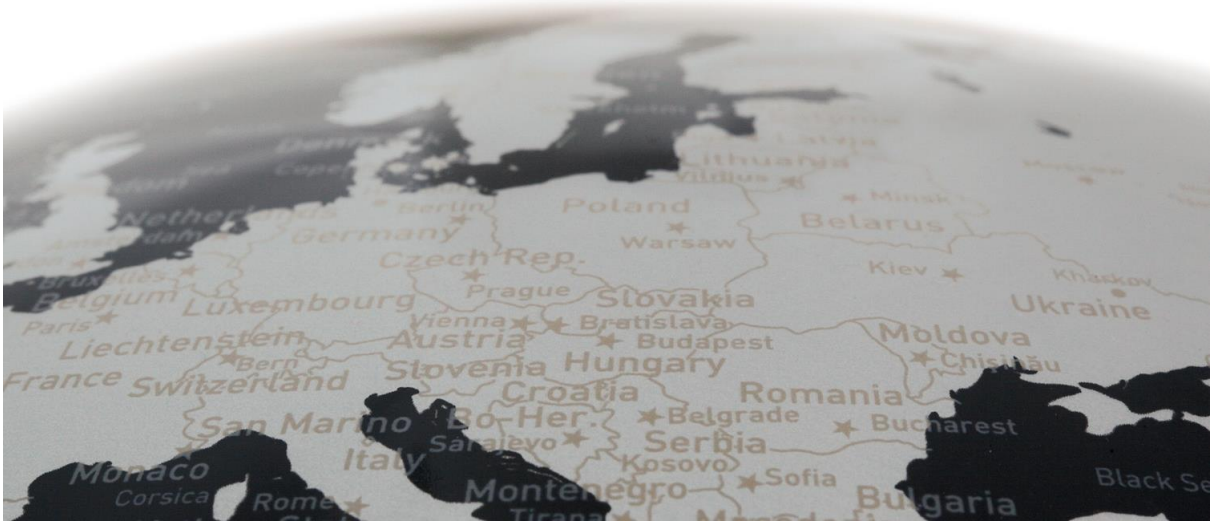
CHSHCEE Newsletter



Keep up to date with the latest legal developments in Austria, Belarus, Bulgaria, the Czech Republic, Hungary, Romania and the Slovak Republic with our CEE newsletter.

Austria

New legal framework for civil law partnerships

Thomas Zivny provides an overview of the new legal framework applicable to civil law partnerships in Austria. **>> Read full article**

Belarus

Eurasian Economic Union

Sergei Makarchuk explains how the Treaty on Eurasian Economic Union, which entered into force on 1 January 2015, represents a new step towards integration between Belarus, the Russian Federation and Kazakhstan. **>> Read full article**

Bulgaria

Recent case-law of the Supreme Court of Cassation

Boyko Guerginov highlights some of the most important decisions in the recent case-law of the Supreme Court of Cassation that aim to harmonise and unify court practices. **>> Read full article**

Czech Republic

Changes to real estate taxation

Petr Kališ focuses on the most important changes to real estate taxation, which came into effect during implementation of the new Czech Civil Code. **>> Read full article**

Hungary

New legislation affecting retail chains

Péter Szajlai and László Krüpl discuss recent amendments to the Act on Commerce and other legislation affecting international retail chains with operations in Hungary. **>> Read full article**

Romania

New regulation regarding work inventions

Mirela Nathanzon analyses the new Romanian legal framework that regulates the relationship between employees who create inventions and their employers. **>> Read full article**

Slovak Republic

Whistleblower Protection Act

Jozef Bannert analyses the new rules relating to whistleblowing in Slovakia that came into effect on 1 January 2015. **>> Read full article**

The new legal framework for civil law partnerships in Austria

The civil law partnership (*Gesellschaft nach bürgerlichem Recht*) is widely used in Austria even though in most instances its partners would not necessarily be aware of the fact that they have actually formed such a partnership – not to mention that in most instances partners would not even be aware of the legal consequences resulting therefrom. Partnerships of at least two legal entities are formed for project work, ad hoc partnerships, among lenders providing syndicated loans and so forth. There is substantial case-law where – occasionally to the surprise of those involved – Austrian courts have ruled that a partnership was formed.

The regulations applicable to civil law partnerships have been enshrined in the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) since 1811. Recently, there has been widespread academic discussion, followed by a revision of the Austrian Civil Code, which entered into force on 1 January 2015. It was imperative to revise the previous regulations given their outdated and fragmentary nature. The following provides an overview of the new framework and – given the lengthy and detailed regulations that now exist – only highlights specific aspects.

To begin with, the Austrian legislator has not changed the dispositive character of the legal framework provided for in the Austrian Civil Code. Hence, the civil law partnership can be adapted to the needs and requirements of its partners. A partnership may be established for any legally permissible purpose. Limitations provided for in specific laws (e.g. those relating to banking, health care providers, etc.) need to be observed and limit the relevance of the partnership.

The partnership does not qualify as a legal entity but is merely an "internal" organisation (even though the law differentiates between purely internal and external partnerships) and is also not registered. It is, therefore, not possible to contract with such a partnership (in comparison to an open partnership (*Offene Gesellschaft*) under Austrian law), but instead a contract is concluded with each of its partners. In the absence of any contractual limitations (agreed with a third party), this leads to the unlimited liability of each of its partners. The civil law partnership is also not able to own property. Any property would be held by its partners directly. Importantly, any property transferred by a partner to the partnership will, in cases of doubt, be qualified as a transfer of such property to co-ownership of its partners. It is, therefore, recommendable to draw up a partnership agreement to regulate asset ownership and, at least internally, the responsibility for the liabilities of the partnership.

The partners represent the partnership individually during the ordinary course of business. Any matters that fall outside of such scope require a unanimous decision of the partners. As it may be difficult to ascertain the difference between an ordinary and an extraordinary course of business, contract partners should either ask for a unanimous resolution or have all the partners sign an agreement.

In practice, civil law partnerships are frequently reorganised into either open partnerships (*Offene Gesellschaft*) or partnerships with limited liability (*Kommanditgesellschaft*). In both instances, assets and liabilities attributable to the partnership would be transferred by universal succession. Any assets not included in an asset register would continue to be held by the partners in co-ownership.

A transfer of a partnership interest, the accession of a new partner or the exit of an existing partner are now governed by provisions of the Austrian Civil Code that are more detailed in nature. Any of these changes requires – failing any specific regulation in the partnership agreement – the consent of all partners. Basically, a new partner would – depending on the shareholder agreement – become co-owner of assets and share the liabilities (provided the new partner accedes to the underlying agreements), whereas an exiting partner would transfer his share in the assets to those partners continuing the partnership.

Specifically, any real estate would require that applications for registration be made. Third parties may, however, contradict the change in a partnership within three months of being informed. In such an

instance, the contractual relationship with the exiting partner is retained. Any partners leaving a civil law partnership continue to be liable for those obligations which arose throughout their partnership for a period of five years, provided the liability matures within such period. Otherwise, the three years statute of limitations period applies.

The dissolution and liquidation of a civil law partnership has been aligned with the Austrian Commercial Code's (*Unternehmensgesetzbuch*) regulations for open partnerships. In a nutshell, a unanimous decision of the partners and settlement of all liabilities is required.

Finally, partners are not obliged to provide capital contributions in addition to what they have agreed under a partnership contract. However, the partners may by majority vote agree on such contributions if the partnership may otherwise not be continued. Any partner voting against such a resolution or not providing such a contribution may exit the partnership or may be excluded by court decision. It remains to be seen how these rules are used in practice and how partnership agreements are being adapted.

Return to top

For more information

Dr. Thomas Zivny, LL.M.
Partner
Austria
thomas.zivny@chsh.com
Tel: +43 1 514 35 131

CHSHCEE | Belarus

Eurasian Economic Union

On 9 October 2014, the Parliament of the Republic of Belarus ratified the Treaty on Eurasian Economic Union (the "Treaty"). It entered into force on 1 January 2015. This represents a new step towards integration between Belarus, the Russian Federation and Kazakhstan, which follows in the wake of the establishment of the Customs Union and is aimed at strengthening mutual economic relations between these states.

Unified Customs Rules

One of the most important achievements of establishing the Eurasian Economic Union is the creation of unified customs rules that simplify trade between parties to the Treaty (the "Parties") as well as trade between the Parties and third countries.

In particular, the Treaty provides that trade with a third country is subject to the requirements of the General Agreement on Tariffs and Trade (GATT 1994) on a most favoured nation basis if this is envisaged by the mutual agreement of the Eurasian Economic Union (the "Union") and such third country or any Party and such third country. Bearing in mind that Russia is a member of World Trade Organization, all Parties are subject to GATT 1994. However, the free trade regime established by GATT only applies to trade with a third country upon the agreement of the whole Union and such third country.

Moreover, the Parties agreed to eliminate most obstacles to mutual trade, including customs fees and duties, and they also jointly agreed to establish a unified internal commodities market.

Unified Economic Policy

The Treaty also obliges the Parties to harmonise national regulations in certain economic areas. In particular, the Parties agreed to implement a unified policy with respect to the following:

- Currency regulation;
- Regulation of financial markets;
- Antimonopoly rules and regulation of natural monopolies;
- Regulation on financing for industrial and agricultural sectors;
- Energy sector regulation and in some other areas.

The Parties also agreed on a unified policy with respect to the service sector. In particular, service providers domiciled in the territory of one Party shall enjoy the regime of the most favoured nation on the territory of the other Parties. Moreover, the Parties agreed to consolidate certain areas of services. The list of such areas will be approved by the Supreme Council of the Union. In such case, service providers of each Party could enjoy the national regime irrespective of where they are domiciled.

Another important provision of the Treaty relates to the free movement of the labour force. In a nutshell, the citizens of Belarus, the Russian Federation and Kazakhstan are entitled to be freely employed anywhere in the territory of the Union without any restrictions whatsoever. Work permits are no longer required irrespective of the provisions of national law.

Summary

In general, it is expected that the Treaty will liberalize the markets of all Parties including Belarus, as well as provide for unified and transparent business rules within the entire territory of the Union. Moreover, gradual implementation of unified rules and regulations will facilitate an improvement of the investment climate in Belarus because it will be possible for companies registered in Belarus to have unlimited access to the large markets of both the Russian Federation and Kazakhstan. Thus, the Treaty is welcomed by the local business community.

Return to top

For more information

Sergei Makarchuk, LL.M.
Managing Partner in Belarus, Advocate
Belarus
sergei.makarchuk@chsh.com
Tel.: +375 17 2663417

CHSHCEE | Bulgaria

An overview of recent case-law of the Supreme Court of Cassation

In order to harmonise and unify court practices, the Bulgarian Supreme Court of Cassation recently rendered several decisions on the interpretation of law. The following is an overview of some of the most important decisions.

Delay penalty under the Obligations and Contracts Act

The Supreme Court has harmonised what was until recently an inconsistent practice relating to the question of whether a penalty for late performance is due (when such a penalty is contractually agreed) in cases where a contract has been rescinded by one of the parties on account of the other party's default. The Supreme Court has ruled that in such cases the rescinding party (the party not in default) is only entitled to a penalty for full non-performance (if stipulated), and not to an additional penalty for late performance (even if this is stipulated in the contract). Further, the Supreme Court

stated that a penalty for delay could be due even if the contract is cancelled, with respect to contracts requiring continuous or periodic performance, in relation to possible delay prior to contract cancellation (since in such cases the cancellation has no retroactive effect).

Privatization Act

The Supreme Court has ruled on the interpretation of a controversial provision of the former Privatization Act (which is still applicable to a number of earlier privatization contracts), according to which upon privatization, the creditors of an enterprise subject to privatization shall within six months of the announcement of the decision to privatize the enterprise notify the privatization authority of the creditors' claims against the enterprise. Should it fail to do so, the creditors' claims will not be enforceable. The Supreme Court has ruled that this provision must be interpreted more widely, so that a creditor who failed to notify the authority of its claim only forfeits the claim if the claim has actually remained hidden as a result of the creditor's lack of notification.

Stay of proceedings under the Code of Civil Procedure

The inconsistent court practice was related to the question of which courts are entitled to order a stay of proceedings when the subject-matter is affected by proceedings pending before the Supreme Court on the interpretation of law. The Supreme Court has ruled that in such cases only the Supreme Court should have the power to stay the proceedings before it (until the interpretative decision is rendered), whereas the lower courts are not allowed to order a stay of proceedings.

Enforcement procedure (payment orders)

The Supreme Court has ruled on the interpretation of the provisions related to payment orders, which play a significant role in enforcement under Bulgarian law. Enforcement through payment orders was introduced in 2008, and since this was a completely new concept under Bulgarian law, court decisions have given rise to considerable inconsistency in a number of respects over the past six years. The decision of the Supreme Court, aiming at making court practices consistent, covers more than 30 separate questions, including in relation to the type and criteria of claims eligible for enforcement through payment orders, applications with respect to guarantors of the debtor and legal successors of the creditor, various issues concerning promissory notes, and the implications of the enforcement of bank loans in default, etc.

Return to top

For more information

Boyko Guerginov
Managing Partner
Bulgaria
boyko.guerginov@chsh.com
Tel.: +359 2 401 09 99

CHSHCEE | Czech Republic

Changes to real estate taxation in the Czech Republic

The new Czech Civil Code, which entered into force on 1 January 2014, introduced many important changes to Czech private law. In this context a number of new and/or amended tax laws came into effect. One of them was Act No. 340/2013 Coll., on real estate transfer tax (hereinafter "RETTA"). This law fully replaced the original law on inheritance tax, gift tax and real estate transfer. Here we focus on the most important changes introduced by RETTA with regard to business issues.

Changes relating to the scope and subject of taxation

In comparison with the previous rules, RETTA provides a much more specific definition of which real estate transactions may be subject to real estate transfer tax. The following are subject to real estate transfer tax: the acquisition of land, buildings, utilities and units, provided they are located in the Czech Republic. On the contrary, share deals – i.e. the transfer of business interests belonging to the company which owns the real estate – are not subject to real estate transfer tax.

Changes to tax exemption

RETTA has not introduced changes regarding the exemption from taxation for the initial acquisition of newly-built immovable property against payment of a consideration. Therefore, RETTA still exempts buyers from paying tax on the initial acquisition of a newly-built house or a flat in a newly-built block of flats or in such part of the block of flats – originated through reconstruction or development (if the flat does not include any other non-housing space than garage, cellar or pantry that is used with it). The exemption also applies to the initial acquisition of a piece of land and construction rights if a part of it is a newly-built family house. However, the exemption does not include the acquisition of a block of flats if bought as a whole.

The acquisition of ownership is exempt from taxation only if it occurs within five years of the first moment of possible usage of the realty in accordance with Act No. 183/2006 Coll., on town and country planning and building regulations (usually since the final building inspection/use approval). Anyone can become the assignor of the ownership. It is not necessary for the assignor to be a developer.

RETTA introduces tax exemption for financial leasing. Double taxation used to occur under the previous legislation applicable to financial leasing of real estate; firstly, through the acquisition by the financial leasing company and then again, at the end of the leasing contract, when the real estate was passed on to the leasing tenant. Since 1 January 2014, the acquisition of real estate by the tenant at the end of the financial leasing contract is exempt from taxation.

Since 1 January 2014, investments of registered capital are no longer exempt from taxation. If the shareholder of a company wishes to make his/her house a non-monetary investment asset of his/her own company, then the company will be obliged to pay the real estate transfer tax. In this case the tax base is determined in accordance with the value of the property stated for the purpose of registration with the commercial register. If the evaluation of the real estate includes debts assumed by the company, then these obligations have to be excluded for the purpose of determining the tax base.

Return to top

For more information

JUDr. Petr Kališ, Ph.D.
Partner
Czech Republic
petr.kalis@chsh.com
Tel: +420 221 111 711

CHSHCEE | Hungary

New legislation affecting retail chains in Hungary

On 9 and 16 December 2014, the Hungarian Parliament approved numerous amendments to the Act on Commerce and other legislation that may affect international retail chains with operations in Hungary. Industry observers note that the new legislation will mainly have negative consequences for foreign-owned chains, with Tesco, Auchan, ALDI, Lidl and SPAR expected to bear the brunt of the changes.

It was the Hungarian government that submitted a bill proposing amendments to Act CLXIV of 2005 on Commerce. The law aims to re-regulate the operation of retail companies and introduce new rules to promote fair market practices in the retail trade.

Banning stores from downtown Budapest

According to the amendments, hypermarkets (defined as stores with an area of over 5,000 m^2), large supermarkets (stores with an area of between 2,500 and 5,000 m^2) and supermarkets (stores with an area of between 400 and 2,500 m^2) may not be opened or operated in built-up areas designated as world heritage sites, which practically means the entire downtown area of Budapest and Buda Castle. The ban would also apply to discount stores (stores with an area of more than 400 m^2 that do not have counters serving fresh meat, meat products and dairy products), but not to stores smaller than 400 m^2.

The government explained that the amendments were needed to protect world heritage sites and globally renowned cultural treasures, conserve cityscapes and protect the environment. Under the legislation, it has been prohibited to open stores such as those mentioned above since 1 January 2015, while existing stores will have to be closed by 1 January 2018.

Since the 2012 introduction of what was popularly known as the “mall ban”, it has not been possible to build or extend a retail building with an area of more than 300 m^2 in Hungary. In the last few years, this rule has probably prompted discount supermarket chains to open stores under the limit in densely populated inner city locations. Although the "mall ban" expired at the beginning of 2015, it will presumably not be possible to open new retail buildings or extend existing ones because with effect from 1 February 2015 an amendment to Act LXXVIII of 1997 on the Built Environment means that the establishment or remodelling of retail buildings with an area of more than 400 m^2 would be subject to a ruling issued by the Government Office for Hajdú-Bihar County, which would have national jurisdiction in this matter.

Closure of loss-making stores

The act also includes an amendment relating to the accounting results of retail companies. This would apply to companies whose net sales exceed HUF 15 billion (approx. EUR 49 million) in two consecutive business years (provided that at least 50% of the revenue is from the sale of fast moving consumer goods, such as food, cosmetics, cleaning and personal hygiene products) but which generate losses or break even in both years.

The amendment means such companies may not continue their retail operations after the approval of their annual report for the second year. The rule would apply to newly-established companies after a four-year grace period.

According to the government’s explanation, the purpose of the amendment is to prevent well-financed hypermarket and supermarket chains from using predatory pricing practices against smaller, typically Hungarian-owned retail companies by consciously choosing to temporarily incur losses.

The amendment provides an example of one case of predatory pricing, but it neglects to mention that Act LVII of 1996 on the Prohibition of Unfair Market Practices and the Restriction of Competition ("Competition Act") outlaws predatory pricing, which has so far proved to be an effective way of preventing infringements by companies with a dominant market position.

Assumption of the abuse of dominant market position

The amendment includes a procedural rule according to which any company with net annual sales revenue – realised by it alone or together with affiliates – exceeding HUF 100 billion (approx. EUR 328 million) is assumed to have a dominant position in the retail market.

Therefore, the Competition Authority proceeding in a potential infringement procedure against such a company under the Competition Act would not have to prove the existence of a dominant position, only that such position was abused, which would make the Competition Authority’s task of complying with the obligation to present evidence significantly easier.

The HUF 100 billion threshold is exceeded by most companies in the Hungarian market, including those with low market shares. Consequently, some companies would be assumed to have a dominant position in the market even though they would never qualify as such if examined on the basis of the methodology that the Competition Authority generally applies. On the other hand, the assumption in question would not apply to Hungarian-owned chains that operate in a franchise system but otherwise have a significant market share.

Mandatory shop closures on Sundays

On 16 December 2014, the Hungarian Parliament adopted a bill regulating mandatory shop closures. The new act entering into force on 15 March 2015 stipulates that stores may open between 6 a.m. and 10 p.m. on business days, but must close on Sundays and during the night on working days.

The Hungarian government justified the new law by stating that it was important for retailers to help employees preserve their mental and physical health by granting them sufficient time-off, and by arguing that it would protect families by allowing family members to spend more time together.

The scope of the new act covers all retail operations with some notable exceptions. The new regulations are not applicable to pharmacies, tobacconist shops, farmers markets or shops located at international airports.

The adopted amendments to the Act on Commerce and the other legislation are in line with the government's declared objective of completely overhauling retail trade in Hungary.

Rules introduced to achieve such a goal include the "mall ban" mentioned above and its extension, the drastic increase in a fee payable for food safety inspections from 0.1% to as high as 6% in a graduated structure, and mandatory shop closures on Sundays.

Return to top

Authors

Dr. Péter Szajlai / Dr. László Krüpl, LL.M

For more information

Dr. Tamás Polauf
Co-Managing Partner
Hungary
tamas.polauf@chsh.hu
Tel: +36 1 457 8040

CHSHCEE | Romania

New regulation regarding work inventions (Law no. 83/2014)

The entry-into-force of law no. 83/2014 regarding work inventions ("Law no. 83/2014") establishes a new legal framework applicable to the relationship between Romanian employees who create inventions and their employers.

The old regulations regarding work inventions have been replaced by these new regulations provided by Law no. 83/2014. By European standards, Law no. 83/2014 is clearly formulated and will help to encourage the inventive potential of highly qualified Romanian employees.

Applicability of the law

Law no. 83/2014 is applicable to inventions created by an individual inventor or a group of inventors when the individual inventor or at least one of the members of the group is employed by a legal entity under public or private law.

In addition, Law no. 83/2014 is applicable to inventions that, according to the provisions of the law, may be patented or registered as a utility model.

Work inventions

An invention is classified as a work invention if the following conditions are met:

(i) It represents the result of the work of the inventor, as expressly specified in the individual labour agreement and the job description or other mandatory internal documents of the employer;

(ii) It was invented while the individual labour agreement was in force or during a period of no more than two years following termination of such by using the know-how of the employer or the material resources of the employer or it is financed by the employer.

Obligations of the employee and employer regarding the work invention

The employee responsible for the invention has a duty to present the invention to the employer by providing the relevant information necessary to identify the invention and the circumstances under which the invention was created.

It is incumbent on the employer to determine whether an invention created by one of its employees or a group of its employees constitutes a work invention.

In the absence of a longer term provided by the internal labour documents of the employer, the employer determines whether the invention constitutes a work invention within four months of the date on which the employee notifies the employer of the invention and whether there are any claims vis-à-vis the work invention. The employer communicates its decision to the employee.

The employee responsible for the invention may initiate proceedings before the competent court to contest the employer's decision regarding the invention within four months from the date on which the employer communicated its decision.

Rights regarding the work invention

The employer holds all rights to the work invention in those cases where such rights are expressly provided for in the labour documents (individual labour agreement, job description, etc.) or otherwise in those cases where the employer claims the work invention, as enshrined in law.

The employee responsible for the invention is entitled to remuneration determined by the employer as per the provisions of Law no. 83/2014 for the work inventions claimed by the employer.

In the event the work invention does belong to the employer, it is entitled to apply for a patent or for a registered utility model. The employee responsible for the invention is to be informed with regard to the registration of the patent or the utility model.

Return to top

For more information

Mirela Nathanzon
Partner
Romania
mirela.nathanzon@gp-chsh.ro
Tel: +40 21 311 12 13

CHSHCEE | Slovak Republic

Whistleblower Protection Act

New legislation, Act No. 307/2014 Coll. on Certain Measures related to the Reporting of Anti-social Activities and on Amendments to Certain Laws (the "Act"), which lays down new rules relating to whistleblowing in Slovakia, came into effect on 1 January 2015.

The Act specifies the requirements to be satisfied in order for protection to be provided to an employee who reports to the authorities criminal acts alleged to have been committed by his/her employee or other serious anti-social behaviour in connection with his/her employment. In reporting anti-social behaviour, a whistleblower is not deemed to be in breach of any confidentiality agreement, any commitment to keep bank or other secrets protected, whether by law or contract.

Under the Act, serious anti-social behaviour comprises the following offences: criminal offences committed by public officers, corruption, damaging the financial interests of the European Union, deceitful practices employed during public procurements and public auctions, any criminal offence punishable by at least 3 years' imprisonment and any administrative offence punishable by a fine of at least EUR 50,000, e.g. cartel agreements.

An application for protection may be submitted either orally or in writing by the whistleblower to the relevant authority, such as the public prosecutor, court or administrative authority. The employer may only take employment-related measures against the protected employee, in respect of which the employee has not given his/her approval, with the consent of the labour inspectorate.

The protection lapses when the protected employee repudiates the protection, when the employment is validly terminated, when the criminal or administrative proceedings are terminated, if it transpires that the reported acts are not true or not as reported.

The Justice Department may provide the whistleblower with remuneration of up to 50 multiples of the minimal wage, but only if the whistleblower submits an application for remuneration within six months of delivery of notification that the determination is genuine and valid.

Employers with at least 50 employees are required to create an internal system for handling employee reports of anti-social activities. Furthermore, these employers are obliged to appoint a person to be responsible for overseeing the procedure, and employers must also specify the methods by which reports can be submitted, establish and keep a register of reports received for at least three years, publish the reports and results of the investigation and issue internal rules setting out other relevant details (with which all employees must be acquainted).

Any employee who deems that his/her employer has taken an adverse employment-related measure due to the complaint he/she made vis-à-vis the employer is entitled to request that the labour inspectorate suspend the effectiveness of such a measure within seven days.

Return to top

For more information

JUDr. Jozef Bannert
Partner
Slovakia
jozef.bannert@sp-chsh.sk
Tel: +421 2 2064 8580

Media owner and publisher:

CHSH Cerha Hempel Spiegelfeld Hlawati
Partnerschaft von Rechtsanwälten, Parkring 2, A-1010 Vienna
Tel.: +43/1/514 35 0 Fax: +43/1/514 35 35 email: office@chsh.com
If you do not wish to receive the newsletter in the future, please respond to this email with "**unsubscribe**".

Visit us at www.chsh.com

CHSH Austria Belarus Bulgaria Czech Republic Hungary Romania Slovak Republic

CHSH
Cerha Hempel Spiegelfeld Hlawati
Partnerschaft von Rechtsanwälten

March 2015