

CHANGES ENHANCING THE PROTECTION OF EMPLOYEES AGAINST UNLAWFUL NON-PAYMENT OF EMPLOYMENT REMUNERATIONS AND COMPENSATIONS BY THE EMPLOYER

In State Gazette № 102/22.12.2017 important changes were promulgated in a number of legal acts which aim at a more effective protection of employees against unlawful delay and non-payment of employment remunerations and compensations by the employers, as well as at the prevention of employers' practices for evading such payments. Most of the changes enter into force on 22.12.2017.

CHANGES TO THE LABOUR LEGISLATION

- **Introducing a deadline for payment of compensations in cases of employment agreements termination**

The employer shall be required to pay the compensations owed to the employees in cases of termination of the employment agreement no later than the last day of the month following the month during which the agreement is terminated. Failure to pay in time results in additional liability for statutory interest.

- **Mandatory instructions by the labour inspectorate control bodies**

The "General Labour Inspectorate" Executive Agency ("GLI") shall be entitled to give mandatory instructions to employers for payment of outstanding employment remunerations and termination compensations. A copy of the instructions is to be provided to the employee upon his request. The instructions can be provided by GLI until the time the employee files a claim before the court.

- **More favourable provisions regarding the employees' right to guaranteed receivables in the event of employer's insolvency**

Further to the changes the receivables of current and former employees of insolvent employers shall be guaranteed regardless of when their employment agreement has been terminated. The period serving as a basis for calculation of the guaranteed receivables is increased from 12 to 36 calendar months prior to the registration of the resolution for the insolvency proceedings opening.

CHANGES TO THE CIVIL PROCEDURAL CODE

Under the previous procedure, in order to obtain an enforcement title against the employer, the employee had to sue the employer and have him ordered by the court to pay any outstanding remunerations and compensations. Pursuant to the new rules the mandatory enforced instructions of the GLI to the employer for payment of any outstanding amounts under an employment agreement which have been delayed more than two months will be considered grounds for issuing an immediate payment order and a writ of execution. Given also that any objection by the employer to the payment order shall not suspend the execution proceedings, unless he provides sufficient collateral for the employee, the execution proceedings against the employer become a lot faster and easier.

CHANGES TO THE COMMERCIAL ACT**▪ Prohibition on transfers of enterprises and sales of shares in case of outstanding liabilities to employees**

The changes aim to prevent companies with accumulated employment liabilities from transferring their enterprises or shares to other companies, thus stripping the debtors from any assets from which the employees' claims can be satisfied during execution proceedings.

Pursuant to the amendments if there are any outstanding remunerations, compensations and social security payments in favour of employees, including those whose employment agreements have been terminated up to three years prior, then:

- the enterprise as a going concern can only be transferred after the transferor (or the buyer, if explicitly agreed) has paid any due amounts to the employees.
- a transfer of shares cannot be carried out.

It is still unclear how the above circumstances will be evidenced before the Commercial Register in the course of the transfer of enterprise or sale of shares registration proceedings.

▪ Non-payment of employment remunerations as grounds for initiating insolvency proceedings

As of 31.03.2018 the following important changes concerning the insolvency proceedings will enter into force:

- a) in case the employer fails to pay the employment remunerations to at least one third of the employees for more than two months, he shall be considered insolvent and insolvency proceedings can be initiated against him. A request for initiation of insolvency proceedings can be submitted by the GLI.
- b) Employees' receivables under existing employment agreements or agreements terminated up to 6 months prior to the registration of the court resolution for initiating insolvency proceedings in the Commercial Register, are entered *ex-officio* by the insolvency administrator in the list of approved claims. Such employees also vote separately on the stabilization plan, if one is proposed.

CHANGES TO THE PUBLIC PROCUREMENT ACT

The following new grounds for removal from participation in public procurement procedures have been introduced:

- lack of written employment agreement between a participant in the public procurement procedure and an employee of his;
- failure to submit a notification for a concluded employment agreement to the National Revenue Agency, or to present a copy of the notification to the employee, as well as making the employee commence work before submitting the notification;
- failure to pay any due compensation in time.

The above circumstances can be evidenced by mandatory instructions of the GLI and the participant in the public procurement procedure can prove his reliability by paying all outstanding remunerations and compensations. The GLI verifies the grounds for removal of participants as well as their payment of outstanding remunerations.

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