanctions by the competent authority.

Data Protection Impact Assessment is also a preparatory requirement and shall be performed prior to the installation of a new technology in data process. Under the assessment, the controller must discover all the possible risks in terms of infringing rights of individuals. If the result shows high risk, the controller must engage in prior consultations with the data protection authority to amend technical flaws and gain approval, otherwise the authority may prohibit the processing activity.

For the sake of thorough monitoring, in the future, data controllers shall report any security breach or incident in data protection within 72 hours (hacker attacks, data leakage, accidental loss of data, etc.) to the authorities and the affected individuals. So far this has only concerned data processors from certain sectors, such as telecommunication service providers.

According to the GDPR the registry of data processing activity will no longer be necessary, however, businesses employing more than 250 employees or sensitive data controllers must run their own registry that must be duly presented to the authority at request.

As for the privacy statements the aim is to provide easy access and simplify the privacy policy, furtherly the informative must be brief and comprehensible for all users. For this purpose a coherent set of pictograms will be developed to create a united and transparent visual character for all privacy statements under the effect of GDPR.

We hope the above short summary was useful to get acquainted with the relevant changes of the regulation of data privacy. Should you feel your system or practice of data protection may not be compliant with the current or future regulation, we encourage you to contact our firm for a professional review or counsel.

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INCREASING OF THE FINE AMOUNTS FOR THE VIOLATION OF MONEY LAUNDERING RULES!

In correspondence of the European Union's directive the Hungarian Parliament adopted a new act on prevention and hindrance of money laundering and financing of terrorism, which is effective from 26 June 2017.

The new Act extends its material scope on trustees who have a registered seat, branch office or business place in Hungary.

With regards the new act the suppliers shall be entitled to verify the identity of the clients online via a safe, secured electronic device, which will be audited and monitored by the supervising authority.

The new act establishes the central database of beneficial owners and prescribes a data supply obligation to the suppliers. The act declares that competent authorities, data suppliers and even third parties will have access to the database in case they can certify the legal title of application for data.

In accordance with the new rules the Hungarian National Bank (MNB) shall continue to be considered as supervisory authority; however the type of the impossible sanctions has been amended. The new act declares that MNB shall be entitled to warn the suppliers, obligate the suppliers to cease the violation of law. The MNB is also entitled to obligate the suppliers to amend their internal regulations in respect of the conditions declared by the MNB. In accordance with the new act MNB is also entitled to suspend or delete the supplier's permit from the registry. In respect of the act the MNB shall be entitled to initiate the declaration of somebody's personal liability and to initiate the suspension or termination of the managing directorial powers by the supplier company.

The new act increased the amount of the impossible fine. In case of financial and investment suppliers, furthermore insurance companies the maximum amount

of the fine is 2 billion Forints (or 10% of the total income), instead of the former 500 million Forints. The other suppliers – such as resellers, tax experts, real estate investors or accountants – shall pay a fine in a total amount of 400 million Forints, instead of former 20 million Forints if they violate the rules of the new act.

The new suppliers shall be obliged to prepare an internal regulation, which is in accordance with the prescriptions of the new act. Those suppliers who have an internal regulation yet, shall be obliged to amend it with regards the new law and shall report the amendment to the Supervisory Directorate of Money Laundering of Governmental Office of Budapest ('Budapest Főváros Kormányhivatala Pénzmosás Felügyeleti Osztály'). **The deadline of preparation, amendment and report of the internal regulations is 30 September 2017.**

The act contains some special rules in connection with the merchants. They shall send their internal regulations to the commercial authority in favour of supervision. The authority will approve the rules and if it is in compliance with the prescriptions of the new act the authority will register the merchants in the registry. The act determines a significant deadline. The merchants shall register until 31 October 2017, because after the prescribed deadline, only the registered merchants will be entitled to accept more than 2.500.000 Forints cash payment.

The act declares that MNB shall only be entitled to impose a fine for violation of the new law from 1 January 2018.

A significant change is that **the multinational companies shall prepare their internal regulations on a group-wide basis** and the supervisory authorities will provide the supervision in cooperation with the other supervisory authorities of the other EU's member states, where the multinational company also have subsidiaries.

The law prescribes new data management obligations such as the supplier shall verify the clients' data in every five year and shall delete the clients' data 8 years after the termination of the client relationship.

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The new act allows a two year period until the suppliers are allowed to accept orders which are in accordance with the former act, but after 26 June 2019 the suppliers will be entitled to accept only those orders which are in compliance with the new regulations.

HOW CAN OUR COMPANY BE PROVIDED WITH SEAT SERVICE?

Pursuant to Hungarian legal provisions, every company must have a seat (a registered office) where the company receives its official deliveries. Several companies register virtual offices at the commercial court as their registered seat which means that the company does not actually operate at that place but postal deliveries are taken over by this service provider.

Since 1 March 2012 law firms may not be entitled to provide companies with seat service. It is problematic because such companies which do not actually operate in Hungary used to prefer to indicate the seat of law firm representing the company in the company registration court procedure as the seat of the company. As it is no longer an opportunity since 1 March 2012, the foreign companies had to look for another service provider: many companies usually appoint the seat of their accountant firms as the seat of the company and the accountant firm of the company provides seat services for the company. Except of the law firms the scope of service providers is not restricted: both legal and natural persons may be entitled to provide seat service for companies. However, they must meet the following legal conditions which have been taken into effect on 1 July 2017.

From 1 July 2017, seat service may only be provided in a real estate by the service provider which is either owned by the service provider or at least its right to use is registered in the land-registry. According to our experience such rights qualify as

„rights to use” which may be registered in the land registry pursuant to the Hungarian Act on Land Registry. Such rights are the right of land usage, the right of usufruct, or an easement. If the service provider has for example an easement on the affected real estate, it may provide a seat service in connection with the real property.

Earlier it was not an obligatory legal provision: several companies provided seat service in real estates which were only leased by them, but the real estates were not owned by the company. The lease of a real estate is not registered in the land registry, thus in the future if a company only leases a real estate, may not provide seat service to other companies in respect of the leased property.

A seat service provision agreement must be concluded by the parties in writing which may only be concluded for an indefinite term, it may not be concluded for definite term. In the seat service provision agreement the documents of the company must be defined exactly which are kept at the seat of the company.

Former contracts on seat service must be amended by 30 June 2018 pursuant to the new regulation. Oral agreements must be put in written form. Former agreements must be terminated until 30 June 2018 if the parties were not able to amend the seat service agreement in accordance with the new requirements. The companies have time until this deadline to supervise their seat service agreements and conclude a new one in compliance with the new regulation.

It is worth taking into consideration the new legal regulation because pursuant to our experience the Court of Registry may request the company to indicate another registered seat if the registered seat is not in compliance with the aforementioned rules.

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**INTERNATIONAL
RECOGNITION**

Last but not least we are proud to inform you that the BWSP Gobert & Partner similarly to the previous years has earned international recognition again. On the basis of our work in the year of 2017 our law firm was awarded in several international listings, with the titles of:



LAW FIRM OF THE YEAR - HUNGARY
(Lawyers Worldwide Award Magazine -
Five Star Lawyers 2017 Awards)



LAW FIRM OF THE YEAR - HUNGARY
(Worldwide Financial Advisor Awards Magazine)



TAX LAW FIRM OF THE YEAR - HUNGARY
(Legal Awards 2017)



**FULL SERVICE LAW FIRM OF THE YEAR -
HUNGARY**
(ACQ5 Law Awards 2017)



**ARBITRATION AND LITIGATION LAW FIRM OF THE
YEAR**
(ACQ5 Law Awards 2017)



**BANKING & FINANCE LAW FIRM OF THE YEAR -
HUNGARY**
(ACQ5 Law Awards 2017)



**LAW FIRM OF THE YEAR - REAL ESTATE -
HUNGARY**
(The Lawyer International –
Global Awards – 2017)



LAW FIRM OF THE YEAR - TAXATION – HUNGARY
(The Lawyer International –
Global Awards – 2017)



TAX ADVISER OF THE YEAR - HUNGARY
(Finance Monthly M&A Awards 2017)



TAX PLANNING LAWYER OF THE YEAR - HUNGARY
(Finance Monthly Global Awards 2017)



**TAX PLANNING – LAWYER OF THE YEAR -
HUNGARY**
(Finance Monthly Tax Awards 2017)

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