REBUILDING AND RESHAPING IN THE AFTERMATH OF COVID-19

As Europe begins a tentative re-opening following several difficult months of quarantining, social distancing, and working-from-home, we spoke to CMS's Warsaw-based Employment Partner Katarzyna Dulewicz and Vienna-based Dispute Resolution Partner Daniela Karollus-Bruner for their perspective on the process.

By David Stuckey

CEELM: Katarzyna, let's begin with you. The pandemic has resulted in a change of the ways many companies operate. Have you seen a major shift in the advice that CMS's Employment teams are providing to clients? Are particular sectors busier on the employment side than others?

Katarzyna: Yes, we have seen a shift in what our teams advise and we are providing significant legal support on coronavirus-related topics. This includes advising on working from home, which has become a pattern in Europe, and health-and-safety measures that firms must adopt when organizing work at home and returns to the office. Many companies are now seeking effective tools to cut down employment costs while still aiming to keep staff. We see protective behavior across all businesses. Most European countries have adopted friendly *ad hoc* legislation subsidizing firms and allowing them to trim salaries or shorten the working week. Suspending bonus payments and extra benefits

Katarzyna Dulewicz

is also the norm. On the other hand, most firms are not cancelling termination plans they had already budgeted before the pandemic. The separation of employees in a touch-free world and a shortage of personal meetings are a challenge, and we provide significant number of instructions on how to safely deal with these actions.

We have also seen more work from employers in the retail and industrial sectors. These were immediately impacted due to store closures.

CEELM: What trends do you expect to see in relation to large cross-border employment restructurings by international investors in CEE?

Katarzyna: I expect to see more cross-border employment topics. The pandemic has made remote working very popular. The physical presence of all employees in the workplace has transpired to be less important, and so it will become more common to hire employees to work remotely from different locations in the world. I also believe that due to the pandemic's long-term consequences, many companies might temporarily or permanently limit their operations – or even cease to exist. This will presumably trigger many individual redundancies and group dismissal procedures across all of CEE.

CEELM: What do you think businesses will take away from the pandemic, especially in terms of implementing effective employee structures and taking advantage of restructuring opportunities in CEE?

Katarzyna: A significant number of businesses will now rely more on remote working, which can be just as effective as working in an office. In addition, this solution offers businesses significant savings by limiting the necessary office space. We have already seen a number of firms deciding to implement remote working on a larger scale, by allowing their employees to permanently work entirely from outside the office or to split their working time 50/50. I expect that a greater number of companies will follow suit in the next few months. I also assume it will soon be a major concern for many CEE states to set out some general legal rules on remote working, as currently many of them, including Poland, do not regulate this issue at all.

CEELM: There are government support schemes that companies benefit from across most countries in CEE/SEE. One of the most significant of these schemes relies on the concept of so-called "short-time work." What is this, and how effective do you think the implementation of it has been in CEE so far?

Katarzyna: Many CEE states have successfully put together various state subsidy programs. Although the programs vary in their details, they rely on the common concept of short-time work, which is of German origin. Their main aim is basically the same across CEE – to allow companies to reduce their employees' working time. At the same time, firms are able to maintain headcounts by receiving state subsidies.

While the primary goal has been mostly achieved and many jobs have been saved, many now wonder if the state subsidies were not merely a temporary solution. For example, state subsidies in Poland are granted for a maximum of three months, during which the company cannot terminate employment with an employee for whom it receives the subsidy. But once the subsidy ends, the limitation will no longer apply, and the company will be able to part ways with the employee. The question is whether, and for how long, governments will support failing businesses if there is a second wave of the pandemic in the autumn which forces Europe to close down again.

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CEELM: Daniela, turning to you – what is the most common concern for business in the transaction phase, before final recovery?

Daniela: The most common concern in the wake of the current COVID-19 pandemic is maintaining liquidity until transactions successfully close. Keeping a steady cash flow is not only necessary in order to avoid illiquidity and having to file for bankruptcy before completing the transaction, but is also required to

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CEELM: What needs to be considered by companies facing restructuring, and are there any specifics when currently filing for insolvency?

Daniela: On the one hand, many states have instituted COVID-19 relief funds, which companies may apply to for subsidies or other forms of financial aid. Such measures may provide vital liquidity to the company and thus prevent bankruptcy, at least in the short-term.

On the other hand, many countries have either fully suspended the obligation to file for insolvency (for instance, Slovenia, Croatia, and North Macedonia), or have at least limited the statutory reasons that lead to such obligation. For instance, in Austria over-indebtedness is not currently a mandatory reason to file for insolvency, as long as the company still has sufficient liquidity.

CEELM: Can companies count on the deferral of planned payment instalments, and the deferral of taxes and social security contributions?

Daniela: In Austria, natural persons may defer planned payment instalments in insolvency proceedings for up to nine months; corporations may not.

Taxes and social security contributions may be reduced or even fixed at zero upon request in Austria and Serbia. Payment in instalments is possible in many countries (for example, Austria, Serbia, Montenegro, and (for taxes only) North Macedonia. The same goes for deferral of taxes (for example, in Croatia, Turkey, and Slovakia).

CEELM: What measures exist for cost reduction?

Daniela: In Austria, at least, there are several measures that may be used to reduce costs during the COVID-19 pandemic: (i) Reduction of rent: tenants may request a reduction or even a complete suspension of rent payments during periods of (state-ordered) company closures; (ii) Termination of contracts based on *force majeure*: even if contracts do not provide a *force majeure* clause, case law allows contracts to be terminated due to pandemics under certain conditions; (iii) Invalidity of contractual penalties: debtors are not obliged to pay any contractual penalty (provided for in a contract concluded prior to April 1, 2020) if they are either significantly impaired in their economic capacity or are unable to perform due to the restrictions placed on working life as a consequence of the COVID-19 pandemic; and (iv) Obligation not to distribute profits in LLCs: losses incurred by the LLC in the new financial year as a result of a pandemic can justify a (possibly partial) distribution ban of dividends to shareholders.

Many countries implemented state-aid measures in the employment sector. Employees may be ordered (in, for instance, Slovenia) or voluntarily agree (in, for instance, Austria) to work short-time, in which case the state will refund part of the salary. Croatia and Turkey provide state aid for employers and/or employees.

CEELM: What do CEE markets offer in terms of credit deferrals, bridging loans, and deadline extensions?

Daniela: In Austria, at least, private persons and micro-enterprises are eligible to defer payments under loan agreements for a period of three months. Bridge loans used for short-time work salary payments are not subject to potential claw-back actions by the insolvency administrator. The maximum deadline for filing for insolvency has been extended from 60 to 120 days after bankruptcy occurs; other deadlines may be extended by the court upon request.

In Slovenia and Slovakia, a moratorium on loans was implemented, which forces banks to grant a moratorium for nine to 12 months. Most of the Croatian banks have internally implemented a three-month moratorium. Turkey provides guarantees for corporations in certain sectors; Slovakia issues such guarantees to Slovak banks. ■