Examination of the courts' jurisprudence
in respect of the liability of executive officers for debts to creditors

As of 1 July 2006, Hungarian law regulates the liability of the executive officers of business organisations for debts to creditors during the businesses' winding up without legal succession. The relevant rules are contained in Act no. IV of 2006 on Business Organisations and Act no. XLIX of 1991 on Bankruptcy and Liquidation Proceedings, and they apply to the executive officers of business organisations that will cease to exist or ceased to exist due to liquidation. They provide for a two-stage procedure. Firstly, any creditor or the liquidator – in the debtor's name – may bring an action during the liquidation proceedings to request the court to establish that the executive officers (or shadow executive officers) of the business organisation had failed to properly represent the interests of the creditors in the wake of any situation carrying potential danger of insolvency, in consequence of which the business organisation's assets have diminished, or other situations prescribed by law have occurred. Secondly, subsequent to the delivery of a final judgement establishing the liability of the executive officers for debts to creditors and to the conclusion of liquidation proceedings and the removal of the debtor from the Company Registry, any creditor may bring an action to request the court to order the debtor's executive officers to satisfy the creditor's claims. If more than one creditor filed an action, the court shall consolidate these actions and shall decide to award equivalent dividends on the claims. In the meantime, some minor changes not affecting the substance of these provisions have occurred on three occasions, lastly by Act no. V of 2013 on the new Civil Code.

The new rules entered into force on 1 March 2012 provided for the liability of the executive officers of involuntarily de-registered businesses as well. Any creditor with claims declared but not satisfied during the process of the debtor's involuntary de-registration may bring an action to request the court to order the de-registered debtor's executive officers to satisfy the creditor's claims. These rules have also been modified by the new Civil Code.

The jurisprudence-analysing working group aims at examining the problematic legal issues of cases involving the liability of executive officers for debts to creditors, expressing its views and giving guidance to the courts. The working group is particularly interested in the temporal scope of application of the relevant rules contained in the Bankruptcy and Liquidation Proceedings Act and the Company Registration Act, the time of the occurrence of a situation carrying potential danger of insolvency and the executive officers' acts that give rise to the establishment of the officers' liability.

The working group's first meeting was held on 2 February 2016. The working group decided to examine approximately 200 high court and regional appellate court judgements. Group members belonging to the judiciary will prepare short studies to analyse the eventual discrepancies and uncertainties of the courts' case-law, while group members outside the judicial system will examine the relevant legal literature and the regulations of other countries.

The working group's next meeting is expected to be held prior to 30 June 2016.

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