

## Conclusions of the summary report on the courts' jurisprudence on executive officers' liability to creditors

Under the Hungarian laws in force, three Acts of Parliament contain rules on the liability to creditors of executive officers of companies that are about to cease to exist or have ceased to exist without a legal successor. Namely:

- Act No. XLIX of 1991 on bankruptcy and liquidation procedures (henceforth: Insolvency Act) regulates the liability of executive officers of companies subjected to liquidation or struck off the company register due to liquidation
- Act No. V of 2006 on public company information, company registration and company winding-up procedure (henceforth: Act on winding-up procedure) regulates the liability of executive officers of companies struck off the company register upon a company court order, and
- Act No. V of 2013 on the Civil Code (henceforth: Civil Code Act) regulates the liability of executive officers of companies, associations, unions and cooperatives having ceased to exist without a legal successor but not in winding-up proceedings

The jurisprudence-analyzing working group obtained the relevant final decisions from the county courts and the regional courts of appeal. The judge members of the group studied some 250 judgments. Save for five judgments, all other judgments were related to executive officers' liability under the Insolvency Act. It is probably attributable to the fact that the Insolvency Act has been in force since 2006 (though several amendments have been made to it), whereas the provisions of the Act on winding-up procedure and of the Civil Code Act entered into force on 1 March 2012 and 15 March 2014, respectively.

Therefore the jurisprudence-analyzing working group basically analyzed the liability rules of the Insolvency Act, studied the courts' jurisprudence, drew conclusions that may be useful for judges proceeding in such cases, and proposed changes to the relevant legal regulation.

Hungarian legal regulation is peculiar, because claims can be enforced in a "two-tier litigation structure". While liquidation proceedings against a debtor are pending, the liquidator (in the name of the debtor) and the creditors may file an action for establishing the executive officer's liability. In exceptional cases action for recovery of residual creditors' claims may also be filed against the executive officer. Where a final court judgment has established the executive officer's liability and has quantified the extent of that liability, after the termination under a final decision of the liquidation proceedings against the debtor, creditors having unsatisfied claims may seek the recovery of their residual claims from the executive officer ratably, in proportion to the respective claims.

The jurisprudence-analyzing working group has identified the factual elements upon the existence of which executive officers' liability to creditors can be established. The working-group has clarified the notion of "situation threatening with insolvency", has identified the conducts giving rise to a finding of the executive officer's failure to have acted by paying due regard to creditors' interests, and has specified the cases when executive officers may excuse themselves from liability. The jurisprudence-analyzing group has also dealt with procedural issues, it has specified, for example, who can be a plaintiff or a respondent in a given lawsuit, the scope to which the plaintiff's duty to prove extends in case the executive officer's conduct is to be presumed under a provision of the Insolvency Act to have violated creditors' interests.

The legislative proposal submitted to the Parliament in relation to the amendment of the Insolvency Act endorsed several proposals made by the jurisprudence-analyzing working-group. We hope that upon the enactment of those amendments the interpretation-related problems identified in the summary report will cease to exist.