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BARD CSERI & Partners Law Offices

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BARD CSERI & PARTNERS

LAW OFFICES

**DIRECTORS' AND OFFICERS' LIABILITY
IN HUNGARY**

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Directors, Officers and managers Personal Liability

The Legal Position in Hungary

1 – Structure of Hungarian Corporate Entities

The structure of Hungarian corporate entities is defined in **Act CXLIV of 1997 on Business Associations** (Business Associations Act). The act lists the following corporate entities:

- Business associations without legal personality: unlimited partnerships and limited partnerships.
- Business associations with legal personality: joint enterprises, limited liability companies and companies limited by shares.

Corporate structures:

Unlimited partnership: The members of a limited partnership undertake to pursue joint business activities with unlimited, joint and several liability. Members make available to the partnership the contribution necessary for such activities.

The supreme body of an unlimited partnership is the meeting of members, in the activity of which all members take part in person. The meeting of members (members' meeting) passes resolutions on all issues not falling within the authority of management as well as which are assigned to the competence of the supreme body of the partnership by legal regulations or the articles of association, or which do not belong to the ordinary business activity of the partnership. Unless otherwise provided by the articles of association, all members are entitled to the management of the partnership. In the articles of association, the members may entrust one or several members with the management, in which case the other members are not entitled to doing so. Any member of the partnership with legal personality may only delegated to the management a natural person authorised to represent such legal person. The personal requirements related to executive officers are applied to the members entrusted with management and the representatives of members with legal personality. Each member entitled to management may act independently. Members entitled to management may object against the planned measures of another member entitled to management. In such cases, with the exception of urgent measures, the measure concerned may not be taken until the meeting of members passes a resolution thereon.

Limited partnership: Members of a limited partnership undertake to pursue joint business activities in a way in which the liability of at least one member (general partner) is unlimited for the obligations not covered by the assets of the partnership, and is joint and several with all other general partners, while at least one other member (limited partner) is only obliged to provide the contribution undertaken in the articles of association, and, with the exceptions set forth in the Business Associations Act, is not liable for the obligations of the partnership. Limited partners are not entitled to the management of the partnership. However, limited partners may also take part in the meeting of members (members' meeting). Limited partners bear the same liability as general partners if their names appear in the company name of the partnership. If a limited partner has not provided his contribution indicated in the articles of association, or has provided such only in part, he is liable with his private property up to the value of the contribution not provided.

Joint enterprises are a form of inter-company co-operation.

Limited liability companies are business associations founded with an initial capital (subscribed capital) consisting of capital contributions of a pre-determined amount, in the case of which the obligation of members to the company extends only to the provision of their capital contributions, and to other possible contributions as set forth in the articles of association. With the exceptions set forth in the Business Associations Act, members are not liable for the obligations of the company. Members of companies are obliged to pay the contributions in cash and to make available the contributions in kind. Members of companies may not be exempted from such payment, and any offsetting of payments with the company is not admissible.

The supreme body of a company is the members' meeting. Members' meetings are convened at least once every year. The following, for example, fall within the exclusive competence of the members' meeting': approval of the annual report, including decision on the appropriation of after-tax profits; decision to pay interim dividends; resolution on initiating the exclusion of a member; election and removal of the managing director, and the establishment of his remuneration, as well as the exercise of employer's rights if the managing director is also employed by the company; election and removal of supervisory board members, and the establishment of their remuneration; election and removal of the auditor; approval to conclude contracts which take place between the company and one of its members, its managing director or their close relatives [Paragraph *b*) of Section 685 of the Civil Code]; enforcement of indemnification claims against members responsible for foundation, managing directors or supervisory board members; decision on termination without legal successor or transformation of the company; alteration of the articles of association; and all issues which are assigned to the competence of the members' meeting by the law or the articles of association.

Administration of the company's affairs and representation of the company is carried out by one or more managing directors elected from among members or non-members. The articles of association may provide that all members be entitled to management and representation, in which case they shall be considered managing directors.

Companies limited by shares are business associations founded with a share capital (subscribed capital) consisting of shares of a pre-determined number and face value, in the case of which the obligation of members (shareholders) to the company limited by shares extends to the provision of the face value or issue value of shares. With the exceptions defined in this Act, shareholders shall not bear liability for the obligations of a company limited by shares.

A company limited by shares may be a closed company or a public company. A company limited by shares is a closed company if its shares are not issued publicly. A company limited by shares is a public company if its shares are issued publicly in part or in full. The supreme body of a company limited by shares is the general meeting, which consists of all shareholders. The authority of the general meeting is similar to the members' meeting.

The management body of a company limited by shares is the board of directors. The board of directors consists of at least three and at most eleven members who are natural persons. The board of directors elects its chairman from among its members. The office of the chairman or that of the members of the board of directors may not be carried out within the framework of an employment relationship.

The board of directors exercises its rights and perform its duties as an independent body. The rules of procedure approved by the board of directors shall provide for the division of tasks and competence among the members of the board of directors. The members of the board of directors take part in the general meeting of the company with a right of consultation.

The deed of foundation of a closed company may provide that no board of directors be elected, and the rights of the board of directors as set forth in this Business Associations Act be exercised by a general director.

2 – Who are Directors, Officers and Managers?

The primary source of definition of directors, officers and managers can be found in section 21 of the Business Associations Act. Executive officers are understood as the member(s) entitled to management at unlimited partnerships and limited partnerships, the director at joint enterprises, and the managing director (managing directors) at limited liability companies. Unless otherwise provided by the deed of foundation of a closed company limited by shares, the board of directors carries out management of a company limited by shares, and the members of the board of directors shall qualify as executive officers. The executive officers conduct the management of the business association pursuant to the provisions governing the individual forms of business associations. Further more, in Act XXII of 1992 on the Labor Code: the owner or the entity exercising ownership rights may, with respect to the positions of key importance for the employer's operations, prescribe that employees filling such positions are to be deemed executive officers.

3- Legal Basis of Directors, Officers and Managers Liability in Hungary

a) Statutory, civil or contractual legal framework

The civil responsibility of officers is regulated by three main sources: the Business Associations Act, the Labor Code and the Civil Code, which is the foundation of both aforementioned laws.

According to Business Associations Act, executive officers shall conduct the management of the business association with the increased care generally expected from persons occupying such positions, and give priority to the interests of the business association. Executive officers are liable to the business association in accordance with the general rules of civil law for damages caused by violation of the law, or breach of the articles of association (deed of foundation, statutes), the resolutions of the business association's supreme body, or their management obligations. It is provided by the Civil Code, that “A person who causes damage to another person in violation of the law shall be liable for such damage. He shall be relieved of liability if he is able to prove that he has acted in a manner that can generally be expected in the given situation.”

It means, that practically the liability of executive officers is unlimited, and they have to prove that they have acted in a manner that can be generally expected in the given situation (exculpation).

Executive officers bear joint and several liability for any damage resulting from their violation of the law, or breach of the articles of association (deed of foundation, statutes), the resolutions of the business association's supreme body, or their management obligations. The joint and several liability is applicable in case of joint authorization to sign for the company, and the board of directors of companies limited by shares. If the executive officers have sole authorization to sign for the company, the general rule for joint damage is provided by the Civil Code. “If the damages are caused jointly by two or more persons, their liability shall be joint and several towards the aggrieved person, while their liability towards one another shall be divided in proportion to their respective degree of responsibility.”

It is set out that the executive officers (with sole authorization to sign) liability is joint only if they act jointly and accountably to all. However, if they are obliged to take the necessary steps, and all of them neglect their responsibility, they will be liable jointly and severally.

The board of directors is liable jointly and severally independent of the fact whether sole or joint authorization to sign on behalf of the company is provided for. According to the wording of the Business Associations Act jurisprudence accepted the interpretation, that the sole and joint liability is applicable only if the board of directors passes a resolution as a corporate body. A special possibility of avoid liability provided by the Business Associations Act, backs this interpretation; “[...] if such damage is caused by a resolution of the board of directors, no liability lies with a member of the board of directors who did not take part in the decision or voted against the resolution, and informed the supervisory board thereof in writing within fifteen days after passage of such resolution.” In other cases it must be examined, whether the pre-conditions provided by the Civil Code of joint and several liability are present or not.

We have to note, that the liability of the supervisory board is very similar to the executive officers'. Supervisory board members bear unlimited, joint and several liability for damages caused to the business association through the violation of their supervisory obligation.

As it is, we have outlined above, generally, executive officers are liable for any damages caused in their function as such, or in violation of the competition prohibitions, in accordance with the provisions of civil law. In other cases the general provisions on liability for damages of the Labor Code are applied, whereby in the event of causing damage by negligence the executive officer is liable for up to the equivalent of 12 months of his average wages.

The main difference between the Labor Code and the Civil Code with regards to the liability is the extent of it and the burden of proof (onus probandi).

According to the Labor Code:

- the liability is limited
- the damages depends not on the extent of the caused damage but on the negligence of the employee. The employee must reimburse the whole damages only if he had acted wilfully
- the employer is required to prove the liability of employees, the occurrence and the amount of damage, as well as the causal correlation.
- the damages does not include the compensation for non-pecuniary loss and the outstanding profit.

If the manager is not deemed to be executive officer in the event of causing damage by negligence, the amount of liability does not exceed fifty per cent of the employee's average wages for one month. The collective bargaining agreement or the employment contract may stipulate different provisions regarding the amount of liability, with consideration to the circumstances of the occurrence and of the person responsible, such as the degree of negligence, the nature and frequency of the damage, and the employee's position.

The employment contract and the collective bargaining agreement may specify the amount of liability as the equivalent of no more than one and a half month's and no more than six months' average wages.

In respect of financial institutions, cash-desk accountants and supervisors are subject to full liability for damages caused by negligence in the course of accounting, or by the omission or incomplete fulfilment of inspections related thereto.

Employees are subject to full liability for damages caused wilfully.

b) Duties and requirements of Directors, Officers and Managers

General rule in the Business Associations Act

Executive officers shall conduct the management of the business association with the increased care generally expected from persons occupying such positions, and give priority to the interests of the business association.

General competition and incompatibility rules in the Business Associations Act

With the exception of acquiring shares in a public company limited by shares, an executive officer may not acquire interest in another business association pursuing an activity identical to that of the business association, furthermore, may not be an executive officer in another economic organization pursuing an activity identical to that of the business association, unless rendered possible in the business association's articles of association (deed of foundation, statutes), or the business association's supreme body grants its consent.

An executive officer and his close relatives may not conclude transactions falling within the scope of activities of the business association in his own name or to his own benefit, unless specifically permitted in the articles of association (deed of foundation, statutes).

An executive officer and his close relatives may not be elected as a member of the supervisory board at the same business association.

Indemnification claims for damages caused to the business association by violation of the above rules may be enforced for a period of one year from the occurrence of such damage.

The same rules apply to the members of the supervisory board.

A person who has been sentenced to imprisonment by a final judgment due to the commission of a crime may not be an executive officer of a business association until such person is relieved from the detrimental legal consequences related to his criminal record.

A person who has been barred from a certain profession by a final judgment may not be an executive officer in a business association pursuing the activity indicated in such judgment during the force of such sentence.

For a period of three years after the establishment of the insolvency (order of liquidation) of a business association by final judgment, a person who acted as an executive officer at the business association to be liquidated for one year or more during the period of two years prior to the date of the final judgment ordering such liquidation may not be an executive officer of another business association, unless he was specifically appointed as executive officer for the purpose of avoiding the liquidation.

For a period of two years after cancellation of a business association from the register of companies based on cancellation proceedings ex officio, a person who, during the year preceding such cancellation, acted as an executive officer of the terminated business association by the cancellation may not be an executive officer of another business association.

With the exception of unlimited and limited partnerships, an executive officer may only be a natural person; and may be elected an executive officer in three business associations at most. The duties of an executive officer may only be carried out in person, no representation is admissible.

c) Is there an equivalent in Hungary to the US Business Judgement Rule?

There are no equivalent in Hungary to the US Business Judgement Rule.

d) Duties of Directors, Officers and Managers towards the corporation.

- representation of the corporation
- to ensure the legal operation of the corporation, with fulfilment of their report and supply of data obligations
- to ensure the operations inside the corporation and to check the legality of the procedures inside the corporation
- protest in case of danger of passing illegal resolutions at the highest organ of the corporation, and execute the legal resolutions
- control in connection with the fulfilment and execution of the corporations (and its organs) obligations
- cooperation with other organs and executive officers of the company
- ensure the economic activity of the company: competitiveness, cash flow, and assertion of claims
- ensure the execution of the corporation's rights, protection of the of the beneficiaries' interests.

e) Duties of Directors, Officers and Managers in case of bankruptcy (liquidation)

The head of an economic organization under liquidation shall

- prepare a final inventory, annual report, simplified report or simplified balance-sheet and other documents provided by the Bankruptcy Act.
- prepare a list of the documents that may not be discarded or are classified as confidential, and deliver it to the liquidator,
- file a declaration with the liquidator and the competent environmental protection agency within 30 days of the starting date of liquidation regarding whether there are any environmental damages or environmental hazards remaining that may result in fine payments or other payment obligations, and expenses connected with the cleanup of such damage,
- disclose information to the liquidator regarding all legal actions and commitments which are provided by the Bankruptcy Act
- inform the employees, cooperative members, as well as the trade unions and works councils (employee delegates) regarding the decree of liquidation,
- inform the beneficiaries of the claims regarding the decree of liquidation within 30 days of the starting date of liquidation.

The head of an economic organization may be subject to a fine of up to 50 per cent of his income received from the economic organization in question in the year preceding the starting date of liquidation, or up to 1 million HUF if his income cannot be determined, for any breach of the obligations defined above or for providing any false information. The fine may be imposed even if said person is no longer in the employment of or under any work-related contractual relationship with the debtor, or is no longer a member or an executive officer of the debtor.

f) Status of enforcement of Directors, Officers and Managers liability with respect to tax, Labor and environmental regulations

Generally, fines must be paid by the companies. The labor, tax and environmental authorities may only fine the directors and officers in form of an execution fine. This is applied if they do not execute the decisions of the authorities.

g) Directors, Officers and Managers Criminal liability

The criminal liability is based on the Penal Code.

We can group the criminal offences on the basis of two major aspects. The first group protects the company and its members and the other protects the creditors or third party.

Felonies protecting the company and its members

| Felony | Description of the felony | Punishment |
|--|---|--|
| Illegal Conduct by Senior Employees of Business Associations and Cooperatives | A senior employee of a business association or cooperative, or a member vested with management authority who deceives any member of the company in respect of the wealth of the company or cooperative commits a misdemeanour offence. | imprisonment up to two years, community service or a fine |
| Negligent Administration | The person who has been entrusted with the administration or supervision of an alien property, the administration or supervision of which is based on law, and causes pecuniary disadvantage by negligence by infringing or neglecting his obligation resulting therefore, commits a misdemeanour | imprisonment of up to two years, Labor in the public interest, or fine |
| Curtailment of Registered Capital or Primary Capital | The senior officer of a company limited by shares or of a limited liability company, who withdraws partly or wholly the registered capital or primary capital, commits a felony | imprisonment of up to three years |
| Curtailment of Registered Capital or Primary Capital | The senior officer of a company limited by shares or of a limited liability company, who withdraws partly or wholly the registered capital or primary capital, commits a felony, and | imprisonment of up to three years |
| Indication of | Any person who partakes in the act of indicating the value of a non-cash contribution | imprisonment of up to three years. |

| | | |
|---|--|------------------------------------|
| Untrue Value | (non-cash deposit) provided to a business association at an amount higher than the value prevailing at the time when provided in the articles of association of such association, or, if the value of a non-cash contribution was established by an auditor, at an amount higher than established by the auditor, commits a felony offense | |
| Fraud Regarding Capital Investment | The person who - by the communication or rumoring of untrue data or the concealing of data concerning the financial situation of an economic organization - induces other persons to make capital investment or the increase of the investment, commits a felony | imprisonment of up to three years. |
| Fraudulent Breach of Trust | The person who has been entrusted with the administration of alien property, and causes pecuniary disadvantage by breaching his obligation resulting therefore, commits fraudulent breach of trust. | Imprisonment from 1 to 3 years |

Felonies protecting the creditors and third parties

| Felony | Description of the felony | Punishment |
|--|---|---|
| Crime of Bankruptcy | <p>The person, who - in case of insolvency which has occurred within the sphere of his economic activity -</p> <ul style="list-style-type: none"> a) conceals, keeps secret, damages, destroys, makes unusable any property serving as cover for his debt, b) concludes a fictitious transaction, or recognizes a doubtful claim, c) commences or continues a loss-generating business in a way contrary to the requirements of reasonable management, d) diminishes actually or fictitiously his property in a way contrary to the requirements of reasonable economy, <p>and thereby frustrates partially or wholly the satisfaction of his creditors, commits a felony, and shall be punishable with imprisonment of up to five years.</p> | <p>Imprisonment up to five years, in aggravated forms from 2 to 8 years</p> |
| Withdrawal of the Cover of Debt | <p>The person who withdraws property serving as cover for a debt resulting from economic activities, and frustrates thereby partly or wholly the settlement of the debt, commits a felony</p> | <p>imprisonment of up to five years</p> |
| Unlawful Preference of a Creditor | <p>The person who - in the knowledge of his insolvency - gives unlawful preference to one of his creditors to the detriment of the other creditors, commits a misdemeanor</p> | <p>imprisonment of up to two years.</p> |
| Credit Fraud | <p>The person who uses a document with untrue contents in the interest of the favorable adjudgment of the extension, termination, of credits to be extended for the exercise of his economic activities or of the changing of the conditions of credit, commits a felony</p> | <p>imprisonment of up to three years.</p> |

We also have to mention the infringement of accounting regulations, tax fraud and embezzlement, which can also be committed by the executive officer.

Executive officers are liable for all of the above felonies, but we have to note, that as result of the EU law harmonization, the legal entities will be also liable if their executive officers commit a crime for the benefit of the company.

4 – Statute of limitations

Preliminary remarks

The Labor Code may not always regard all managers as executive officers therefore the special three-year statute of limitations (provided by the Labor Code) may be applicable in some cases.

If responsibility of the executive officer is dealt with under the Civil Code the five-year statute of limitations rule applies. Notable exemptions are: if damage results from criminal conduct and the statute of limitations for such conduct is more than five years than the longer period applies; warranty claims are generally shorter (6 months); ownership claim does not lapse.

We have to note, however, that the responsibility of the executive officers is towards their company and therefore one may exercise his/her claims *towards the company* in the above-defined time-period.

These general rules are applicable to all sections of question 4.

a) Shareholders actions

As a special rule it should be noted that minority shareholders may also independently lodge a claim against the company.

Following termination of the business association without legal successor, indemnification claims may be brought against the executive officers by the members (shareholders) with membership at the time of the cancellation of the business association by the court of registration, for a period of one year following such cancellation by a final judgment. If, during the existence of the business association, the liability of the member (shareholder) for the obligations of the business association was limited, the member (shareholder) may exercise such indemnification claim up to the proportion due to him from the assets distributed upon termination of the business association.

b) Contractual disputes

See above general rules.

c) Discrimination actions

In case the discrimination actions are in connection with the provisions of the Labor Code, the period of prescription is 3 years. If the subject of discrimination lodges a claim on the basis of violation of inherent rights the period of prescription is 5 years.

d) Sexual harassment actions

If the subject of sexual harassment lodges a (civil) claim on the basis of violation of inherent rights the period of prescription is 5 years.

e) Wrongful termination actions

The period of prescription is 3 years.

f) Fraud

The period of prescription may be from 2 to 10 years, with regards to the severity of the committed crime.

g) Tax

1. If the executive officer did not committed a crime: see preliminary remarks! Generally, the period of prescription may be 5 years.
2. If the executive officer committed a crime: The period of prescription may be from 2 to 8 years, with regards to the severity of the committed crime.

5. Who can sue?

Preliminary remarks

As we have mentioned, the business association is liable for damages caused to third parties by its executive officer acting within his sphere of competence as such. There are two main exceptions: one is the pre-company (after the filing but before the registration a business associations is a pre-company); if, as a consequence of the form of the business association to be established, the liability of the members for the obligations of the business association is limited, and outstanding claims remain despite the members (shareholders) accepting liability, the executive officers of the business association to be established bear unlimited, joint and several liability towards third parties. In the other case following termination of the business association without legal successor, indemnification claims may be brought against the executive officers by the members (shareholders) with membership at the time of the cancellation of the business association by the court of registration, for a period of one year following such cancellation by a final judgment. If, during the existence of the business association, the liability of the member (shareholder) for the obligations of the business association was limited, the member (shareholder) may exercise *such indemnification claim* up to the proportion due to him from the assets distributed upon termination of the business association.

To sum up, generally only the company may be sued, and then the company can lodge a claim against the executive officer.

a) Corporation: (derivative actions)

- brought by the board of directors on behalf of the company
- brought by shareholders on behalf of the company (is there a share ownership interest to bring such a claim)
- frequency and severity of such suits?

There are no derivative actions under Hungarian Law which are brought by shareholders.

b) Shareholders: (direct actions and class actions)

An *indemnification claim* can only be brought in the aforementioned case, after the company was terminated (see 5 – Preliminary remarks) .

- how can minority shareholders sue under the law of Hungary

Members (shareholders) representing one-tenth or more of the votes may at any point in time request that the business association's supreme body be convened, indicating the reason and the purpose thereof. (The articles of association (deed of foundation, statutes) may also grant this right to members (shareholders) representing a smaller proportion of the votes.)

If the supreme body of a business association has refused the proposal to enforce a claim against the members, executive officers, supervisory board members or against the auditor of the business association, or, if no decision on a regularly announced proposal to this effect has been reached by the business association's supreme body, members (shareholders) representing one-tenth or more of the eligible votes may, under penalty of forfeiture of rights, enforce such claim on behalf of the business association in court proceedings within a period of thirty days after the meeting of the business association's supreme body. The costs of lodging the claim are advanced by the business association. However, in the event that the action fails, the costs thereof are jointly and severally reimbursed to the business association by the members (shareholders) lodging such claim. (*derivative action*)

- how can minority shareholders bring direct, class and/or derivative actions?

The minority shareholders may not bring direct actions against the executive officers.

For derivative actions see above!

There are no class actions in which a single person (shareholder) represents by their litigation the interest of a larger group. There is only the joinder of parties, in which the parties or claims are united in a single lawsuit (it might be compulsory or permissive).

- Can shareholders associate in a class action? And if yes what are the basic requirements for class action under the law of Hungary?

See above

c) Creditors:

- Frequency and severity of such suits?

Creditors may only sue the company.

d) Third parties:

- frequency and severity of such suits

Third parties may only sue the company.

e) Insolvency administrators / Trustees in Bankruptcy

- frequency and severity of such suits?

They can only sue the company. They can only fine the executive officers.

f) Regulatory authorities: what type of administrative proceedings and court actions?

- Hungarian Capital market regulator

The Hungarian State Supervision for Financial Organizations fines the executive only if officers act so, that it means sever risk for the operation of the company. The Supervision's fining policy is rather early warning based, therefore such fines are very rare. The Supervision may not lodge a claim against the executive officers.

- Hungarian employment and Labor regulator

The Hungarian Labor Supervision may only apply execution fines against executive officers. These files are applied if the company do not fulfil the resolution of the Supervision. The Supervision may not lodge a claim against the executive officer.

- frequency and severity of such suits?

There are no such suits. Even the fines are very rare, but they are applied in sever cases.

g) Employees

- how and when can employees sue Directors, Officers and Managers for discrimination, sexual harassment and wrongful employment practices?

As a general rule employees may only sue the company. But if their inherited right was violated, they can sue directly the executive officers.

- frequency and severity of such suits?

Infrequent, not very sever.

6 – What is the enforceability of a foreign judgement on Hungarian Directors, Officers and Managers

The foreign judgements may enforced on the basis of international agreements or in case of reciprocity. In such cases the Ministry of Justice can provide information.

7 – Can the Directors, Officers and Managers be liable for punitive damages under Hungarian law, and are punitive damages insurable under Hungarian law?

No, there is no punitive damages under Hungarian law.

8 – Can the Company indemnify its Directors, Officers and Managers under Hungarian law and under which conditions?

The company can indemnify its executive officers if they agree in a contract.

The managing director can also exclude his/ her liability against the company with the following restrictions of the Civil Code. Liability for a breach of contract damaging life, physical well-being, or health that has been caused willfully, by gross negligence, or by a felony offense cannot be validly excluded.

Unless otherwise prescribed by law, liability for breach of contract shall not be excluded or restricted, unless the disadvantage incurred thereby can be offset by the adequate reduction of the consideration or by some other advantage. As the managing director is in a contractual relation with the company, the above rule is applicable.

9- Is Directors, Officers and Managers Liability Insurance Legal?

- **Who can pay the insurance premium?**

The executive officer or the company can also pay the insurance premium.

- **Must the D&O insurance policy be issued by a local admitted insurer? If yes, does the same apply to a Hungarian subsidiary of a multinational?**

Because generally there is no obligatory insurance for managing officers (which might mean obligatory regulations for instance with regards to the place of issuance), a policy issued by a foreign insurance (with or without a Hungarian fronting insurance company) company may also cover the risks of an executive officer acting in Hungary. We have to note that a policy in Hungary can only be issued by a Hungarian insurance company or a registered subsidiary of a multinational.

The company can deduct only the obligatory professional liability insurance from the corporate tax basis. In other cases both the company and the executive officer have tax payment obligation.

10 - General comments

During the last 10 years of the development of the market economy, concerning the D & O liability the case law has not produced valuable judgements according to the Company Law provisions. More cases are registered according to the Labor Law. The beneficiaries and third persons prefer to sue the corporations, which use their regress right against the responsible officer (according to company or labor law)– rather seldom (e.g in bigger damage caused to the State). The reason of this situation is probably, partly that in the smaller companies the officers are often also shareholders, partly - in the big companies - because the officers and generally the decision making are under sophisticated control. It is to mention that the D&O liability insurance praxis is accordingly small. Further, we can state that the tendency concerning the liability of directors and officers shows approach and rigour, taking into consideration the earlier protection of the executive officers provided by the labor law. The tendency was undoubtedly approach to the unlimited liability, which accomplished by the new Labor Code and the Business Associations Act.

This essay is only a short overview about D&O liability. Because of the complexity of the issue, always consult a local lawyer.