Tax&Legal Highlights

Lithuania

Lithuanian Supreme Court emphasized the importance of companies' obligation to disclose registered seat information to the Commercial Register (JAR)

On 3 January 2018 the Lithuanian Supreme Court (the Court) has, in the civil case No 2-68-3-08960-2016-1, assessed the importance of information on the legal persons' registered seat in the JAR to the delivery of procedural documents during the court proceedings.

Paragraph 2 of Article 122 of the Code of Civil Procedure states that all procedural documents have to be delivered to the legal persons at the address registered with JAR, unless the legal person indicates another delivery address or documents are being delivered via e-channels. The Court has emphasized that such regulation on the delivery of procedural documents to legal persons is based on the nature of legal persons and the principle of disclosure of information on incorporation and registration of legal persons with the JAR.

The Court found that the above-described legal regulation sets an obligation upon legal persons to disclose the key information set by laws to the JAR. One of the essential elements of information registered with the JAR is the data on the legal person's seat (its address). Information on the legal

person's seat is of significant importance, since it ensures the possibility of contacting the legal person, and also helps securing the interests of creditors.

The Court has also noted that a legal person not only has to disclose information to JAR but also ensure the possibility of accepting the procedural documents as well as other correspondence at the address of the seat. Failure to disclose the information on its actual seat to JAR means that a legal person deliberately assumes the risk of not being notified on the ongoing court proceedings and waives its right to be heard.

Considering the above-described case law, which emphasizes the importance of information on legal person's registered seat in the JAR, legal persons should verify that data on their registered seat submitted to JAR is up-to-date and, if necessary, take measures to update the data as well as ensure the possibility of accepting the procedural documents and other correspondence at the address of the registered seat.

The Court clarified what information can be treated as confidential during public procurement

On 4 January 2018 the Lithuanian Supreme Court (the Court) adopted a ruling in a civil case No e3K-3-16-378/2018 (the Ruling) on the concept of confidential information in the public procurement.

In the Ruling the Court has reminded of its previous clarifications on the different categories of confidential information based on its nature and importance:

- Trade secrets is one of several types of confidential information, as the legal category of confidential information is broader than that of trade secrets;
- Information which does not fall under the category of trade secrets may fall under the scope of definition of confidential information and thus be protected;
- Data, constituting the content of confidential information, is not always deemed to be trade secret.

In the light of the above, the Court has further clarified, that the supplier's right set in Article 6 of the Law on Public Procurement to protect the non-public information specifically indicated in the tender offer covers only such data that qualifies as a trade secret. This means that only the protection of the most important and commercially sensitive information may be based on the purposes of regulation of public procurement legal relations. The mere fact that certain information related to the supplier and its activities is normally not easily available does not mean that it also has to be protected in the procedures of the public procurement, unless it corresponds to the concept of a trade secret.

When defining the concept of a trade secret the Court has, in its previous case law, clarified that to be deemed as a trade secret, the information has to meet the following criteria: 1) the information has to be secret (non-public); 2) the information must have a real or potential commercial (trade) value for not being known to third persons and may not be easily available; 3) the information has to be secret due to the wise efforts of its owner or other person to whom the information was entrusted by its owner. Therefore,

only such information that conforms to the above-discussed criteria can be considered confidential and protected in the context of public procurement.

New case law on seller's duty to guarantee the quality of the product and on the protection of buyer's rights

On 7 February 2018 the Lithuanian Supreme Court (the Court) has, in the civil case No e3K-3-5-915/2018, examined the obligations of the seller during the product's warranty period and other questions, related to consumers' remedies.

The Court found that the laws do not require the defect of the product to be apparent at the time of its transfer to the buyer – it is sufficient that at that time there are reasons for the defect to emerge or occur in the future during the warranty period. This is especially relevant in the context of complex and technologically sophisticated goods, since it may take more time for their defects to expose.

The Court has also emphasized that the current legal regulation foresees the presumption of seller's liability for the quality of the sold goods, which may only be denied if the seller proves that the defects of the goods have occurred due to improper use of the goods by the buyer, third party fault or force majeure. Furthermore, in this case the Court has formed an important rule on the burden of proof, according to which the buyer's breach of the rules on the use or storage of the good eliminates seller's liability. Such breach has to be proved by the seller, though. When examining the questions related to the remedies of the consumers, the Court has ruled that even the non-essential defects of the goods may serve as a proper ground for the consumer to terminate the contract and request for repayment of the product's price. As the laws do not provide for the hierarchy in the legal remedies that may be taken by the consumers, the consumer is free to choose the most appropriate legal remedy established by laws, insofar as this does not conflict with the principle of proportionality. The question whether the remedy chosen by the consumer meets the principle of proportionality is decided by court on a case-by-case basis.

The Lithuanian Supreme Court: tenant's right to renew the lease is not imperative

On 7 February 2018 the Lithuanian Supreme Court (the Court) has, in its civil case No e3K-3-23-611/2018, ruled on the interpretation and applicability of legal provisions governing tenant's pre-emptive right to renew the lease agreement.

The Court found that the article of the Civil Code establishing the tenant's right to renew the lease agreement entitles the tenant to use its pre-emptive right against third persons to conclude a new lease agreement with the same lessor rather than sets an additional protection to the tenant. This means that the tenant may as well choose not to use such right of his. He can do this not only at the expiration of the lease agreement but also at the time of its conclusion, by setting a waiver in the agreement itself.

Considering the above, the Court has formed the following rule on the interpretation of law: a tenant's pre-emptive right to renew the lease agreement is not imperative, therefore, the parties are free to negotiate and to agree in advance that the tenant waives his pre-emptive right to renew the lease agreement.

New disclosure obligations for partnerships

Partnerships will have to disclose information on their partners to the administrator of the information system of stakeholders of legal persons (JADIS).

On 1 June 2017 the amendments to the Law on Partnerships were adopted, based on which general and limited partnerships will have to submit to the administrator of JADIS information on the partners of the partnership, the amounts (in case of monetary contributions) or value (if contributions are non-monetary) of their contributions as well as dates when a partner joined and left the partnership. The above data will have to be submitted within 5 days after registration of the partnership or, respectively, change of the data. Liability for submission of the above-listed information to the administrator of the JADIS will lie with the general partners appointed to perform the duties of management bodies.

New rules will come into effect as of 1 January 2019. Partnerships established by 31 December 2018 will have to submit the data to the administrator of JADIS until 31 August 2019 (if the data has not changed from 31 December 2018 to 30 June 2019).

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