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## ***A brief overview of thoughts on the legal aspects of the coronavirus induced pandemic in Hungary***

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The worldwide and apparently long-lasting COVID-19 pandemic has spoiled our everyday life, unexpectedly interrupting several different areas of our economy and general business. The real economic, social and political consequences of the pandemic are still unforeseeable despite the already sustained damages, negative outcomes and restrictions. In the midst of the resulting uncertainties, it is difficult or almost impossible to navigate through the daily changing content of various relevant legal provisions and the legal interpretation practice of the state apparatus. In the following article, Moldovan & Co intends to present an outline – without aiming to give an exhaustive list – of the most actual legal questions of the pandemic, giving basic guidance in particular to managers and decisionmakers, who need to cope with the fields of the commerce, labour and company law as well as data protection matters at the same time.

### ***1. Contractual obligations in general***

As a preliminary statement we note that insomuch the content of valid contracts determines considerably the potential reactions for the current circumstances, most importantly the first step is to peruse and review these documents with due care, in which the widely known and commonly used force majeure clauses may have essential relevance.

Valid and enforceable contracts shall be performed according to their content. Effective legislation enables relief and derogations in only few cases, thus as a rule of thumb the risk of the changes in the circumstances shall be borne by the parties themselves. If in the long-term contractual relationship of the parties performing the contract under the same terms is likely to harm any party's relevant lawful interests in consequence of a circumstance that has occurred after the conclusion of the contract, the contract may be amended by the court. As it is stated in Act V of 2013 on the Civil Code, the change (i) shall have occurred after the conclusion of the contract, (ii) it could not have been foreseen at the time of the conclusion of the contract, (iii) it could not have been caused by the parties, (iv) and it shall be considered as such a circumstance that may not be regarded as normal business risks by any of the parties. The first three conditions seem to be met in the case of the coronavirus pandemic and its direct consequences, however the presence or the absence of the foreseeability depends largely on the date of the conclusion of the contract and the activity of the contractual partners. The verification of the fourth condition is more difficult and shall always be determined by considering all circumstances of the relevant case. The current disease situation may result circumstances that are beyond normal business risk, however it shall be emphasised that according to judicial practice, general market variables and the change in supply and demand shall be mainly considered as normal business risk, thus neither of the parties shall be entitled to request that the contract be amended by the relevant court successfully. Nevertheless, the newly appearing

situations may leave open the possibility for the judicial interpretation practice to change even if only in limited cases.

In accordance with the Hungarian Civil Code, any failure to perform a contractual obligation shall be considered as non-performance, which may yield way for the obligation to compensate for damages. Under the general provisions on contracts, the party which caused damage by breaching the contract shall be relieved of the liability to compensate any loss caused by non-performance if they are able to prove that the damage occurred in consequence of unforeseen circumstances beyond their control, and there had been no reasonable cause to take action for preventing or mitigating the damage. These unforeseeable and unpreventable circumstances are generally qualified as the so-called force majeure cases, in respect of which the party otherwise responsible may be relieved of their obligations.

In judicial practice, the expression force majeure means an “irresistible force” of natural or human origin, which is of absolute character, namely it generally cannot be prevented by the relevant party (on the basis of judicial discretion, unobtainability of materials, loss of workforce and restrictions, prohibitions, store closings could also be considered as force majeure). Nonetheless it is notable, that the force majeure cases could only award relief from the consequences of the breaching of the contract if these directly affect the performance of the contract, and until the impeding circumstances of the performance subsist. Under the parties’ obligation of cooperation and for the facilitation of a possible further evidentiary procedure it is recommended and also expected that the party whose performance of its contractual obligations is impeded shall notify the other party without delay thereof and of its inducing circumstances.

Another case of relief from obligations could be “frustration”, which results in the termination of the contract. The party gaining knowledge of the impossibility of performance (frustration of contract) shall immediately notify the other party thereof. The party failing to give notification shall be liable for damages originating therefrom. If performance has become impossible for a reason that cannot be attributed to either of the parties, the monetary value of the services provided before the time when the contract was terminated shall be compensated. Insofar as the other party did not compensate the monetary consideration provided for services already performed, the money shall be refunded. In these days of hardship the most frequent question we receive from clients is whether they are or may be relieved from performance under a certain agreement. It is to be investigated on a case by case basis whether the conditions of force majeure (as provided for in the relevant agreement, if provided for at all, or as generally accepted by judicial practice) are met, or if frustration of performance occurred. Different agreements and different arrangements lead to different results, and every business setup is unique in some way. A qualified legal advisor is able to help clients navigate these waters, and could help private individuals and legal entities settle their potential disputes originating from this unknown pandemic episode with their contractual partners.

## **2. Labour law and data protection**

One of the most important labour law related questions raised as a result of the current situation is how the employment relationship could be maintained between the employer and the employee without significant violation of the legal interests of either of the parties. The most obvious solution seems to be working from home (home office), provided that the nature of the job function makes this possible. The main rules of home office were elaborated by judicial practice by defining how it differs from the so-called teleworking regulated in the Labour Code. Of course, it is recommended in case of home office to lay down such in-house regulations which guarantee the data security and the confidentiality of business secrets. If however the personal presence of the employee is indispensable, the employer shall be obliged to ensure the occupational safety and health requirements and to develop the related data handling processes.

The employer is reasonably expected to implement a so-called pandemic or business continuity action plan including the prevention steps and measures applicable in case of infection, as well as to elaborate detailed information connected to the infection for the employees, and to restructure its business operation to suit the present viral crisis. The employer may – in line with the opinion of the Data Protection Authority – record (or collect on a questionnaire) the date of notification, the personal data proving the personal identity of the employee and the form of getting in contact with the coronavirus (e.g. staying abroad, contact with persons returning from abroad) and the response measures taken. The related notification obligation of the employee can be deduced from the duty of cooperation of the parties, as well as the requirement of good faith.

It is always the data controller who shall bear responsibility for the lawfulness of data processing. The employer ordering screening tests regarding its employees by applying questionnaires or the doctor providing medical care act as data controllers. Only a doctor shall be entitled to carry out the screening test regarding the employees, and exclusively the result of the test can be forwarded to the data controller demanding the information on a justified basis.

When organizing the data processing, especially the processing of personal (sensitive) data, it is of primary importance to ensure the compliance with data protection principals. It is essential that the data processing is justified only in so far as the certain purpose would not be achievable without the recording of personal data. The implementation of essential hygienic measures ensuring the occupational safety and health requirements by the employer, e.g. the regular use of disinfectants during the work process and the more thorough and increased cleaning of the workstations and offices can be an efficient solution not requiring the processing of personal data.

## **3. Corporate law**

The proclaimed emergency has also rendered the daily operation of several business organizations impossible, along with posing significant impediments to strategic decisionmaking. Accordingly,

the recent government decree No. 102/2020. (IV. 10.) on the applicable provisions on the operation of partnerships and joint stock companies (Decree) offers flexible operating conditions during the emergency.

In cases where, despite the restriction of leaving home, the decision-making body or the sole shareholder (founder) of the company is not prevented from making decision, for example operation of companies with a sole shareholder, public limited liability companies with a sole shareholder, companies with shareholders living in the same household, the special provisions of the Decree shall not be applicable as these provisions are not necessary in connection with social distancing and the operation of these bodies may continue without limitations as usual.

There are two options that may be followed instead of the customary personal participation that is now limited: (i) holding meetings via electronic devices or, (ii) upon the initiative of the management, the decision-making may take place without holding a meeting if it is not prohibited by the legal provisions applicable to the particular entity. As it is provided for in the Decree, these options are to be followed even if they are not specified in the deed of foundation of the legal person or regulated otherwise.

If decision-making may not take place either online or in writing, the executive officers of the legal person shall, with certain restrictions, decide in urgent matters normally falling into the competence of the supreme body but (i) required for maintaining the legal operation of the legal person, (ii) necessary for handling the situation arisen from the emergency and (iii) arising out of reasonable and responsible financial management that may not be postponed. These decisions however shall be included in the agenda of the extraordinary meeting for posterior approval to be held within 90 days of the termination of the emergency situation. Furthermore, the Decree lays down different rules for certain types of cases and company forms.

#### **4. Online attorney services**

Countersigning of documents and identification of clients do not require personal presence at the office. The applicable laws make it possible for the attorney, via software audited by the Hungarian Chamber of Attorneys, to countersign distance agreements and declarations already executed by the parties. Real property sale and purchase agreements, real property gift agreements, agreements affecting beneficiary right of a real property require countersigning by an attorney as well as documents in relation to business organizations and companies, articles of association, deed of foundation i.e. foundation and modification of a company and also, among others, marriage asset contracts.