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LAW SHOOTER

April 2013

NUMEROUS LEGAL UPDATES FOR BOTH EMPLOYERS AND EMPLOYEES

Our April newsletter deals with numerous legal aspects, with the main emphasis on various labour law related issues such as working hours and social media. As a further highlight we have prepared a summary discussing the main rules concerning the termination of companies without a legal successor via voluntary winding-up. For more legal news and updates on our firm, feel free to read our blog and our Facebook page.

We at BWSP Gobert & Partners hope you will enjoy reading this months newsletter and find the content informative. Should any questions arise regarding any of the material in this months newsletter please do not hesitate to contact us, we remain at your constant disposal.

Dr. Arne Gobert
Managing Partner

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PRACTICAL QUESTIONS REGARDING WORKING HOURS AND REST PERIOD

1. Registration of working hours

Act I of 2012 on the Labor Code (hereinafter referred to as: „**LC.**“) is quite short-spoken on the registration of working hours and only stipulates that: „*Should be updated regularly and should contain facilities to identify the time of commencement and ending of any regular and overtime work and stand-by duty*.”

Working hours covers also preparatory and finishing activities related to work. As a practical example, if a uniform is needed to perform work, the time for changing clothes is part of the preparatory work. If our presence for a preparatory work is needed in a time out of working time – for example in a bakery to heat up the ovens at 5 am, or reaching the territory of the manufactory, where the employee needs to go in order to perform his or her work, takes more time - it may be deemed as overtime work and for this in certain cases wage supplement could be applicable. A useful and practical hint - which is considerable during a labour inspection is, that the records of working hours, should always be transparent and realistic, i.e. it should be in an up to date condition, ready for handing them out to labour authorities upon their request.

The judicial practice always adopts its decisions based on the deliberation of all circumstances related to the case, takes into account the local customs of society and the situation at hand. Therefore it can easily happen that the work of an event planning company related to the preparation of a weekend event may be deemed „*ordinary*“ by the society. But as a general rule the weekly rest period of employees should be allocated at least once in a given month on a Sunday.

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2. Working with Display Screen Equipment and work breaks

Nowadays working with computers is widely used, and it is almost impossible to imagine a job in an office without this equipment. According to the provisions of the *Health Ministerial Decree 1990/50 on the minimum health and safety requirements for working before screens*, in case the employee spends 4 hours from the working hours with a screen equipment, the employer has to plan the work process in a way, that every one hour at least a ten minute long break should cease working before the screen, and the daily actual amount of work before such equipment may not exceed six hours. If the interruption is not possible due to possibly endangering the life of others, physical integrity or safety of certain assets, or the given technology is not suitable for such break, the employer has to organize the work appropriately between the employees in a way, that it should not exceed 75% of the full working hours.

It is very important to emphasize, that the abovementioned is not equal with the work break. The work break pursuant to the LC. is allocated after the daily working hours. If the daily working hours exceed six hours, twenty minutes of work break should be provided. If the working hours exceed nine hours, an additional twenty five minutes of work break should be provided, but the maximum of the work break is sixty minutes according to the law, based on the agreement of the parties or the collective agreement. The work break should be provided by the interruption of the work, and it does not qualify working hours.

Summarizing the aforementioned, when laws stipulate break from working before screen, it shall mean break only from that activity. This might be revision of documents, participation on meetings. These breaks are part of the working hours and regular work performance as well, so they must be spent with work, not with activities before the screen, but with others within the scope of the job profile. In contrast to this, the work break interrupts the daily work, and its aim is to provide the employee time for eating, resting, and fulfilling the employee's personal needs.

Differences between performance-based wage and commission

If wages are paid on the basis of performance, thus performance requirements are to be determined for the employee by the employer on the basis of preliminary and objective surveys and calculations, stipulated in writing. The base of the requirement is the potential to perform one hundred percent during regular working hours. Wages are paid on a time and performance basis combined, if the time rate is lower than the base wage. Wages in the form of performance-based wages exclusively may be established only if so agreed in the employment contract. It is important to emphasize, that the performance based wage may not be discriminative, employee groups under the same performance requirements need to be taken into consideration, as well as the employer's operating conditions, such as the requirements relating to the performance of work, work organization and the applied technology. In the event of any dispute, the burden of proof is on the employer to verify that the provisions governing the performance-based wage have been kept. Example for the performance based wage is employing an employee in a production-line, where on the given working day the employee is required to put together a given amount of product or its parts.

The commission is a separate payment form, which is not particularly named in the currently effective LC. The commission is typically used in agency agreements, used as payment after the concluded business contacts, but it is also possible that the collective agreement or employment agreement stipulates the commission separately from the base wage as a wage element within the employment contract, or determine it as other payment form. The commission, unless we exclusively talk about an agency agreement, dependent on the job profile, is separate from and supplementing the basic wage, and such as the premium and the bonus have incentive roles.

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PRACTICAL GUIDE ON THE VOLUNTARY WINDING-UP PROCEDURE

The present summary introduces the main rules regarding the termination of companies without a legal successor via voluntary winding-up, therefore, it is of high importance to state, that the voluntary winding-up procedure may exclusively be an option, in case the company is not insolvent.

Legal sources declaring rules of dissolution procedure:

- Act V of 2006 on public company information, company registration and dissolution proceedings (hereinafter referred to as: ***Company Act***) Chapter,
- Related provisions of the Act XCII of 2003 on the rules of taxation (hereinafter referred to as: ***Taxation Act***),
- Government Decree 72 of 2006 (3.IV.) on accounting tasks of dissolution procedure (hereinafter referred to as: ***Government Decree***),
- Act CLXXV of 2011 on freedom of association, non-profit status, further operation and support of civil organisations related to the dissolution procedure of civil organisations (The latter may not be relevant in the present case)

I. Decision to go into dissolution, selecting a receiver

The first step in the procure of a voluntary winding-up is the decision of the starting date of the procedure, which shall be defined in a resolution of the supreme body of the company (member of the company) besides the decision on the termination of the company without succession. The starting date of the voluntary winding-up procedure may not be earlier than the date of the resolution. At the time of the opening of dissolution procedure, the mandate of the

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company's executive officer shall terminate, and the company's executive officer and exclusive legal representative shall be the **receiver**. (Usually the prior executive officer, official receiver, or member/leader of the company's accounting office is appointed as the receiver.)

The receiver - in cooperation with the legal representative of the company - shall report to the Court of Registry the opening of dissolution procedure within 30 days after the adoption of the resolution thereof as an application for the registration of changes, indicating the data as declared under the Company Act.

Main tasks of the receiver on the course of the dissolution procedure:

- supervising the financial situation of the company,
- enforce the claims of the company,
- settlement of the company's debts,
- exercising the rights of the company and fulfil its obligations,
- selling the company's assets, if necessary,
- dividing the remaining assets of the company after satisfaction of creditors under the members (shareholders) of the company in cash or in kind assets,
- terminating the operation of the company.

The receiver shall exercise special care as generally expected from persons in such positions, serving the best interests of the company undergoing dissolution and the interests of creditors. The receiver shall be held liable in accordance with the general provisions of civil law for damages caused by any breach of his obligations.

According to provisions of Taxation Act, as of start date of dissolution, tax related obligations of the company shall be fulfilled by the receiver. Accordingly, default penalty based on any infringement of the receiver may exclusively be set against the receiver and the receiver may only be exempt from the default penalty, in case he can prove that the infringement originates in a reason beyond his interest.

II. Steps after the start of winding-up procedure

2.1. Publication after the resolution for ordering winding-up:

The Court of Registry takes an order related to the opening of the dissolution procedure, which shall be published in the Company Gazette. The notice shall contain – among others – a notice to the creditors to report their existing claims to the receiver within 40 days following the date of publication of the announcement.

2.2. Informing authorities about the opening of winding-up:

The receiver shall - within 15 days following the publication of the winding-up notice – inform the following concerning the opening of the winding-up procedure:

- the land registry office,
- if any asset of the company is listed in any national authentic or public records, the agencies maintaining these records,
- the government employment office competent for the area,
- the competent environmental protection agency as to whether there are any environmental damages or environmental hazards remaining that may result in penalties or other payment obligations, and expenses connected with the cleanup of such damage,
- all financial service providers, where the company has current accounts,
- the executive officers of the legal entities in which the company has any financial interest, and the foundations and associations in which it participates,
- the relevant authority or court, if and where any pending proceeding is opened against or by the company.

2.3. Notification of creditors' claims:

Company's creditors shall notify their claims to the receiver within 40 days following the date of publication of the notice, however this deadline is not preclusive. The receiver shall provide a list of the claims within 15 days following the deadline prescribed for creditors to submit their claims, which shall be submitted to the competent Court of Registry within further 15 days.

2.4. Compulsory measures of the prior executive officer of the company:

- preparing the closing report of the company's books effective as on the day preceding of the starting date of the voluntary winding-up procedure and provide it within 30 days after the starting date of the voluntary winding-up. The closing report shall be put into deposit and published within 45 days after the start date of the dissolution (companies paying simplified corporate tax (EVA) and the ones without legal personality are excluded from this obligation);
- providing the tax declaration on the closing of the company's activity and submit them to the tax authority within 30 days following the start date of the dissolution;
- fulfilling simultaneously the further obligations for providing the tax declarations besides the one on the closing of the company's activity, the due date of which is prior to the submission of the activity closing tax declaration;
- handing over all documents and records of the company to the receiver on until the 30th day after the date of the voluntary winding-up.

Legal consequences to be applicable in the event of default:

- The company's former executive officer shall be subject to civil liability according to the general provisions for damages resulting from his omission or failure to fulfil duties. In the event of any default of the former executive officer, upon the receiver 's or creditor's request, the court of registry may impose a penalty of between **HUF 100 000 and HUF 900 000 within the framework of judicial oversight proceedings, which may be repeated.**

- Based on infringement **prior to the starting date of voluntary winding -up** (e.g. default of activity closing tax declarations) **default penalty may be charged against executive officer(s).**

2.5. Preparation of opening balance sheet:

The receiver shall prepare the opening balance for the voluntary winding-up relying on the annual report as prescribed in the Accounting Act prepared by the former executive officer of the company for the closing of the company's activities. Then – after the

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maximum deadline of 75 days prescribed for creditors to file their claims – shall make adjustments in the opening balance sheet for dissolution as appropriate, consistent with the list of creditors' claims (adjusted opening balance sheet for dissolution), and shall present it to the Member (company's supreme body).

If the receiver concludes on the basis of the adjusted opening balance sheet of the voluntary winding up that the company's assets are not enough to cover the creditors' claims, and the members (shareholders) fail to provide the funds lacking within 30 days, the receiver must submit a request for liquidation to the competent court without delay.

III. Conducting of winding-up procedure

According to provisions of Taxation Act, the company meets its tax return obligations based on general rules; however, the fact of winding-up shall be indicated on the tax return.
If the voluntary winding-up does not come to an end within 12 months, tax year(s) consists of 12 months, however, the last tax year may be shorter than 12 calendar months.

If the voluntary winding-up procedure is not completed in the financial year, when it was opened, the receiver shall for each financial year:

- prepare the annual report prescribed in the Accounting Act;
- put into deposit and publish the prepared report within 150 days after the sheet date;
- prepare a report annually for the Member and the court of registry, in which to demonstrate the situation of the company, further the winding-up procedure.

The receiver shall not be exempted from the submission of tax reports for the reason that the company's economic activity was terminated before. The liquidator is not exempt from the submission of the tax return for the reason that the company has previously ended its economic activity. The tax return obligation must be fulfilled even if no tax payment obligation has arisen!

However, submission of tax declaration is equal to submission of tax return, that is to say, if the taxpayer declares using *„NY"* electronic form, that there has been no tax return submitted, considering that no tax payment obligation arise for that period.
However, tax declaration may not be submitted instead of the activity closing tax return, further instead of the tax return, which shall be submitted at the conclusion of the winding-up.

IV. Conclusion of the winding-up procedure

4.1. Closing documents:

Upon the conclusion of the winding-up procedure the receiver shall prepare – and together with the report drawn up by the auditor – shall present to the Member (supreme body) for approval the following documents:

- the closing tax reports,
- the annual report for the last financial year of winding-up (in which the assets and any liabilities are shown at market value with a view to what is contained in Paragraph (2); the valuation of assets at market value),
- the closing statement on the economic events that took place during the period of dissolution proceedings; and
- a proposal for the distribution of assets,
- a proposal for the future of legal entities in which the company maintains a financial interest, and non-governmental organisations, foundations in which it participates.

In the event of preparation of the closing tax report, the report of the receiver, and the proposal for the distribution of assets, the receiver takes those reasonable expenses necessary for the conclusion of winding-up, which may arise in the future into consideration, further the personal income tax declared, returned and to be paid by the payer after the income withdrawn from the company.

The sum of the late payment charges, which not yet prescribed but related to the period until the date of the balance sheet of the closing report shall be taken into consideration as expected payment in the event of the preparation of the last report and the proposal for the distribution of assets. (For the calculation of the late payment charges, the calculator software program published on the website of the Hungarian tax authority (NAV) can provide a useful support. Closing date for the calculation of late payment charges is the closing day of the voluntary winding-up.
The tax authority sends a notification forthwith about the late payment charges on the closing year of winding-up and the preceding calendar year.

The Member (supreme body) shall adopt a resolution concerning the documents above presented, which may be for the assignment of rights and the transfer of liabilities or for the assumption of the company's debts by others as well.

The resolution - if necessary - shall contain provisions for:

- the receiver's fee,
- bearing of the costs of the voluntary winding-up, including the costs of storage of the company's documents and the costs arising in connection with the company's termination as well.

4.2. Tax reports, financial report, notifications:
The receiver shall put into deposit and publish the closing tax report and the closing statement confirmed by the Member (or the supreme body of the company).

The closing financial report of the winding-up shall be put into deposit and shall be published simultaneously with the submission of the application for the cancellation to the competent Court of Registry, ***but not later than 60 days after the submission date of the report***.

We call the attention that the closing tax report of winding-up procedure - regardless of their number of items – shall be submitted simultaneously to the tax authority.

All tax report obligations applying for the preceding periods before the voluntary winding-up and has not yet expired, due and shall be completed simultaneously with the closing tax report of the voluntary winding-up procedure.

The receiver shall disclose, as prescribed in social insurance legislation, pension insurance related data of the insured persons, in particulars of the employees of the company undergoing dissolution to the pension insurance administration agency, and shall submit the

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certificate received from the pension insurance administration to the Court of Registry.

This certificate provided by the Pension Insurance Administration Authority (hereinafter referred to as Authority) **shall be submitted to the competent Court of Registry** in the event of the winding-up procedure, further together with the application for cancellation of the company.

The tax authority informs the relevant Court of Registry without the application of the client **within 90 days after publishing of the closing report electronically**, whether there is any on-going tax procedure related to the company; furthermore, whether the company has any debt at the tax authority. It means the tax authority **provides the competent court of registry directly with the negative certificate in relation to public due** (the so called zero certificate).

The company may only be cancelled from the Company Registry, if there isn't any on-going procedure against it according to the notification and the company has no registered public due.

4.3. Deadline of conclusion of the winding-up:

Winding-up shall be completed within 3 years at the latest following the time of the opening. Accordingly, application for cancellation of the company shall be submitted within 3 years to the Court of Registry, otherwise the company shall be subject to ***mandatory deletion procedure***. At the same time of the opening of the mandatory deletion procedure, the mandate of the receiver terminates; however, the former receiver shall co-operate with the Court of Registry during the procedure.

V. Additional information

5.1. Control deadlines under winding-up:
According to the Taxation Act, in the event of the voluntary winding-up, the supervision of the NAV regarding **preceding period before the closing tax report, further the posteriorly control over the period of the winding-up shall be finished within 60 days after the receipt date of the closing tax report** prepared by the receiver. In case that the closing tax report are submitted at different times, the deadline is 60 days after the receipt date of the tax report related to corporate income tax.

Nevertheless, tax authority is entitled to conduct the activity closing control, or/and other kind of control - control of payment transfer, posterior control of tax reports, access to the files, supervision of administration etc. - even before the receipt of the winding-up closing tax return.

We call the attention, that **there is no possibility to reflect to the protocol** containing statements regarding the control of the tax authority on the course of the voluntary winding-up.

Contrary to the general provisions of the Taxation Act, the deadline for taking a decision based on this control protocol is 30 days, and **an appeal may be submitted against the decision within 8 days of the enouncement of the decision.**

5.2. Settlement of tax account:
In case the company has registered overpayment on its tax account, and/or has recoverable tax (including the recoverable VAT related to the termination), it is worth to recover before the cancellation of the company, during the winding-up procedure using the form No. 65 and or the form No. 17 called „Application for transfer or indication of payment in case of overpayment on the tax account".

The company is not entitled to any tax return following its cancellation, having regard to the fact that its legal entity terminates by the cancellation, thus declaration under its name cannot be given with legal effect.

Following the cancellation of the company the tax authority only accepts the application of someone, who may prove the right to the transfer by the submission of the proposal for the distribution of assets approved by the supreme body.

5.3. Maintenance obligation of bank account
The company shall have at least one bank account registered at the tax authority during the winding-up procedure as well. Accordingly, the tax authority may only perform the transfer, if the company under winding-up did not terminate its bank account.

VI. Simplified voluntary winding-up

Such procedure may only be lunched by business associations **without legal personality (general partnerships, limited partnerships) and sole proprietorships,** if the company concludes the winding-up procedure within 150 (one hundred and fifty days) from the time of the opening of winding-up procedure.

(According to the adoption of the new Hungarian Civil Code, based on which the general partnership and the limited partnership shall bear legal personality, the Company Act will be amended accordingly, whether by terminating of the opportunity for these companies to choose simplified winding-up, or they will be named under the relevant provision separately.)

Basically, in the event of simplified winding-up the Company Act orders to apply those general provisions of general voluntary winding-up procedure under the above mentioned conditions, but with the following derogations.

In case of the simplified voluntary winding-up procedure the receiver shall provide for the publication of the winding-up notice within 8 days following the time of the opening of winding-up procedure and not the Court of Registry.

The Court of Registry shall only be informed about the person of the receiver at the end of the procedure, together with the termination of the winding-up, simultaneously with the submission of the application for cancellation.

The receiver shall abandon the simplified voluntary winding-up procedure and shall proceed according to the general provisions, if:

- he disputes the claim of any creditor in the course of winding-up, and
- the creditor files legal action against the company on account of its disputed claim, or
- the deadline of 150 days prescribed for simplified winding-up expires during the procedure. The date of switch-over shall be the date when the application is submitted.

Winding-up may not be concluded by the simplified procedure either, if there are proceedings under progress in connection with a winding-

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up complaint.

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We hope that the above provided useful information for you; however, if you would like to consult with our experts in connection with your individual case, we are available at your kind disposal.

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FIXED TERM EMPLOYMENT RELATIONSHIPS

Regarding the Act I of 2012 on the Labour Code („**new Mt.**") that has entered into force recently, it is worth taking into consideration, how the current regulation of fixed-term employment relationship is developing.

The fixed term employment relationship has an exceptional character, because the employee's essential interest is a stable employment relationship of indefinite duration. Consequently domestic law prohibits the establishment of a fixed-term employment relationship, if it can result in negative discrimination regarding the employee in question, and it tries to prevent the abuse of successive fixed-term employment contracts. That is why these contracts shall be used only in cases, where completion of work exceeding the regular course of business is needed, or when an employee is employed only for the period of a certain project, but also in cases when due to the absence of an employee, substitution is needed.

The **new Mt.** 192 § (1) – (4) includes the provisions on the fixed term employment relationship. As a general rule, the old and new regulations also allow the fixed term employment relationship to be both renewed and newly concluded. For this the joint existence of several criteria are needed. After the termination of a fixed term employment, the employment contract expires automatically, thus notice period, protection, severance pay or reasons for discharge are not needed. To avoid abuse, the statute stringent and restricts the possibility that employers employ employees with the use of successive fixed term employment contracts, avoiding the principle of proper exercise of law by this. We provide information below under which conditions there is a possibility for this:

The fixed term employment relationship can be five years at most. It has to be applied not only to the continuously extended fixed term employment contracts, but the statute stipulates that it also includes the duration of another fixed-term employment relationship concluded within six months from the termination of the previous fixed-term employment relationship.

Secondly, a fixed-term employment relationship may be extended, or another fixed-term employment relationship may be concluded within six months from the time of termination of the previous one only upon the existence of the following conditions, on one hand upon the existence of the employer's legitimate interests, further, if it is not directed to the infringement of the employee's legitimate interest.
Consequently, there is of course no impediment to conclude fixed term employment contract by the parties, but only if they take into account the exceptional character and the above outlined requirements, and furthermore it does not infringe the principle of proper exercise of law.

The application of the stipulation of the fixed-term not in compliance with law may involves risks, consequently it is worth paying attention to the followings.

A labour inspection includes the examination of the employment relationship and the essential content elements of the employment contract. Based on this during a labour inspection there is a possibility to examine whether a company employs the employees in compliance with the statutory provisions and within this framework if it uses the stipulation of the fixed- term correctly. If it can be stated, that it was not correct, the company may expect a labour penalty, the amount of which shall be from thirty thousand to ten million Forints. The inspection may be challenged by the employee as well. If the employee takes a standpoint that his employment contract shall be regarded as a contract for indefinite time, he might have a possibility to enforce his claim for unlawful termination.
How the sanctions apply according to the new Mt. the judicial practice has not been developed yet, thus regarding the legal consequences several interpretations are possible.

According to one, general rules pertaining to void agreements are applicable. This means that the employer is obliged to cease the unlawfully established fixed term employment contract with immediate effect and pay an amount of absentee fee for a period that he would be entitled for in the case of the employers termination, furthermore properly apply the rules on severance pay.

Second standpoint is, that general rules on partial invalidity, employment is void only in the section, where it stipulates fixed term, but without this part as an employment contract for indefinite period it is still valid and the employer is obliged to further employ the employee according to this.

The abovementioned needs to be taken into consideration in the case when a company decides to participate in a public procurement procedure. The governing regulation is very stringent in such case. According to the Act on Public Procurement in the procedure may not participate as a tenderer, candidate tenderer, subcontractor, or in the attestation of competence such economic operator who has been found guilty of any infringement of the requirement of distinguished labour relations by court decision and subject to employment penalty.

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LINKEDIN - LINKEDOUT - IN OTHER WORDS WHO IS ENTITLED TO YOUR CONTACT NETWORK?

Does the employer have right to ask for the employees contact list from his LinkedIn account, when terminating his employment relationship?

According to an English judgement yes, what's more he may even oblige him to delete the entire account. Pertaining to the judgement the contact network established whilst being in employment relationship as database, is the employer's property.

It is against the judgement that according to the LinkedIn's terms and conditions of usage the user accounts (if the employee establishes them in his own name, not on behalf of the employer) are registered under a user name, therefore they constitute the user's "property". Consequently an employer may not force the employee to hand over his account, user name or password.

Nevertheless, it does answer the question, because as the judgement points it out as well, the employer does not prohibit the employee from his user account, but from using the database, which the employee gathered in the work time and on the employer's expenses, moreover in the given lawsuit, he stored by using the employer's IT system. Is it conceivable to draw conclusions on such score in Hungary also?

The possibility to successfully argue before the court is not excluded. **The key question is in fact** whether a contact list built on LinkedIn in the course of employment relationship, is regarded trade secret (confidential information), which is then the employer's property. Obviously telephone numbers, email addresses themselves are not confidential information, however setting up contact lists pertaining to several specified areas requires investment from the company and their disclosure to competitor represents significant trade value. According to the Hungarian law, the database is under copyright protection (and as far as employer applies appropriate employment contracts), the established intellectual creation in course of the employment relationship (or with the employer's equipments) belongs to the employer. In the case of *A Hays Specialist Recruitment (Holdings) Ltd & Another –v- Ions &* Another the court declared that **the employer is entitled to permit and encourage the employee to build contact network on the internet,** however these contact data are considered as information of an confidential character established in the employment relationship, therefore they belong to the employer. The judgment does not include clear standpoint on whose property is the contact list created on LinkedIn, however the following conclusion can be drawn from it: any database containing client contact data, built in the course of the employment relationship, is the employers property, and if an employee's employment relationship terminates he needs to turn in this database to the employer.

During such procedure the employees may argue, that they need the database and that it is based on their personal knowledge, therefore it is not the employer's property. Thus the aforementioned judgement (although it has not took a clear position in this matter) may let us draw the conclusion that the employee, when terminating his employment relationship, is obliged to transfer or delete the client contact database, together with his LinkedIn account created in the course of employment (regardless whether he established the account in his name, or in the employer's).

Penwell Publishing (UK) Ltd Ltd –v- Ornstein & Others case contains even more precise conclusion, where the Court stated that direct phone numbers and email addresses pertaining to client contacts, are regarded as being confidential information and if the employee obtained these during his employment relationship, the information constitute the property of the employer. The Court has not contested that the publicly accessible information, such as the registered seat of the company and the publicly accessible phone numbers do not fall within this protected scope. Moreover in the Penwell-case the dismissed employee stored these information in the employers outlook system, continuously refreshed on the employers server and not on LinkedIn website and external servers. Taking into account these particular circumstances the Court found undoubtedly justified that the data are in the property of the employer, because they have obviously been collected in the course of employment, obviously stored on the IT systems owned by the employers, thus the contact data could not be considered the employee's private information.

These two judgments indicate that it **is more and more suggested and needed to create a regulation governing the social networking sites,** therefore if it is formulated as an unambiguous and specific expectation from the employer's side, that the employee may not take away the contact list built on the employer's expenses, he may later not have objections against it. It may be clearly stipulated in the regulation, that upon the termination of the employment relationship those client contacts which the employee gathered in the course of employment must be deleted. It is even a safer solution, if these conditions are stipulated in the employment contract, even if having only a general character. On the other hand it is also in the interest of the employees, thus they might be aware right at the beginning of the employment relationship, what rights are they entitled for upon the termination of the employment relationship and what is the employer's attitude to building client contacts, having specific view to the non-competition provisions. It arises as a legal question, whether it is a non-competition stipulation if the employee after the termination of the employment relationship should restrain from maintaining contact with certain clients (in which case the condition of validity is the payment of counter value).

According to my standpoint, similarly in case of provisions pertaining to trade secrets, the correctly formulated legal documents may reduce this risk. Prohibition from competition – as arising from its character – means that the employee restrains to engage in activities at the competitors. The employer's requirement for the contact network is certainly not of such character. If it is not defined in the employment contract or a separate regulation what happens with the LinkedIn account, it is advisable to clarify in what manner and into what extent may the employee keep the contact network he built by the help and in the interest of the employer. Instead of the legal twist and turn, in the practice it is even a more simple solution, that the employee may not use, other than equipments owned by the employer and this equipment he is obliged to return upon the termination of the employment relationship without making a copy it.

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Naturally the employee may not be hindered from using the earlier created copy database for own purposes in the future. In the case of the LinkedIn contact networks, the employer may easily and externally follow what contact changes does the ex-employee have. If the mutual agreement explicitly regulated the contact system, “private actions” conducted after the termination of the employment relationship may even be sanctioned.

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