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LAW SHOOTER

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LEGAL UPDATES AND THE CELEBRATION OF OUR NEWEST AWARD

We are proud to announce we have been awarded by the UK based Legal Monthly 2013 awards as the best Real estate law firm in Hungary! We are very honored that we were selected for this special award, especially due to the fact that this is our 4th award this year!

However, as we see our main goal in keeping our valued partners informed about the current legal status, we prepared a compact newsletter edition about topics such as the new regulation on the civil associations, the liability of the executive officers according to the new Civil Code as well as entering, staying and working conditions in Hungary in case of EU/EEA citizens.

We remain at your constant disposal and hope you enjoy this months newsletter!

Dr. Arne Gobert
Managing Partner

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POSSIBILITIES FOR TAX ABATEMENT AND PAYMENT FACILITIES III.

Legal remedies in the procedures pertaining to payment allowances

In the procedures initiated to adjudicate petitions for tax allowances the petitioner is entitled to the same ordinary legal remedies (and the application for supervisory measures) as in other procedures, namely the appeal and supervisory measures.

The submission of the appeal is subject to duty, if its base cannot be defined upon the subject matter of the **appeal** procedures (for example payment in

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instalments, payment deferral), the amount of the appeal fee will be HUF 5 000, in case of non-private individual taxpayer HUF 15 000. For the appeal lodged against a resolution HUF 3 000 duty shall be paid.

If the petitioner lodges an appeal at the tax authority of first instance after the expiry of deadline and without application for prolongation of deadline – not including the modification in own competence – or the appeal does not come from the entitled person, or is lodged against a non-actionable order, the tax authority of first instance rejects the appeal without considering the merits (Art. 136.§ (6)).

If the petitioner lodges an application for prolongation of the deadline together with the appeal submitted in delay, the application is adjudicated by the tax authority of first instance and in case of its acceptance the appeal has to be considered as being submitted within the prescribed deadline.

In the appeal there is opportunity to present such new circumstances, which have not been assessed during the procedure of first instance.

The superior tax authority, the minister responsible for tax policy or the minister appointed for the supervision of the National Tax and Customs Administration shall take a **supervisory measure** upon request or *ex officio*, if the acting tax authority's resolution or ruling (action) that may be appealed independently is unlawful or if no resolution or ruling (action) that may be appealed independently has been adopted in violation of the law.

In the procedures started upon the request for supervisory measure the taxpayer may proceed exclusively with the representation of an attorney, tax advisor, tax expert, certified tax expert, except when the private individual or the chief executive officer of the legal entity, or other organization lacking legal personality has a legal bar examination, or he/she itself is a tax advisor, tax expert or certified tax expert.

The procedure initiated upon the request for supervisory measure is also subject to duty, which is at least HUF 50 000 and HUF 500 000 at most. If the value of the subject matter of the request for

supervisory measure cannot be expressed in money and the procedure is conducted by the minister responsible for tax policy or by the minister appointed for the supervision of the National Tax and Customs Administration.

Special rules concerning the tax allowance procedure of the customs organs

The collection of default interest charged upon the amount of customs duty unpaid or paid in delay may be omitted with regard to the provisions of Article 232 of the Council regulation No 2913/92 establishing the Community Customs Code (**Customs Code**)

- where, because of the situation of the debtor, it would be likely to create serious economic or social difficulties;
- where the amount does not exceed a level fixed in accordance with the committee procedure (EUR 10), or
- if the customs duty is paid within five days after the expiry date prescribed for payment.

The EU customs, and the non-community taxes and fees imposed together with these union customs cannot be reduced or remitted; however, based on Article 229 of the Customs Code deferred payment and other payment allowance may be granted upon request.

The condition for granting payment allowance is the provision of **guarantee**, (except, when it would create serious economic or social difficulties to the debtor) and charging **credit interest** on the amount concerned by the payment allowance.

The Customs Act gives opportunity to reduce or remit the imposed customs penalty, if the sanctioned conduct was not intended to infringe the customs legislation, it is not connected with the obligor's mala fide conduct and other statutory requirements are fulfilled.

Request for the **reduction / remission of the misdemeanour penalty** has to be submitted at the

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allowance may be granted for the administrative fine upon request lodged prior to the deadline for fulfilment according to Section 74 of the Act CXL of 2004 on the general rules of administrative proceedings and services (Ket.), if the requestor proves that a reason not attributable to him makes the performance on time impossible or the fulfilment causes him disproportionate difficulty.

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NEW REGULATION ON THE CIVIL ASSOCIATIONS – OR THE BEGINNING OF PROSPERITY OF SILENT PARTNERSHIPS?

The new Civil Code (**new Ptk.**), coming into force on 15th of March 2014, beside several revolutionary innovations reformed the scope of civil associations – using the french, swiss and the austrian legal institutions as a compass. The Act's reasoning is unambiguous in respect of the main reason of the changes: the market economic relations demand that a looser and tighter cooperation, economical capital and collection of expertise may be established among the economic actors only in a way that an independent organization, new legal entity is not created. According to this, with regard to the the new Ptk. 6:498. § „*under civil association contract the parties undertake the obligation to cooperate in order to achieve their common goals and they provide material contributions necessary for the achievement of common goal and they bear the risk of their activity jointly.*”

The new regulation gives up the conditions determined by the currently effective Ptk., such as the prohibition

of pursuing commercial activity and the for-profit, so the legal order may provide a flexible type of contract, which can be reliably applied on the wider spectrum of economic and social conditions. Thus the purpose of the civil association will not be limited; therefore, in the future civil law contract may be concluded even for economic purpose exclusively. The risk may not be precluded, albeit the obligation of providing financial contribution in equal amount and bearing the profit and losses proportionate to the members' contribution is a rule providing for derogation (new Ptk. 6:499. § (1), 6:502).

The most typical contracts according to the reasoning of the act are: the consortium contract, the comprehensive, complex investment cooperating contract containing general contracting elements, syndicated credit agreement, and the profit-rate-dependent loan agreement. The question why the silent partnership is not listed in the above enumeration remained open.

However, taking into view that the silent partnership is more and more needed in the economy (either in a form of loan agreement or capital conveyance, but always appears in connection with some for-profit economic activity, where one party is contributing to the success of the enterprise with only capital/investment, from which he wishes to share in return for his contribution and proportionally to it), and that the regulatory context of the civil associations has become significantly flexible, the operation of the so far step-fated silent partnership, as private law partnership will become feasible again.

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ARTICLES TO LOVE ON THE LEGAL PITFALLS OF A WEDDING IV.

Advance payment, down payment, break-up fee

Conclusion of service agreements – What shall we be aware of and when to let go?

The scope of service agreements is extraordinarily wide-ranging in the course of a wedding planning. But for us to be able to interpret under what conditions do we undertake obligations and require a service from the contracting party, it is advisable to get to know some basic notions, which appear in practice quite often.

Advance payment and down payment

A bulk of the wedding service providers ask for advance payment or down payment in order to make sure, that the other parties' contractual intent is serious. Advance payment and down payment are similar in the way, that part of the service fee is performed before the completion of the service. The difference may be sensed in case of the frustration of a contract. In case we handed over advance payment, but the contract performance is concealed eventually, independently from the fact to what party it is imputed, it should be returned without any further legal consequence.

Nevertheless, in case the parties - namely the parties to the marriage contract and the service provider - agreed expressly in down payment, in case of performing the contract it has to be calculated to the amount of the fee due for the service, same as in the case of advance payment. However in case of a frustration of a contract, if neither party or both parties are liable for the frustration, down payment is returned. If the party giving down payment is liable for the frustration, that is the couple to the marriage contract, the service provider is entitled to keep the down payment. Service provider (party receiving the down payment) is obliged to repay the double of the

received down payment.

Summerizingly, the frustration of a contract ensured by down payment is subject to more stringent sanctions, than the contracts associated with the notion of advance payment, it is albeit a precondition that the amounts intended function, handed over as down payment, is expressly evident from the contract.

Break up fee

Break up fee is a common law notion, with which we may meet more often nowadays. Whilst we may not take our homemade food to restaurant for consumption there, the hotels, eventhalls, restaurants and other hospitality industry unities suitable for providing wedding locations, use a break up fee. By which the facilities generally oblige the parties to a marriage contract, who usually already contracted for a basic service, in the extent of 10-15%, to requisit the extra services at the same place too. In case we would use the services of another service provider for the completion of a part of a service, we would have to pay the break up fee, which is a given percentage of the fee determined by the location insurer.

In certain cases, when other service provider offers a particular service with discount or even for free, it is worthy to pay the break up fee, however its equity is strongly disputed. To the abovementioned a simple example is the fictive case, when in the castle hotel, where we would like to keep our wedding ceremony, the hotel offers the material decorating the chairs, the chair skirts for 400 Ft unit price, which is in case of 100 guests 40.000 Ft. But our relative would let the chair skirts from her decorating shop to our disposal for free, it is more worthy in the present example to pay the 10% break up fee – of which amount in this case is 4000 Ft – than the 40.000 Ft required by the hotel, and thus the saved 36.000 Ft we may manage in other direction.

It is worthy to pay attention and make reasonable decisions, inspite of the fact that, every element of the marriage decisions are practically based emotionally.



What to do if we have not received what we asked for, or not on the time when we asked for it?

Lets take the exapmle, that our wedding cake was not merely decorated by the confectionar with roses of orange colour, instead of our desired white, but above to that, our wedding day is set in the middle of summer, and he delivers it to the location a couple of days earlier, thanks to which the fruitcake easily perishable in the warm temperature, may be thrown out to the basket and the our guest host woud be staring at us with big eyes, waiting for the delecious sweet after the plentiful dinner.

Well, in cases like that it is important to pay attention that the day of performance is determined as a fix date and we sign a service agreement from which the circumstance of the performance, according to which the ordered cake is a wed cake, may be found out unambigously and which we want to see on our wedding day in the proper quality, quantity, time and location appropriately to the order. However if our wedding cake inspite of this does not comply with the above criteria, then arises the case of lapse of interest, which entitles us not to accept the cake after or before the wedding, and we may excercise our right to recession from the contract.

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ENTERING, STAYING AND WORKING CONDITIONS IN HUNGARY IN CASE OF EU/EEA CITIZENS

Entry for 90 days

Citizens of the European Union and nationals of the states of the European Economic Area („EU citizens/

EEA nationals”) with the right of free movement may enter Hungary in possession of their valid passport or personal identity card. EU citizens/EEA nationals are entitled to stay in Hungary for 90 days without the obligation to report their presence and certify the legality of their stay.

Stay exceeding 90 days

In case the EU citizens/EEA nationals intend to stay in Hungary for more than 90 days they shall apply to the Regional Directorate of the Office of Immigration and Nationality for a registration certificate during the 90 days-stay period. To obtain such certificate EU citizens/EEA nationals need to prove their employment relationship, livelihood, housing and comprehensive health insurance. If all necessary documents are collected, the duration of the procedure will take only thirty minutes. The registration certificate is issued for an indefinite period and will lose its validity if the right of residence itself is terminated. It is important to note that EU citizens/EEA nationals cannot be expelled for failing to register, but they may be fined.

EU citizens/EEA nationals are entitled to become a permanent resident of Hungary, only after a five-year period of uninterrupted legal residence.

Working in Hungary

EU citizens/EEA nationals are allowed to be employed in Hungary without permission. However, the employer shall submit a notification in relation to the employment of such persons to the local employment office not later than on the first working day.

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LIABILITY OF THE EXECUTIVE OFFICERS ACCORDING TO THE NEW CIVIL CODE

One of the new Civil Code's endeavors is to re-think the rules governing the liability of executive officers in the light of the changed economic conditions. The executive officer is obliged to comply with the legal regulations, memorandum of association, the orders of the business association, he conducts the management individually, giving priority to the company's interests. His powers cannot be refused, nor can he be deprived of them. On one hand he is liable to the company and its members itself, on the other he is liable to third parties as well. If he causes damage with his conduct, he might be held liable according to the below.

Pursuant to the prior rules, if the executive officers of the company caused damages to third persons, only the company was liable for the damage caused. The company afterwards could - upon its own decision - turn to its executive officer with the claim for damages. However the new regulation has modified this situation. From now on not the company's liability is primary, but for damages caused to third persons the executive officers and the company have joint and several liability. Thus aside from the fact that the conduct is committed by the executive officer, the executive office and the company have joint liability. This rule can provide extended guarantee mainly to the creditors.

The new regulation brings major changes in respect of the executive officer's liability for damages towards the business association. If he infringes his obligations and causes damage to the company, he may be held liable according to the general rules on the liability for the damages caused by the breach of contract and he has to indemnify the damages which could have been foreseen. He may be exempted from liability only if he can prove that the damage was caused by a condition beyond his control and which could not have been foreseen at the time of the conclusion of the contract, furthermore the avoidance or the prevention of the

damages could not have been reasonably expected from him.

The institution of the waiver of liability certificate may serve to avoid the liability, pursuant to which the supreme body of the company upon the request of the executive officer decides on the appropriateness of the management activity from the previous business year (simultaneously with the approval of the annual financial report). If the certificate is issued, the company may not claim damages because of the breach of the executive officer's obligations, only in the case if the facts underlying the waiver of liability certificate are false or deficient.

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