

Dear Readers,

In this November edition we focus on the following issues:

- 1) **paying employees in cryptocurrencies** – with the growing popularity of cryptocurrencies, employees may be interested in using them as an innovative way of getting paid. Would getting paid salaries or bonuses in this way be possible in Poland?
- 2) **changes in the regulations concerning board management and supervisory boards of corporate group companies** - we discuss whether a parent company can make a binding request to its subsidiary and what the potential liabilities are for management board members carrying out this request;
- 3) **what happens to trade union membership and any roles a person might have when their employment contract is terminated** – recently, the Chief Labour Inspector (pl. Główny Inspektor Pracy, GIP) clarified their position on trade union membership for unemployed people. The essence of the GIP's stance is in line with our opinion on the matter - people who have lost their jobs, as a rule, do not retain their trade union membership, and therefore, cannot continue their trade union function.

Enjoy reading!

Agnieszka Nicińska-Chudy
Robert Stępień



Payment in cryptocurrency - is it possible?

Currently, digital currency as a means of payment is not regulated by legislation. As a rule, remuneration in Poland should be paid in traditional money or in kind. Regulations do not specify what part of employee pay can be made in cash and what part in other forms. To some extent, it is possible to pay employees in kind, following the long-established practice in the coal mining industry of paying part of the salary in coal.

We believe that, by the same token, there is no reason why part of the remuneration could not be paid in cryptocurrencies as, for example, discretionary awards or bonuses.

Employment contracts based on the Civil Code offer more freedom to the parties. In our opinion, the entire remuneration under a contract for specific work can be paid in cryptocurrencies. Other Civil-Code-based contracts will be, to a greater or lesser extent, governed by the same rules as employment contracts based on the Labour Code, providing that the minimum salary must be paid in cash and the remainder can be paid, for example, in cryptocurrencies.

Where there is a will there is a way to pay employees in digital currency. However, the unpredictability and frequent fluctuations of cryptocurrencies would be a hard nut to crack.

Another downside would be that, still, cryptocurrencies and how they work remain... cryptic. This, in turn, will give rise to some uncertainty on how to calculate taxes and social security contributions from the employee's income at the end of the month. Even though paying employees in cryptocurrencies is not as straightforward as it may seem, there is a growing interest in using this solution.

What's new in Commercial Companies Act - key changes for board members

The recent amendment to the Commercial Companies Code introduced many significant changes concerning the management and supervisory boards of commercial companies. For example, up to now, holding law provisions were quite rudimentary, and contracts for company management and profit transfer did not work in practice. In the new regulations, the interest of the group of companies understood as the effect of a common strategy is brought to the foreground to justify the parent company's management over its subsidiaries.

Liability for the effects of a binding request

One of the most significant developments is, undoubtedly, that a parent company can issue a binding request concerning corporate management to a subsidiary company. Therefore, it would be crucial for the management board members of a subsidiary to consider the question of liability for carrying out such a request.

When a request is binding?

Not every request made by a parent company will be considered binding. First, certain requirements must be met. Most importantly, a parent company must issue the request in written or electronic form. A binding request must also specify, among other things, the interest of the group that justifies carrying out the request, the expected benefits or damages to the subsidiary resulting from it and, if the latter is expected, how and when the subsidiary will be compensated for the damage.

Request-related liability

If the subsidiary decides to carry out the request, its management board members are not liable for the damage that might result from complying with that request. The parent company is liable for the entire damage caused by carrying out a binding request and not remedied within the time limit provided for in the request.

Board member's duty of loyalty

The new legislation also covers the duty of loyalty from board members and sets out that a board member should carry out their function not only with due professional care required by the function but also with loyalty. Therefore, the legislator has introduced a new standard for 'loyal conduct', even higher than, for example, the existing duty of non-competition.

This requirement will take on added significance when determining a board member's potential civil liability to the company. The legislation does not define 'loyal conduct'. However, it can be assumed that it is manifested primarily by giving priority to the company's interests. The new laws can also be interpreted as promoting a board member's proactive approach to taking advantage of business opportunities. A loyal board member, having exercised due diligence and risk assessment, will not be held liable for failed ventures.

Termination of employment tantamount to termination of union membership and functions

The Chief Labour Inspector has taken a stance on the regulations concerning the rights of trade union members after the termination of their employment.

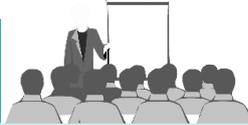
As a rule, people who have lost their jobs do not retain their trade union membership and, consequently, cannot continue their trade union functions under the majority of trade union statutes.

Such a conclusion can be clearly drawn from the provisions of the Trade Union Act. Under the Act, only retired employees, persons on disability benefit and unemployed people "within the meaning of employment regulations" retain the right to trade union membership. Therefore, under the literal rule, the Act does not allow people without unemployed status according to the applicable employment legislation to continue their trade union membership.

The Chief Labour Inspector (pl. Główny Inspektor Pracy, GIP) confirmed this point of view. The GIP also pointed out that the provisions of trade union statutes must not be inconsistent with the applicable legislation. Otherwise, such provisions are invalid and ineffective. Thus, for example, the statutes cannot set out that a union member who lost their job but did not register as unemployed at the labour office and is neither retired nor on disability benefit can retain their trade union membership.

GIP confirmed that it will be possible to use the purposive approach to statutory interpretation, under which union membership can be retained by a person who is not unemployed "within the meaning of the employment legislation", only in exceptional circumstances. However, these would be reserved for extraordinary situations and decided individually by the court on a case-by-case basis.

We would like to provide you with a list of events organized by PCS | Littler in the coming weeks and interesting publications by our lawyers.



Live conference: HR law challenges in 2023

Date: 1st December, 11:00 a.m - 13:00 p.m.

Venue: Hilton Garden Inn Rzeszów, Al. Kopisto 1, Rzeszów.

Speakers: Robert Stępień and Agnieszka Nicińska-Chudy, Michał Bodziony, Kinga Ciosk.

Detailed agenda and registration: [here](#).

Let's talk about money: A cash injection – should it come from the Social Fund or working capital? What other benefits are offered to employees for Christmas and how to fund them?

We would like to invite you to attend the first meeting of the “Let's Talk About Money” series.

Date: 1st December, 11:00 - 11:45 a.m., online.

Speakers: Sandra Szybak-Bizacka and Łukasz Chruściel.

More: [here](#). | Registration form: [here](#).

Conference: Focus on the Manager. Leader of yesterday, today and tomorrow

We invite you to participate in the conference organised by Ernst & Young Polska.

Date: 5th December, 9:00 a.m. - 5:00 p.m., hybrid event.

Speaker: Sławomir Paruch.

Detailed agenda and registration: [here](#).

Webinar: How not to catch a bad egg when fishing for talent?

Date: 6th December, 11:00 - 11:30 a.m., online.

Speakers: Miłosz Awedyk and Jakub Grabowski.

Registration form: [here](#).

Workshop: Compliance in HR departments - human capital management, processes digitisation, regulations

We would like to invite you to participate in a workshop organised by MMC Poland.

Date: 5-6th December, 9:00 am - 3:00 pm, online.

Speakers: Karolina Kanclerz and Bartosz Tomanek.

Detailed agenda and registration: [here](#).

On unions with unions: Terminating an employee being a trade union representative - when is it permissible?

We would like to invite you to take part in the next meeting of the “On unions with unions” series.

Date: 7th December, 11:00 - 11:45 a.m., online.

Speakers: Sławomir Paruch and Robert Stępień.

More: [here](#). | Application form: [here](#).

No, because RODO!: Data Protection Incidents - the most common situations, how to react and how to protect yourself from the consequences

We would like to invite you to participate in the next “No, because of RODO!” meeting.

Date: 14th December, 11:00 - 11:45 a.m., online.

Speakers: Paweł Sych and Robert Stępień.

More: [here](#). | Registration form: [here](#).



Littler with the 2022 UPS Legal Diversity Award

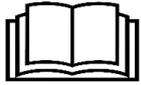
We can be beautifully different. True diversity is born out of deep conviction, manifested in practice.

At PCS | Littler, we change the world for the better by starting with ourselves. We set an example. We would like to thank our colleagues and customers for being with us.



We are proud to announce that **Littler has been named the "Law Firm of the Year" in the category of Employment Law.**

Invariably, for 13 years now, Littler has received Tier 1 Rankings on U.S. News – Best Lawyers® 2023 “Best Law Firms” List. More details: [here](#).



The Employer's Guide to Europe's Inflation

Littler's Database of Anti-Inflationary Government Measures Impacting Employers in Key Countries in Europe
Launched on 08 October 2022



Littler – The Employer's Guide to Europe's Inflation

After more than two years of struggling with the pandemic, European countries have been rocked by record levels of inflation and economic slowdown. To help households cope with this difficult situation that shows no signs of improving, governments and employers across Europe are adjusting legal regulations.

Read more in the guide: [here](#).



Pro Bono Week Podcast – PCS | Littler Assistance with Ukraine

Tomasz Rogala and Marcin Sanetra talk with Lavanga Wijekoon about the pro bono legal assistance PCS | Littler's attorneys have given Ukrainians fleeing the war.

For more than eight months, we have been focused on pro bono work for Ukrainian refugees as part of our 'How to Help Ukraine' initiative. A dedicated team, headed by Karolina Schiffter, offers free legal advice to those in need. The team has already helped more than 1,500 people, published over 65 articles and legal alerts and organised several free online meetings. More about supporting Ukrainians: [here](#).

The podcast is available: [here](#).



#RZECZO PRAWIE



Interview: A good business lawyer cannot be out of touch with business reality | #RZECZO PRAWIE

We invite you to watch Slawomir Paruch and Wojciech Tumidalski's discussion in the #ReczoPrawie programme.

"The role of a lawyer should be to enable clients to carry out their business initiatives and plans efficiently and lawfully."

The interview is available: [here](#).



Establishing the Together for Diversity in Business Foundation

A PCS attorney, Marcin Szlasa-Rokicki, is one of the founders of the Together for Diversity in Business Foundation.

On 27th September this year, the Together for Business Diversity Foundation was set up by notarial deed.

The foundation has been established to continue the four-year work of the Together for Diversity in Business social initiative to promote and develop best practices in diversity and equality management in business and employment, as well as share knowledge in this area.

The foundation's main focus is on intergenerational collaboration, gender synergy, multiculturalism and the inclusion of people with disabilities.

PCS Paruch Chruściel Schiffter Stępień Kanclerz | Littler has supported this initiative from the very beginning.

More about the foundation: [here](#).