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GIDE LOYRETTE NOUEL

newsletter

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BANKING & FINANCE LAW

In the previous issues of our newsletter, many articles were devoted to the new laws and judicial practice concerning foreign exchange loan agreements. The recent step in the legislative process was the adoption of Act LXXVII of 2014 (the "**HUF Conversion Act**") and Act LXXVIII of 2014 (the "**Fair Bank Act**"), both Acts entering into force on 1 February 2015.

The financial institutions must incorporate the new rules into their general terms and conditions by 1 February 2015.

The HUF Conversion Act

The main purpose of the HUF Conversion Act is to set out the rules of the obligatory conversion of all FX-based loan agreements into HUF-based agreements. The scope of the HUF Conversion Act covers all Hungarian Forint-based and FX-based credit and loan agreements and financial lease agreements which (i) were concluded between 1 May 2004 and 19 July 2014, (ii) are still existing on 1 February 2015; and (iii) in relation to which financial institutions have settlement obligations pursuant to Act XL of 2014 on the rules of settlement between consumers and financial institutions (examined in our Newsletter Addendum of October 2014).

The HUF Conversion Act differentiates between three types of agreements, as follows:

Consumer debt under (i) FX-based agreements secured by real property mortgages must be converted to HUF in accordance with the exchange rate of 308.97 HUF/EUR or 256.47 HUF/CHF. In the future, the financial institution may only apply an interest rate of 3-month BUBOR reference rate plus a limited margin. Nevertheless, consumers are entitled to opt out and remain in the FX-based structures if certain criteria are met.

In case of (ii) Hungarian Forint-based agreements and (iii) such foreign exchange- or foreign exchange-based agreements that are not secured by real property mortgages, the interest/margin may not exceed the original interest/margin of the agreement as at the date of its conclusion (with some exceptions).

The Fair Bank Act

The Fair Bank Act aims to provide consumers a higher level of protection, for instance against the detrimental amendments of their loan agreements.

Detailed provisions regulate the obligations of financial institutions concerning the information to be given to consumers prior to the conclusion of loan agreements. Banks will be obliged to show consumers, by way of representative examples, the weight of the repayment as compared with the consumer's income and the additional risks such as possible changes in interest and exchange rates. Furthermore, the most commonly used loan agreement templates must be published on the bank's website.

In addition, the bank's right to unilaterally amend the loan agreement to the detriment of the consumer will be limited. Such amendment may only happen in connection with interests, margins, costs and fees if it is allowed by law and if the parties expressly state this possibility in the loan agreement.

Costs arising in connection with services provided by third parties may only be modified if the increase corresponds to the cost increase imposed by the third party (e.g. land registry fees). Fees may be used to cover certain expenses of the bank and may only be increased once per year and by the amount of the official devaluation rate.

Loans with a maximum term of three years may only be provided either with fixed interests or with a fixed margin added to the National Bank of Hungary's (the "**NBH**") reference rate. For such short-term loans, the conditions concerning the interest cannot be modified to the detriment of the consumer. For loans granted for a period exceeding three years, creditors may raise interests or margins a maximum of five times during the loan's term and by a maximum amount of the so-called interest/margin change indicator set out by the NBH and published on its website.

Furthermore, consumers may terminate the loan agreement free of charge if the interest or the margin changes to their detriment in a new interest period.

LABOUR LAW

Recent labour law-related amendments

As of 1 January 2015, certain provisions of the Labour Code were amended by Act XCIX of 2014.

Under the previous provisions, employees had fewer days off if they missed work due to a long-lasting illness. As a result of the lobbying actions of certain employee representative bodies, under the new rule employees do not lose their right to use their entire annual amount of days off even if the duration of incapacity to work due to illness exceeds 30 days. Until this change, even courts were uncertain as to the exact consequences of the previous provision and constitutional law-related concerns also have been raised.

Another important novelty concerns employees entering parenthood. According to the new rules, upon request from one such employee, the employer must amend the employment relationship from full-time to part-time. However, this part-time employment is temporary as it may only last until the child reaches 3 years of age, or 5 years of age for employees with three children or more.

Furthermore, the protection of female executive employees has been increased in relation to the termination of their employment contracts. Until now, the employment contract of a female executive employee could not be terminated during her pregnancy and maternity leave. Pursuant to the new rule, the same protection applies for the period in which the employee is undergoing infertility treatment, but only up to six months after the startof such treatment.

As of 1 January 2015, the monthly minimum wage was increased to HUF 105,000 (approx. EUR 330) for all employees, and to HUF 122,000 (approx. EUR 390) for employees having upper secondary qualifications.

As of 15 March 2015, working on Sundays will be prohibited in the retail sector with some exceptions such as: pharmacies, petrol stations, markets, etc. As a general rule, retail sector shops may only be open between 6 am and 10 pm.

COMMERCIAL LAW

New rules seriously affecting companies in the retail sector

At the end of 2014, the Hungarian Parliament adopted the amendment of the Commercial Act in two parts, both seriously affecting companies active in the retail sector. The first amendment prohibits the operation of a retail establishment on world heritage lands and obliges companies pursuing commercial activities to stop the sale of consumable goods (i.e. food products) if they yielded no profit for two consecutive years. The second amendment restricts Sunday trading.

In line with the first amendment, retail stores currently open in the world heritage sites, such as the Andrassy street or the castle district, will be forced to close their business by 1 January 2018 the latest. A fine will be imposed on outlets still open after this date. Furthermore, as of 2 January 2016, companies will have to stop their business activities if they (i) achieved at least half their turnover from the sale of daily consumable goods, (ii) had a turnover reaching an amount of HUF 15 billion each year for two consecutive years, yet with the balance sheet profit being at zero or negative for these two years.

The new rules will greatly impact the retail sector market players, which may displace currently active operators or prevent new actors from entering the market. It is questionable therefore whether the amendments are compatible with the fundamental freedom of establishment within the EU.

The second amendment on Sunday trading is a result of a long-lasting debate on whether shops should be open or closed on Sundays. Under the currently adopted rules, from 15 March 2015 shops must close on Sundays, except for those in which the retail activity is carried out by the entrepreneurs themselves or their family members, and whose size does not exceed 200 square meters.

INTERNATIONAL LITIGATION

According to Strasbourg Court, Hungary breached the right of tobacco retail licence owners

On 13 January 2015, the European Court of Human Rights (the "**ECHR**"), located in Strasbourg, ruled in favour of Mr Vékony, an individual who brought his case before the court on the grounds of being deprived of his tobacco retail licence without any possibility of domestic legal remedy.

The Act CXXXIV of 2012 entered into force on 1 July 2013 and aimed to restrict access to tobacco for minors. As a result of the new rules, the "tobacco retail licence" became state monopoly and retailers had to apply for such licence through a tender. The tendering rearranged the market and displaced certain long-standing retailers without any justification or material compensation.

Mr Vékony had to close his family business, as within the new system he did not obtain a licence despite of having applied for one. As the decision denying his application lacked substantiated reasoning and offered no possibility of appealing against the decision, Mr Vékony turned to the ECHR to seek compensation claiming that the Hungarian State has breached his right to property.

At first instance, the ECHR, in its as yet not final decision, agreed with the arguments put forward by the applicant and - in line with its previously established practise - concluded that the provisions of the Rome Convention on the protection of property were breached by the state when it deprived Mr Vékony of his "tobacco retail licence" without compensation. The court awarded EUR 15,000 in respect of pecuniary and non-pecuniary damages and EUR 6,000 in respect of costs and expenses, to be paid within 3 months after the decision becomes final. In its ruling, the ECHR also objected to the lack of transparency and lack of possibility for remedy.

We note that the decision of the ECHR has no effect on actual law-making, as the court is only competent in individual cases. The Hungarian State is therefore not obliged to amend the applicable rules.

Nevertheless, the decision gives well-founded hope to applicants, whose similar cases are already before the court. The question of whether further applications will be accepted will depend on the approach of the ECHR. In line with the procedural rules, applications may be filed within a maximum of 6 months after the actual breach. If the law and the system qualify as a continuous breach, then further proceedings may be initiated. If the ECHR holds that the breach may be limited to one point in time i.e. the actual tendering, then no further cases will be accepted.

DOMESTIC LITIGATION

Electronic communication introduced in civil procedures

The electronic communication with authorities and courts reached a new milestone in 2015.

Until 30 June 2015, the party of a civil litigation may decide to submit pleadings and their attachments to regional courts by electronic means, provided that the lawsuit began after 1 January 2013. In such cases, all further communication with the court during the first instance procedure is to be conducted electronically. If acting through a legal representative, communication with the court shall proceed through the lawyers' online platform.

As of 1 July 2015, under the general rule, electronic communication will be mandatory for corporate entities or parties acting through a legal representative. Such parties must submit their statements of claims, other submissions and evidence to the court by electronic means only. The courts will also have to deliver all official documents to the parties by electronic means.

Since 1 January 2015, such electronic communication has already been introduced in bankruptcy and liquidation proceedings. In addition, the paper-based proceedings are changed to on-line registration procedures for certain civil organisations (such as parties, commercial chambers and sports federations).

CONTACTS

FRANÇOIS D'ORNANO
ornano@gide.com

ÁKOS KOVÁCH
kovach@gide.com

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