MANAGEMENT LIABILITY UNDER THE NEW HUNGARIAN CIVIL CODE

The New Civil Code¹ became effective on March 15, 2014. Among other substantial amendments, the new law significantly changes the liability of the executive officers of companies. Such changes will affect the liability of executive officers towards both third parties (e.g., creditors, shareholders, etc.) and the company itself.

1. LIABILITY TOWARDS THIRD PARTIES

Pursuant to the general rule under the currently effective Companies Act (the “Companies Act”), executive officers are not held directly liable for any damages caused in their capacity as executive officer. Rather, the company is held liable for such actions and the executive officers are only held liable under exceptional circumstances, in particular in wrongful trading cases if a company becomes insolvent.³

Pursuant to the New Civil Code, executive officers may be held liable jointly and severally with the company, if the executive officers cause any damage in connection with their position.⁴ Accordingly:

(a) Executive officers may be held directly liable towards third parties for damages caused such third parties in their capacity as executive officer (e.g., creditors, shareholders, etc.); and

(b) Those third parties are entitled to initiate lawsuits directly against the executive officers.

2. LIABILITY TOWARDS THE COMPANY

The New Civil Code redefines the legal relationship between a company and its executive officers and states that the liability of the executive officers to the company is regulated pursuant to the rules of contractual damages. The consequences are twofold:

(a) The new contractual damages regime implies a strict liability regime, the scope of exemptions thereunder is limited. The executive officer shall not pay damages if the executive officer proves that (i) the circumstances causing the damages was out of his/her control, (ii) such circumstances may have not been foreseen by the executive officer at the date of the conclusion of the agreement, and (iii) the executive officer was not obliged to prevent such circumstances or damages⁵; and

(b) On the other hand, the amount of damages payable is limited. The executive officer shall be liable for the entire amount of damages caused in the subject matter of the contract; however, as to extra-contractual damages,⁶ the executive officer shall be held liable only if it is proven that such damages may have been foreseeable at the time of the conclusion of the contract. The New Civil Code became effective on March 15, 2014. Existing companies shall abide by the new legal code and as soon as possible amend their articles of association but no later than March 2015/2016.⁷, ⁸
RECOMMENDATIONS FOR RISK MANAGERS WITH DIRECTORS AND OFFICERS IN HUNGARY

Management liability under the new Hungarian Civil Code is getting the attention of company heads, directors and officers of companies in Hungary. The number of questions in this respect is increasing day by day. The good news is that those executives employed by multinational companies with D&O insurance programs in place on a corporate level.

Since non-admitted insurance is prohibited in Hungary, the following options should be considered:

- Cover your local Hungarian D&O exposures on a Freedom of Services (FOS) program policy.
- If an FOS solution is not available, Hungary should be included in your global D&O program with an appropriate local policy in place.
- Obtain a free-standing D&O policy in Hungary if a global program option is not possible.

At this point, we would like to alert risk managers to the existence of D&O insurance, which they should communicate as appropriate to their respective responsible country heads.

For more information, contact your Willis Client Advocate® or
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1 Act V of 2013 on the Civil Code
2 Act IV of 2006 on the Companies
3 Act XLIX of 1991 on the Bankruptcy Proceedings, Section 33/A. §
4 New Civil Code Section 6:541. § (Liability for the damages caused by the executive officers)
5 Section 6:142. § (Liability for contractual damages)
6 Damages arisen as the consequence of the breach and the anticipated profit (lucrum cessans)
7 Draft act No. T/12094 on the entry into effect of the New Civil Code and other temporary measures, Section 12. § (2)
8 In respect of the kft. (which means limited liability company) and rt. (which means public limited company) after March 15, 2016 and in respect of kkt. (which means general partnership) and bt. (which means limited partnership) after March 15, 2015

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