



## Tax and Legal Newsletter

April 2018

Audit and consulting company, Deloitte Lithuania, is glad to introduce you with Tax and Legal Newsletter. In this edition, you will be presented with the latest tax and legal news prepared by our Managers from Tax and Legal Department.

## Legal News

### **Deloitte Legal has announced the results of the fourth international dismissal study**

The study examines procedures of employment termination upon initiative of the employer in 45 countries and provides the employers with a forecast of potential dismissal costs.

According to the study, after 1 July 2017, the date of when the Labor Code came into force, Lithuania is no longer considered as one of the countries where employers incur the highest employment termination costs. Evaluation of different scenarios and countries showed that Lithuania is the 22<sup>nd</sup> most expensive country out of 35 in cases of employment termination without the fault of an employee and 20<sup>th</sup> most expensive country out of 30 in cases of employment termination based on employer's will.

More information about the survey is available [here](#).

### **The European Commission has announced a corporate law reform**

On 12 April 2018, The European Commission launched proposals related to activities of companies in the European Union. The reform aims to simplify the establishment of companies in all Member States of the European Union by creating the possibility to establish companies digitally and making an easier way of companies transfer from one Member State to another.

It is planned that digital creation of companies will reduce the cost of establishment for more than three times and will take twice less time than the registration of a company in paper format. The reform requires to enable businesses from another Member State to establish a company without a physical presence in the chosen state. The aim is to broaden the scope of information provided free of charge, to increase its availability in search using authenticated processes and to create opportunities for increased usage of other business-friendly languages. Moreover, the movement of companies between Member States is simplified. The reform harmonizes the conditions under which different legal entities are merged, divided or their legal form is changed.

More information is available [here](#).

### **The relation between personal data and a company's interest has been clarified**

On 20 April 2018, the Supreme Administrative Court of Lithuania adopted a ruling in administrative case No. A-622-525/2018 and analysed the relation between personal data and a company's interest.

During the internal investigation of the company's management activities, computers, along with personal correspondence and children photos, were taken. Managers did not have the opportunity

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to erase the information. The content was accessible not only for the investigators, but also for the third parties.

The Supreme Administrative Court of Lithuania has made it clear that the company's interest in conducting internal investigations was more important than the personal data. The court ruled that the personal data was stored in professional computers by the own risk and managers, according to the nature of their positions, had to know that professional email could be monitored by the employer. The court stated that the formal notice of professional email monitoring at work is not necessary if it is proven that an employee shall understand about it taking into account the nature of his/her position. This case is relevant to the General Data Protection Regulation coming into force on 25th May, by which it is mandatory for an employee to be informed in writing about data processing.

More information is available [here](#).

### **An employee who continues to work after termination of the employment contract must prove the existence of an agreement on the remuneration of work**

On 11 April 2018, The Supreme Court of Lithuania in civil case No. 3K-3-135-248/2018 examined the situation when an employee was offered to continue work after termination of the employment contract. The employee has worked for 2 months, but this work has not been properly formalized and paid.

The court stated that an employee who continues to work after termination of the employment contract shall reach an agreement on the remuneration of relationship, amount of remuneration, payment terms and other conditions. In the present case, there was no agreement on specified conditions, the employee also did not apply for payment during the specified period and indicated that she continued to work for personal development. On this basis, the court concluded that the parties had agreed on unpaid services, which in their essence represented the characteristics of volunteering.

More information is available [here](#).

### **The court stated that an employee should pay compensation for the disclosure of commercial secrets**

On 13 March 2018, in the case No. 2K-101-628/2018 investigated by the Supreme Court of Lithuania, the company's employee by using Skype's chat program revealed the company's commercial secret to the competing company: customers, transportation routes, freight carriers, consignors and consignees, forwarding prices. The employee's contract of employment provided for the employee to ensure the confidentiality of all information received during the work. Due to these actions, the company has not received about EUR 42k of profit.

The employee indicated that the information provided to third parties could not be considered as commercial secret, because the

company did not have a list of commercial secrets, with which she would have been able to familiarize. The court clarified that the employee's obligation to protect commercial secrets originated from the contract of confidential information concluded with the company. The fact that the information provided to third parties was publicly available does not invalidate the information's commercial value for the company's business.

In addition, proving the relation between damages and the causal link may also be based on indirect evidence. It is important that the facts and findings would be interconnected in a coherent and logical chain. In this case, the court recognized the following data obtained from the employee's computer as evidence: correspondence from Skype and e-mail, Word, Excel and PDF documents.

More information is available [here](#).

### **The rent for the state-owned land shall also be paid for the unformed land plot**

On 2018 March 26, the Supreme Court of Lithuania in the civil case No. 3K-7-49-1075/2018(S) clarified Article 22 of the Law on Land Reform. The court indicated that the rent for the state-owned land shall also be paid in cases where there is a usage of a state-owned land plot, which is not formed in accordance with the procedure established by legal acts and is not registered in the Real Property Register, and no lease contract has been concluded between the lessee and the state. The amount of the rent for the state-owned land is determined taking into account the size of the actual land plot used. There is no need to pay rent if the land is used on a lending basis.

More information is available [here](#).

### **Adult children and their parents are no longer considered as related persons involved in the purchase of agricultural land**

On 26 April 2018, the Parliament of Lithuania adopted amendments to the Law on Acquisition of Agricultural Land. From now on, married couples as well as parents and their minor children will be considered as related persons involved in the purchase of agricultural land. Adult children and their parents will no longer be considered as related persons.

More information is available [here](#).

### **The lease contract of the state-owned land leased without an auction may be terminated if a state-owned land plot is used not according to its purpose**

On 2018 April 9, the Supreme Court of Lithuania examined a civil case No. 3K-3-133-219/2018 in which the lessee of the state-owned land did not use the land for 23 years. The court clarified the rule that a state institution must consider termination of the lease contract of the state-owned land leased without an auction if a lessee uses the building or the state-owned land not according to its

purpose or does not actually use the land for an unjustifiably long period.

The lease contract of the state-owned land may also be terminated if the owner of an unfinished building located in the state-owned land does not obtain a building permit for an unjustifiably long period and does not start construction works; the structure is damaged and cannot be used according to its purpose; during the period of validity of a building permit, the owner does not start or does not complete construction works without justified reasons.

More information is available [here](#).

### **The court ruled on the principle of loyalty of the head of a company**

On 28 March 2018, the Supreme Court of Lithuania in case No. e3K-3-96-611/2018 examined the situation in which the CEO performing his professional duties was also engaged in individual activities and provided the same services as the company. In the course of his individual activities, the CEO used the resources of the company.

The court stated that the CEO should give priority to the interests of the company and avoid a situation when personal interests are in conflict with the interests of the company. If a CEO wants to be engaged in the same activities in which the company operates or to use the company's property or possibilities to enter into transactions personally, then the CEO must prove that such actions are beneficial for the company or must obtain a consent of the shareholders. The consent may be implied, for example, if the shareholders knew about the CEO's individual activities, but did not take any actions. In the absence of a consent, shareholders can apply for damages.

More information is available [here](#)

### **An investigation of the legal entity's activity cannot be initiated if the company is on the bankruptcy process**

On 6 April 2018, The Supreme Court of Lithuania resolved the case No. e3K-3-132-421/2018, in which the shareholder filed a lawsuit regarding the investigation of a legal entity's activity two months after the bankruptcy process was started.

During the bankruptcy process, the bankruptcy administrator checks the transactions of the company, implies claims for invalidity of the transactions and compensation for damages, determines the suitability of the activities and the persons liability for the mistakes made, etc. The court pointed out that, according to actions of the bankruptcy administrator, the goals of the investigation of the legal entity's activity institute are reached and, therefore, it is impossible to initiate the investigation of the legal entity's activity to a company, which is on bankruptcy process.

More information is available [here](#).

## **The Centre of Registers informs about the development of a virtual company's prototype**

The Centre of Registers has announced that the virtual company will be developed - the concept of such company will be constructed, required legal changes, competences and structures necessary for the implementation will be clarified.

Virtual companies will be subjects of Lithuanian jurisdiction and will have to pay taxes in Lithuania without the obligation to submit financial statements. The aim is to create a legal form that allows to fully develop the blockchain and DLT (*Distributed Ledger Technology*) technologies in Lithuania. The main innovation would be the transition to a legal entity's (virtual company's) stock market based only on blockchain technology. The Center of Registers has already begun drafting legislative amendments which should be considered in 2019.

More information is available [here](#)

## **The Parliament of Lithuania approved the amendments on the Law of Payments and other laws implementing PSD2 (2nd Payment Services Directive)**

On 17 April 2018, the Parliament approved amendments on the Laws of the Republic of Lithuania on Payments, Payment Institutions, Electronic Money and Electronic Money Institutions and related Laws of Bank of Lithuania, Consumer Rights Protection, Financial Institutions, Banks, Central Credit Unions and Credit Unions, implementing the European Parliament and Council's Directive (EU) 2015/2366 of 25 November 2015 on payment services in the internal market amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010 and repealing Directive 2007/64/EC (PSD2).

By amendments listed above, two new payment services are provided - the initiation of payments (allowing the user to initiate a payment from an account opened by another payment service provider) and an account information service (allowing information about opened accounts in several institutions). The payment service provider will have to establish risk mitigation measures and control procedures. The amendments provide for additional requirements for entities seeking access to licenses of payment or electronic money institution. The amendments simplify the management structure of the payment and electronic money institution - the supervisory board and the management board will not be obliged. The aim of these and other legislative changes is to increase the payment market development and competition, develop fintech and other innovations, improve payment security and consumer protection.

The earliest date for the entry into force of the amendments is 1 August 2018. Other amendments will come into force in one or one and a half of year.

More information is available [here](#), [here](#) and [here](#).



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